

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment :13.7.2015

Crl. Appeal No.1243/2012

RAJEEV CHAWLAAppellant

Through: Mr.V.K.Shukla, Advocate.

Versus

STATE

.....Respondent

Through: Ms.Kusum Dhalla, APP for the State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 This appeal is directed against the impugned judgment and order of sentence dated 26.9.2012 and 29.9.2012 respectively wherein the appellant stands convicted under Section 397 read with Section 392 of the IPC. Vide order of sentence dated 29.9.2012 he had been sentenced to undergo RI for 7 years and to pay a fine of Rs.2000/-, in default, to undergo SI for 15 days.

2 The version of the prosecution as has been unfolded in the testimony of PW-1 (complainant) is that on the intervening night of 25-26.1.2009 a PCR call of having apprehended a thief was recorded.

This was in DD no.47A at about 11.55 p.m. The local police station

was Vikaspuri. Investigation was marked to H.C. Naresh Kumar (PW-7) who along with Contable Raj Lal (PW-8) reached the spot. Statement of the complainant (PW-1) was recorded. As per his version the accused (apprehended at the spot) had robbed the complainant of Rs.2000/-, a NOKIA mobile phone and a driving licence on the point of a screw driver. Statement of complainant Ex.PW-1/A was recorded pursuant to which the present FIR was registered.

3 The prosecution in support of its case examined eight witnesses of whom PW-1 was the only public witness who was the complainant. MLC of the complainant was recorded by Dr.Shoeb. Dr.Rishi (PW-5) proved the MLC of the complainant as Ex.PW-5/A. Simple injuries were noted on the person of the complainant.

4 In the statement of the accused recorded under Section 313 Cr.P.C. he pleaded innocence stating that he had been falsely implicated.

5 No evidence was led in defence.

6 The foremost argument propounded by the learned counsel for the appellant is that a screw driver is not a “deadly weapon” within the meaning of Section 397 of the IPC and as such the conviction of the appellant under Section 397 of the IPC is uncalled for and he is entitled

to a benefit on this score. At best his conviction could have been under Section 392 of the IPC. To support his stand, reliance has been placed upon a judgment of this Court of Court in CrI.A 623/2012 titled as Vikram @ Ganja Vs. State wherein where the dimensions and the size of the knife had not been disclosed, the Court had held that it could not qualify as a “deadly weapon” under Section 397 of the IPC and benefit had been granted to the appellant in that case.

7 In a judgment of the Apex Court in Criminal Appeal No.2016/2009 title Hem Raj Vs. State of H.P. delivered on 23.5.2014 the Apex Court had upheld the contention noted by the High Court that a screw driver cannot be terms as a lethal weapon. To this limited extent ratio of the aforenoted judgment is applicable. This is otherwise a judgment dealing with an offence under Section 302 of the IPC.

8 This Court notes that PW-1 had not given any details of the screw driver. He had merely stated that he was robbed at the point of a screw driver. Investigating Officer (PW-7) had proved the screw driver as Ex.P-4. PW-8 who was present along with PW-7 had got the FIR registered. The rukka had been handed over to him. The screw driver had been seized vide memo Ex. PW-1/B but there were no dimension or

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size mentioned in Ex.PW-1/B. In fact, 4 articles had been seized vide this memo and the item at serial no.4 was screw driver which merely describes it as made of steel with a yellow/green plastic cover upon it. There was also no sketch of the screw driver which could give its dimensions and depict its size.

9 In this background it can in no manner be said that this screw driver was a “deadly weapon”. There is no gain saying to the settled legal proposition that the words “uses any deadly weapon” as appearing in Section 397 of the IPC include not only an actual user but even a threat to the victim which creates a fear in his mind and even in such a case Section 397 of the IPC may be applicable. However, the essential ingredients of Section 397 of the IPC are the “use of a deadly weapon” The screw driver in this case does not fall within this category.

10 The conviction of the appellant under Section 397 of the IPC is accordingly converted to a conviction Section 392 of the IPC.

11 Nominal roll of the appellant reflects that as on 11.7.2015 he has undergone incarceration of 2 years 10 months and 2 days besides remission earned of 11 months and 20 days meaning thereby that he has completed almost 4 years of incarceration. Learned counsel for the

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appellant submits that in view of the conviction of the appellant having been modified from Section 397 of the IPC to one under Section 392 of the IPC, the period of incarceration already suffered by him be treated as the sentenced imposed upon him. Additional submission of the learned counsel for the appellant in this score is that the appellant is young in years (aged 32 as on date) and he has a family comprising of his wife and a three year old child. The wife of the appellant is also present in Court.

12 Noting the period of incarceration already suffered by him, this would be a fit case, in its factual matrix; that the period of incarceration (almost 4 years) already suffered by the appellant be the sentence imposed upon him.

13 Appellant be released forthwith if not required in any other case.

14 Copy of this order be sent to Jail Superintendant for intimation to the appellant and compliance.

INDERMEET KAUR, J

JULY 13, 2015/ndn