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

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Date of Decision : May 20, 2016

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CRL.A. 29/2016

MANOJ KUMAR

..... Appellant

Represented by: Ms.Manika Tripathy Pandey,
Advocate with Mr.Ashutosh Kaushik,
Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP with SI
Amit Kumar, PS Burari

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Manoj languishes in jail because vide verdict dated November 19, 2014, he has been convicted for the offence punishable under Section 380/452/398 IPC. Charged for the offence punishable under Section 411 IPC and Section 25/27 Arms Act, 1959, he has been acquitted of the two. The reason is that the prosecution has not proved the notifications concerning knives and daggers, possession whereof would be an offence. The offence under Section 411 IPC probably has not been held to be made out by the learned Trial Judge because the stolen property was recovered at the spot itself. I find there is no discussion in the impugned judgment concerning the offences punishable under Section 411 IPC and the Arms

Act, but the reason for not convicting the appellant appear to be as aforenoted.

2. Vide order on sentence dated November 21, 2014, for the offence punishable under Section 398 IPC, Manoj has been sentenced to undergo RI for 7 years and pay fine in sum of ₹1,000/-; in default to undergo SI for 7 days. For the offence punishable under Section 380 IPC he has been sentenced to undergo RI for 2 years and pay fine in sum of ₹2,000/-; in default to undergo SI for 7 days. For the offence punishable under Section 452 IPC he has been sentenced to undergo imprisonment for 2 years and pay fine in sum of ₹2,000/-; in default to undergo SI for 7 days.

3. It was 12:00 noon. The date was March 12, 2014. Shiv Kumar PW-7 reached his shop at Main Market, Sant Nagar, from where he used to sell hardware and paint. He saw the gate of his godown broken and appellant removing an iron frame and a flex board, which was fixed outside the godown. The iron pipe on which the board was fixed had been removed. Shiv Kumar stopped the appellant who took out a knife and demanded money. Shiv Kumar became nervous and raised an alarm. Appellant ran. Public gathered. The appellant was apprehended at the spot.

4. A call was made over the police helpline No.100. SI Rambir Singh PW-8 posted at PP Jharoda, PS Burari was passed on the information. He went to the spot. HC Kailash PW-2 and Ct.Sanjeev PW-3 had already reached the spot and had taken custody of the appellant. A knife, Ex.P-1 was seized from the appellant. Its sketch Ex.PW-3/B was drawn up. The drawing shows that the knife is akin to a dagger.

5. SI Rambir Singh recorded the statement Ex.PW-4/A of Deepak Aggarwal PW-4, the son of Shiv Kumar who had reached the spot in the

meanwhile, soon after his father had reached the spot in which it is recorded that when he reached the spot the public had apprehended the appellant and his father said that this was the man whom he saw running away from the shop. Based on the statement the FIR Ex.PW-1/A was registered at PS Burari by ASI Satpal PW-1.

6. The statement Ex.PW-4/A of Deepak Aggarwal records aforesaid facts including appellant being apprehended and endorsement Ex.PW-8/A beneath the statement by SI Rambir Singh also records said fact. In view thereof I find unimpeachable evidence of the appellant being apprehended at the spot and knife Ex.P-1 recovered. As regards the stolen property, since it was a flex board which appellant had removed, obviously he had dropped the same when his presence was noticed and the appellant attempted to flee.

7. After he was apprehended the appellant was sent for medical examination to Aruna Asaf Ali Hospital. The unproved MLC lying in the record of the Trial Court shows that the appellant was drunk. Since the crowd has given him a beating there was swelling on the right leg and an abrasion on the left knee region.

8. HC Kailash PW-2, Ct.Sanjeev Kumar PW-3 and SI Rambir Singh PW-8 have deposed in sync i.e. of the appellant being handed over by a crowd to HC Kailash and Ct.Sanjeev Kumar when they reached the scene of the crime and knife Ex.P-1 recovered from him and the two in turn entrusting the custody of the appellant and the knife to SI Rambir Singh. Deepak Aggarwal PW-4, one Mahavir Singh PW-6, a public person, as also Shiv Kumar Aggarwal PW-7 have deposed in sync. The testimony of Shiv Kumar Aggarwal shows that the appellant was seen by him committing robbery. When he accosted the appellant, he took out a knife and threatened

him. Appellant demanded money from him. He became nervous and raised an alarm. Appellant ran. Mahavir Singh's testimony proves that when his attention was attracted towards the place where there was a ruckus he saw 10-15 persons chasing a man whom he identified as the appellant. The testimony of Deepak Aggarwal established the appellant being apprehended at the spot by the public soon after he i.e. Deepak Aggarwal reached the godown and learnt about the robbery.

9. Contention of learned counsel for the appellant that the appellant did not use the knife to cause injury to anyone and therefore the offence is not under Section 397/398 IPC but is offence under Section 392 IPC is noted and rejected on account of the law declared by the Supreme Court in the decision reported as 1975 (1) SCC 797 Sh.Phool Kumar Vs. Delhi Administration, followed with approval in the decision reported as AIR 2004 SC 1253 Ahfaq Vs. State. Para 7 and 8 of the latter decision read as under:-

"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 AIR 1975 SC 905 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.”

10. The appeal is dismissed.
11. The sentences imposed are maintained. Needles to state the sentences shall run concurrent and appellant shall have the benefit of Section 482 Cr.P.C.
12. TCR be returned.
13. Copy of this decision be sent to the Superintendent Central Jail Tihar for updation of record and thereafter to be supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

MAY 20, 2016
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