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

+ CRL.A. 363/2015 & CrI.M.B.3150/2015

RASHID

..... Appellant

Through : Mr. Riaz Mohammed, Adv.
versus

STATE

..... Respondent

Through : Dr. M. P. Singh, APP with SI Mahesh
Singh PS Pandav Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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25.11.2016

Appellant was convicted under Sections 459/392/394/34 IPC. He has also been convicted under Section 397 IPC. He has been sentenced to undergo RI for four years with fine of ₹5,000/- and in default of payment of fine to undergo SI for six months under Sections 454/34 IPC; RI for seven years with fine of ₹5,000/- and in default of payment of fine to undergo SI for six months under Sections 392/394 IPC read with Section 397 IPC and RI for seven years with fine of ₹5,000/- and in default of payment of fine to undergo SI for six months under Sections 394/34 IPC read with Section 397 IPC. All the sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has been given to the appellant.

As per the prosecution, when PW1 returned home he found the lock

broken and the door was closed from inside. In the meanwhile, he saw appellant and the juvenile accused coming out of the house, having iron rods in their hands. They assaulted PW1, robbed money from him and ran away. PW1 sustained simple injuries by a blunt object.

During the course of hearing, only argument advanced by the learned counsel for appellant is that the ingredients of offence under Section 397 IPC are not attracted in this case since prosecution had failed to lead any positive evidence to prove that appellant had used a “deadly weapon” at the time of committing robbery or caused grievous hurt or attempted to cause death or grievous hurt to the complainant. It is submitted that iron rod was not shown to the complainant, inasmuch as none of the witnesses including police officials have deposed that iron rod used by appellant was a “deadly weapon”.

I have perused the trial court record and find the force in this contention. Prosecution has to prove, as a fact, that the weapon used by the accused was a “deadly weapon” by leading evidence in this regard. No evidence has been led by the prosecution that the iron rod used was a “deadly weapon”. No sketch of iron rod was prepared and proved on record. PW-1 has deposed that iron rod was having sharp edges. However, trial

court has not observed in the deposition of any of the witnesses or otherwise that the iron rod was shown to witness or was having sharp edges. Nature of injury sustained by the PW-1 also does not support the version of PW1 that iron rod was having sharp edges. As per the MLC, PW-1 has sustained simple injuries caused by a blunt object. Had iron rod, having sharp edges been used, PW1 would have sustained incised wounds. However, as per the MLC, injury sustained by the PW1 was caused by a blunt object.

Each and every iron rod, by itself, would not fall within the ambit and scope of “deadly weapon”. It is only the size, shape and manner of use of such iron rod that would make the same to be a “deadly weapon”. In this case even length and width of the iron rod is not known as no sketch was prepared. Accordingly, appellant is to be given the benefit of doubt on this issue. As already noted above PW1 has not sustained grievous injury nor is there any evidence on record to suggest that appellant attempted to cause death or grievous hurt to complainant PW1.

For the foregoing reasons, conviction of appellant under Section 397 IPC is set aside. However, conviction of appellant under Sections 454 392/394/34 IPC is maintained. Appellant is in incarceration for about five years. The sentences awarded under the aforesaid provisions are reduced to

the period already undergone by him. Appellant be released from jail, if not required in any other case.

Appeal is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 25, 2016/dk