

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

Date of Decision: June 02, 2017

+ **CRL.A. 548/2015 & CrI.M(B) 887/2017**

MD. NAEEM

..... Appellant

Through: Mr. Amar Nath, *Amicus Curiae Counsel* with Mr. Sumer Kumar Sethi, DHCLSC with Ms. Dolly Sharma, Advocate

versus

STATE

..... Respondent

Through: Ms. Meenakshi Chauhan, Additional Public Prosecutor with ASI Vinod Kumar

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

%

Impugned judgment of 23rd December, 2014 holds appellant guilty for the offence under Sections 392/34 of IPC and also under Section 411 of IPC. In addition, appellant has been held guilty for the offence under Section 397 of IPC on account of using knife in the incident in question. Vide impugned order on sentence of 24th December, 2014, appellant has been sentenced to rigorous imprisonment for seven years with fine of ₹1,000/- for the offence in question under Section 397 of IPC and for the remaining offences, he has been sentenced to rigorous imprisonment for two years each with fine of ₹1,000/- each and with default clause. All these sentences have been directed to run concurrently.

At the outset, learned counsel for appellant submits that the offence under Section 397 of IPC is not made out against appellant and that as per Nominal Roll of appellant, he has already undergone the sentence of 4½ years and since the offence under Section 397 of IPC is not made out, therefore, the sentence awarded deserves to be reduced to the period already undergone by him.

On the afore-noted limited aspect, the impugned judgment and order on sentence as well as trial court record have been perused. During the course of hearing, learned counsel for appellant has drawn the attention of this Court to the deposition of *ASI Pratap Singh (PW-3)*, who had recovered the knife in question from appellant. It is pointed out that as per seizure memo of knife in question, it was a small knife and that it has come in the evidence of this material witness (PW-3) that the recovered knife was a dummy knife, which is also used as a cigarette lighter and is easily available in weekly markets. So, it is submitted on behalf of appellant that recovered knife cannot be labelled as a deadly weapon and so, appellant deserves to be acquitted of the offence under Section 397 of IPC. To submit so, reliance is placed upon decisions of Co-ordinate Bench of this Court in *Jitender@ Jeetu v. State (NCT of Delhi)*, 2015 SCC OnLine Del 6594; *Deepak v. State (GNCT of Delhi)*, 2017 SCC OnLine Del 6918 and *Rahul v. State*, 2014 SCC OnLine Del 2216.

Learned Additional Public Prosecutor for respondent-State does not dispute that as per recovery memo of knife in question, it was a small

knife and the dimensions of the knife are not given in the recovery memo and that the sketch of recovered knife was not prepared by the police.

Upon hearing and on perusal of impugned judgment and order on sentence, trial court record and the decisions cited, I find that evidence of *ASI Pratap Singh (PW-3)* regarding the recovery of knife being a dummy knife is unassailable. Even from the evidence of complainant, it does not appear that after appellant-accused had shown dummy knife to him, he was alarmed. It is a matter of record that soon after this incident, appellant was apprehended from the spot by the train passengers, which by itself indicates that weapon shown by appellant at the time of this incident was not deadly enough, so as to create a scare at the spot.

It needs no reiteration that '*deadly weapon*' is the one which is capable of causing death or serious bodily injury and no prudent person would consider the dummy knife as a '*deadly weapon*'. By no stretch of imagination, a dummy knife can be said to be a '*deadly weapon*'. The necessary ingredient of Section 397 of IPC is that the weapon used, is a deadly one. In view of the evidence of the complainant and aforesaid witness (*PW-3*), I find that the conviction of appellant for the offence under Section 397 of IPC is unwarranted. Accordingly, the conviction of appellant under Section 397 of IPC is set aside. However, the conviction of appellant for the remaining offence is well deserved and is maintained. It is noticed that the sentence awarded to appellant for the allied offences has been already undergone by him. So, it is directed that appellant, who is in custody, be released forthwith if not warranted in any other case.

So far as the imposition of fine of ₹1,000/- each for the allied two offences is concerned, learned counsel for appellant submits that appellant is a poor person and so, this jail appeal was filed and he has no means to pay the fine and thus, fine imposed deserves to be suitably reduced. In pursuance to the production warrants issued vide last order, appellant is present in the Court and he submits that he was a labourer prior to this incident and has no means to pay the fine and that he has a family to support and so, the fine imposed upon him be waived.

In the facts and circumstances of this case, the quantum of fine is reduced from ₹1,000/- to ₹500/- each and the period of default is also reduced from simple imprisonment for two months each to simple imprisonment for ten days each. In the event of appellant depositing the modified fine, appellant be released from jail forthwith as he has already undergone the substantive sentence for the allied offences.

With aforesaid modification, this appeal and the pending application are disposed of. The concerned Jail Superintendent be apprised of this judgment forthwith to ensure its compliance. Before parting with this judgment, this Court would like to place on record its appreciation for the able assistance rendered by Mr. Amar Nath, learned *Amicus Curiae* and Mr. Sumer Kumar Sethi, DHCLSC Panel Lawyer in disposal of this appeal.

(SUNIL GAUR)
JUDGE

JUNE 02, 2017

s