

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

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Judgment reserved on :30.7.2015
Judgment delivered on :05.8.2015

Crl. Appeal No. 1427/2012

DEVA SINGH

.....Appellant

Through: Ms.Manjusha Wadhwa, Advocate.

Versus

STATE

.....Respondent

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

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 29.02.2012 wherein the appellant stood convicted under Section 392 read with Section 397 of the IPC. He was sentenced to undergo RI for a period of 7 years for the offence under Section 397 of the IPC; for his conviction under Sections 392 of the IPC he had been sentenced to undergo RI for a period of 4 years and to pay a fine of Rs.5000/-, in default of payment of fine to undergo SI for a period of 3 months.

2 Version of the prosecution was that Shiv Sagar (PW-2) had

lodge complaint on 13.9.2011. This was to the effect that at about 4.00 p.m. when he had gone DDA Jungle near Gas Godam near Metro Line to answer the call of nature, at the point of a knife the accused threatened the complainant and forcibly took his purse containing his I-card, visiting card, cash of Rs.1100/-, his mobile make MAXX model as also two silver rings which he was wearing on his hands. Being isolated place he could not make noise. PW-2 ran towards the Gas Godam which was manned by Ajay (PW-3). Police officials were also there. The accused who had hardly run a little distance was chased by the police party and he fell down. The accused sustained injuries. He was apprehended and from his personal search all the articles detailed by PW-2 in his complaint Ex.PW-2/A i.e. his mobile, Rs.1100/- in cash, his I-card and his two rings were recovered from the accused. A knife was also recovered from his pocket. This was in the presence of both PW-2 and PW-3. The knife was taken into possession vide memo Ex.PW-2/B. The length of the knife was about 1 foot.

3 Incident was reported to the police. Statement of PW-2 was recorded. FIR was registered thereafter. PW-5 (constable Harender) and PW-6 (constable Ravinder) had apprehended the accused. Both of

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them have corroborated this incident. The accused was arrested vide memo Ex.PW-2/E. His MLC was conducted and scratch/injuries were noted upon his person. Personal search of the accused was conducted vide memo Ex. PW-2/F. Investigating Officer of this case was SI Praveen. He was examined as PW-7. PW-4 (Pramod Chaudary) was also another relevant witness examined by the prosecution. He was the shopkeeper who as per his version had sold two mobile phones to PW-2. He had produced the bill (Ex.PA) regarding the sale of these two mobile phones to PW-2. On the basis of the aforementioned evidence collected by the prosecution, the accused was convicted and sentenced as aforementioned.

4 On behalf of the appellant arguments have been addressed by learned Amicus Curiae. Her submission is that there are several loopholes in the version of the prosecution. Admittedly, PW-2 did not make noise when he was robbed. This is a strange attitude. Further submission being that the knife which was allegedly recovered from the personal search of the accused is not a deadly weapon within the meaning of Section 397 of the IPC and at best the offence for which the appellant can be convicted would be under Section 392 of the IPC.

Further submission being that the appellant has already completed about
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4 years of incarceration, he be released on the period already undergone by him.

5 Learned APP for the State has refuted these submissions. Submission being that on no count does the impugned judgment suffer from any infirmity and calls for any interference. Further submission being that settled proposition of law is that even if injury has not been suffered by the victim the word “used” as appearing in Section 397 of the IPC would be satisfied if the version of the victim is to the effect that this deadly weapon had created terror in the mind of the victim. This by itself is sufficient to cover Section 397 of the IPC. For the proposition reliance has been placed upon the judgment of Supreme Court reported as AIR 2004 SC 1253 Ashfaq vs. State (Govt. of NCT of Delhi)

6 Testimony of PW-2 is clear and cogent. He had described the incident in detail. He had deposed that on the fateful day he had gone to attend the call of nature to DDA Jungle which was just 100 meter away from the Gas Godam. While he was urinating accused armed with a knife had threatened him to give his valuables or else he would be harmed. He was robbed by the accused of his MAXX Mobile, Rs.1100/- in cash, his identity card, two silver rings of Jamuni and

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Orange colour. His phone was in his front pocket. He did not make noise as he was in a fear of danger. When the accused went a little distance, PW-2 went to the Gas Godam where two police officials were present. The incident was related to them as also the owner of the Gas Godam. The accused who had gone few steps had been apprehended by the police part. From his possession a knife as also I-card of PW-2, Rs.1100/- in cash and two rings were recovered from the accused. The knife was taken into possession vide memo ex. PW-2/C. Sketch (Ex.PW-2/D) of the knife was prepared. In his cross-examination he had stuck to his stand. He admitted that he has an electronic shop. When he is absent from his shop his wife sits in the shop. On the fateful day he left his shop at 8.30 a.m. in order to go gas godown to obtain a domestic gas cylinder. He admitted that he did not receive injury from the accused. The accused had knife in his right hand. He did not make noise because it was lonely place. He denied the suggestion that he had falsely implicated the accused.

7 PW-3 who was owner of the gas godam. He used to supply domestic gas cylinders. He admitted that the accused was apprehended and a knife was recovered from the accused in his presence where two

other police officials were also present. This version of PW-3 remains undented.

8 The two police officials who were also present at time when PW-2 had made narration to PW-3 were examined as PW-5 and PW-6. Their versions are also fully corroborative to the versions of PW-2 and PW-3. PW-5 has categorically stated that accused was chased and he was caught as he was fallen down. From his personal search a purse containing Rs.1100/-, voter I-card of the victim and two rings and his mobile have been recovered. This was also the version of PW-6. None of them have faulted in their cross-examination. This appears to be one case where the prosecution has been able to fill in all the jigsaws in the puzzle.

9 The version of the prosecution stands fully established not only by the ocular version of PW-2 who was the victim and even presuming that he was an interested witness, testimony of PW-3 who was an independent witness goes wholly unchallenged. PW-4 was also the shopkeeper from where PW-2 purchased two mobile phones one of which recovered from the accused. EMI number matched and details of which has been given by the complainant to the police party. PW-2 in

his first complaint had detailed had detailed that this mobile was of MAXX mobile.

10 The documentary evidence which is sketch of the knife seized vide memo Ex. PW-2/B shows that it is a one foot long knife. Its blade measures 17 cm, handle measures 12 cm. By no stretch of imagination it can be described kitchen knife. What is a deadly weapon depends upon the design, manner and its use, being a question of fact in each case. In the instant case, blade of knife is 17 cm long. The word “concord” has been inscribed upon it. It was made of stainless steel. The accused had used this weapon to create terror in the mind of the victim which he had successfully managed to do by robbing him of his articles as discussed supra. This knife used by him would fall within the parameters of a “deadly weapon”.

11 The law on what is the use of a deadly weapon as contained in Section 397 of the IPC has been answered by Apex Court in the judgment Ashfaq (supra). The Apex Court had answered this contention in the following words:

“7. So far as the contention urged as to the applicability of Section 397 IPC and the alleged lack of proof of the necessary

ingredients therefore, is concerned it proceeds, in our view, upon a misconception that unless the deadly weapon has been actually used to inflict any injury in the commission of the offence as such, the essential ingredient to attract the said provocation could not be held to have been proved and substantiated. We are of the view that the said claim on behalf of the appellants proceeds upon a too narrow construction of the provision and meaning of the words "Uses" found in Section [397](#) IPC. As a matter of fact, this Court had an occasion to deal with the question in the decision reported in [1975]3SCR917 (Phool Kumar. v. Delhi Administration) and it was observed as follows:

".....

Section [398](#) uses the expression "armed with any deadly weapon" and the minimum punishment provided therein is also 7 years if at the time of attempting to commit robbery the offender is armed with any deadly weapon. This has created an anomaly. It is unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of 7 years under Section [398](#), if he is merely armed with any deadly weapon, while an offender so armed will not incur the liability of the minimum punishment under Section [397](#) if he succeeded in committing the robbery. But then, what was the purport behind the use of the different words by the Legislature in the two sections, viz "Uses" in Section [397](#) and "is armed" in Section [398](#). In our judgment the

anomaly is resolved if the two terms are given the identical meaning. There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand, if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not put to any fruitful use because it would have been of use only when the offender succeeded in committing the robbery."

8. Thus, what is essential to satisfy the word "Uses" for the purposes of Section 397 IPC is the robbery being committed by an offender who was armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in the mind of victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be."

12 On no count does the impugned judgment suffer any infirmity. The accused has not been able to project any defence. None is forthcoming either in the cross-examination of the witnesses of the prosecution or in his statement recorded under Section 313 Cr.P.C. No substantial defence has been projected before this Court also. The only

line of defence is that the accused has been falsely implicated at the behest of the Investigating Officer. This appears to be far-fetched in view of the cogent evidence led by the prosecution which has remained un rebutted.

13 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 5, 2015
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