

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

**RESERVED ON : 2nd FEBRUARY, 2017
DECIDED ON : 6th FEBRUARY, 2017**

+ CRL.A.406/2014

DEEPAK Appellant

Through : Mr.Habibur Rahman, Advocate.
versus

STATE (GNCT OF DELHI) Respondent

Through : Mr.Arun K.Sharma, APP.

AND

+ CRL.A.404/2014

AJIT @ BABU @ GANJA Appellant

Through : Ms.Manika Tripathy Pandey,
Advocate.
versus

STATE (GNCT OF DELHI) Respondent

Through : Mr.Arun K.Sharma, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The instant appeals have been filed by the appellants – Deepak (A-1) and Ajit @ Babu @ Ganja (A-2) to challenge the legality and correctness of a judgment dated 19.09.2013 of learned Addl. Sessions Judge

in Sessions Case No.23/2012 arising out of FIR No.31/2012 PS Vivek Vihar whereby A-1 was held guilty for committing offences punishable under Sections 392/34, 397 & 411 IPC and A-2 was convicted for committing offences punishable under Sections 392/34 & 411 IPC. By an order dated 21.09.2013, the appellants were awarded various prison terms with fine.

2. Briefly stated, the prosecution case as disclosed in the charge-sheet was that on 21.02.2012 at about 04.45 p.m. at ITI Mor, Deer Park, Vivek Vihar, Delhi, the appellants in furtherance of common intention robbed the complainant – Ankit Mathur and deprived him of cash ₹800/- and two rings. The appellants were arrested at the spot on raising alarm by the complainant. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. Articles recovered from the appellants' possession were seized vide seizure memos. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against both the appellants in the Court. The prosecution examined five witnesses to substantiate its case. In 313 Cr.P.C. statement the appellants denied their involvement and pleaded false implication. The Trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been preferred.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place on 21.02.2012 at around 04.45 p.m. when the complainant – Ankit Mathur had left his house to go to a nearby barber shop on foot for hair cut. When he reached at the corner of ITI mor, Deer Park, he was surrounded by the appellants and was forced on the point of surgical blade to go along with them at Deer Park where he was robbed of his valuable articles. The appellants were arrested near the spot

and the robbed articles were recovered from their possession. In complaint (Ex.PW-1/A) forming basis of the FIR, the complainant gave vivid details of the incident as to how and under what circumstances he was robbed of his articles by the appellants using a surgical blade. The Investigating Officer sent rukka at 07.05 p.m. without delay. Since the appellants were named in the FIR and the complainant had no prior acquaintance or familiarity with the assailants, there was least possibility to have fabricated a false story in such a short interval.

4. In his deposition before the Court as PW-1 (Ankit Mathur) proved the version given to the police at first instance without any variation. He identified both the appellants to be the perpetrators of the crime. Specific and definite role was assigned to each of them. He deposed that he was caught hold by neck by both the appellants; A-1 put a blade extending threats to him. A-2 forced him by using criminal force to go towards the park. Thereafter both of them forcibly took ₹8,00/- consisting of a currency note of ₹500 denomination and three currency notes of ₹100 denomination, two rings, one silver and other gold. He further deposed that on his raising alarm repeatedly the appellants were arrested by the police officials and his statement (Ex.PW-1/A) was recorded. He also deposed about the recovery of the articles from the appellants' possession. In the cross-examination, he disclosed that there was no public person in the park at the time of occurrence. He denied the suggestion that no such incident had taken place and the accused were identified at the behest of the police.

5. On scanning the testimony of the complainant, it reveals that no infirmity or discrepancy has emerged in the cross-examination to suspect his version. No ulterior motive was assigned to the complainant to fake the

incident of robbery and to implicate the appellants with whom he had no prior animosity. Nothing has come on record to show if the complainant had any familiarity with the assailants forcing him to implicate them in a false case. In the absence of prior ill-will, the complainant who was victim of robbery was not expected to let the real culprit go scot free and to rope in innocent ones. No sound reasons exist to disbelieve the statement of the complainant merely because the independent witnesses were not associated. Statement of the victim inspires implicit confidence. Moreover, he himself has stated that no one was available in the park at that time. It is relevant to note that the complainant was caught hold at the corner of the ITI mor and on the point of blade was forced to go to the Deer Park, a secluded place, to enable the appellants to rob him. Since the complainant was under fear, there was least possibility of his raising alarm at that time to attract attention of public persons present nearby.

6. The accused persons were arrested near the spot and robbed articles were recovered from their possession. It lends credence to the complainant's version that he was the victim at the hands of the appellants. The complainant's statement has been corroborated by police officials. In the absence of prior enmity, the police officials are not expected to give a false statement to implicate the appellants. Nothing has come on record to show that the statements given by them were false. The appellants did not deny their presence at the spot. They did not claim where else they were present at the relevant time.

7. The impugned judgment based upon fair appreciation of the evidence regarding conviction under Section 392/411/34 IPC cannot be faulted.

8. Regarding Section 397 IPC, it was the case of the prosecution that A-1 used a surgical blade (Ex.P2) at the time of commission of crime. On perusal of the evidence on record, it however, reveals that no sketch of the surgical blade was prepared or proved to ascertain its dimension, shape, size and type. Admitted position is that no injury was caused by the surgical blade to the complainant; he was not medically examined. Perusal of Section 397 IPC makes it clear that if, the offender at the time of committing robbery or dacoity uses any deadly weapon or causes grievous hurt or attempts to cause death or grievous hurt to any person, the offence contemplated by the Section would be made out. Nothing has emerged in the evidence of the prosecution witnesses if the surgical blade (Ex.P2) allegedly used in the incident was a 'deadly' weapon. None of them has deposed if it was a 'deadly' weapon.

9. This Court in '*Sanjay vs. The State of NCT Delhi*', MANU/DE/3330/2009 (Crl.A.406 and 591/2006 decided on 21.12.2009) held :

“12. The Investigating Officer has not prepared any sketch of the surgical blade alleged to have been recovered from the possession of the appellant Sanjay. The seizure memo of the blade does not show what its size or shape was. Though the police officials have described the instrument recovered from the possession of the appellant as a surgical blade, none of the witness has given any description of the blade which has been referred by them as a surgical blade. The trial court has also not made any observation as regards the size, shape or design of the blade produced during trial. Unless size and shape etc. of the blade recovered

from the appellant is given or a sketch is prepared from which these particulars may be ascertained, or a photograph of the weapon is produced, it is not possible for this Court to ascertain whether the blade recovered from the possession of the appellant was actually a surgical blade or not and whether it was a deadly weapon or not. There is no evidence or opinion on record to show that the blade recovered from the appellant was such, as would ordinarily result in death by its use. What would make a blade deadly is its size, design and shape etc. and a weapon cannot be said to be a deadly weapon merely because the witnesses described it as a surgical blade. This is more so when neither any sketch or photograph is produced nor any particulars of the instrument are given during evidence and the trial court also does not make a note as regards the size, shape and design etc. of the blade produced before it.”

10. In order to bring home a charge under Section 397 IPC, the prosecution must produce convincing evidence that the weapon used for committing crime was ‘deadly’ weapon. Since no convincing evidence has come on record to show that the surgical blade used in the crime was a ‘deadly’ weapon, its benefit must go to A-1 and his conviction and sentence under Section 397 IPC cannot be sustained and are set aside.

11. Resultantly, both the appellants shall suffer sentence as awarded to them by the learned Trial Court for commission of offence punishable under Sections 392/411/34 IPC only. Other terms and conditions of the Sentence Order are left undisturbed.

12. A-2 shall surrender before the Trial Court on 21st February, 2017 to serve out the remaining period of sentence.

13. The appeals stand disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 06, 2017 / tr

