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

+ **CRL.A. 285/2003**

LAL CHAND @ MAHENDER

..... Appellant

Through: Mr. Krishan Kumar, Ms. Sunita
Arora, Mr. S.P Nangia & Mr. RCS
Bhadora, Advocates (M-
9810068578).

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Meenakshi Chauhan APP with SI
Dinesh Chandra, PS Keshav Puram.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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26.07.2018

1. The present appeal arises out of the judgment of the Trial Court dated 14th February, 2003 in Session Case No. 23/2000, FIR No. 364/1999 by which the Appellant-accused was convicted under Sections 455/394/397 of IPC. He was handed a sentence of rigorous imprisonment of seven years and a fine of Rs.500/-. Both the sentences under Sections 394 and 397 were to run concurrently.
2. The appeal was listed before this court and on 19th May, 2004 since he had already undergone four years, the sentence was suspended. As per the nominal role received on 29th June, 2018 the total period undergone by the accused is 4 years, 8 months and 16 days and he has earned a remission of 5 months and 6 days which therefore the total period undergone is 5 years 3

months. The accused is present today in court.

3. The counsel for the accused points out that when the incident took place on 1st December, 1999, the accused had entered the house of the complainant as an electrician and the injuries were caused with a kitchen knife. The seizure memo which is pointed out records the knife as being “*sabzi kaatne wala chaaku*”. He submits that as per the settled decisions of this court and the Supreme Court, such a knife cannot be construed to be a deadly weapon.

4. The prosecution on the other hand argues that the nature of injuries which were inflicted were serious. She specifically points out to paragraphs 25, 26 and 27 of the impugned judgement which recorded that several injuries were caused and the doctor who had operated upon the complainant had stated that the injuries were dangerous.

5. This court has heard the parties and has perused the judgments sited on behalf of the Appellant. In ***Sukhvinder Singh v. State, Crl.A. No.1358/2012***, a Learned Single Judge of this court quoting the Supreme Court in ***Jagdish v. State 1985 Cri.L.J. 1621***, held that since the recovery was of a kitchen knife, the possibility of such a knife being deadly is doubtful. The benefit of doubt was given to the accused. In ***Rahul v. State CRLA 431/2013 & CRLMB 654/2013 dated 31st October, 2014***, the said judgment was followed and a Learned Single Judge of this court observed as under:

“16. Following these judgments, it was held that the use of knife at the time of robbery does not ipso facto prove a case under Section 397 of IPC. The prosecution has to prove that the knife used falls within the four corners of deadly weapon. In that case, the

knife was a kitchen knife. The injuries inflicted upon the injured was simple in nature and was caused on the right hand of the injured and as such it was observed that the vegetable knife cannot be termed as deadly weapon, therefore, conviction of appellant under Section 397 IPC was set aside.

17. In the instant case also, as per the prosecution case itself it was only a vegetable knife and as per the MLC the complainant had one superficial cut mark over right hand of ring finger and the measurement of the knife reflects that it was not capable of producing death or serious bodily injuries as such it cannot be termed to be a deadly weapon so as to attract the applicability of Section 398 of IPC. That being so, the conviction of appellant under Section 398 of IPC cannot be sustained and is accordingly set aside.”

6. The Appellant was found in possession of a kitchen knife and the same cannot be termed as a deadly weapon. Following the settled precedents, the conviction under Section 397 is liable to be set aside. The conviction under Sections 455 and 394 is however upheld. The Appellant has already undergone 5 years and 3 months of imprisonment. The sentence is modified to the period already served. The appeal is disposed of in the above terms.

PRATHIBA M. SINGH, J.

JULY 26, 2018

Rahul