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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 16.01.2018

Judgment delivered on: 23.01.2018

+ CRL. Appeal 965/2017

MANOJ KUMAR

..... Appellant

Through: Mr Manish Kumar, Mr Ravindra
Samueal and Ms Sanjeeta Tripathi,
Advs

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms Neelam Sharma, APP with SI R.S.
Pandit

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Appellant Manoj Kumar has filed the present appeal. He had appeared on the production warrant. He is a convict along with co-accused Satish Kumar. Both the appellants have been convicted under Section 392 r/w 120B IPC. Appellant Manoj Kumar was separately convicted under Section 397 IPC as well. The appellant had been sentenced to undergo RI for a period of 7 years as also to pay a fine of Rs 5000/- and in default of payment of fine to undergo SI for a period of three months. As on 20.11.2017 the appellant has undergone incarceration of 1 year and 13 days meaning thereby that as on date he has undergone incarceration for almost

15 months which would include the remission earned by him. His jail conduct is satisfactory.

2 On behalf of the appellant it has been argued that the offence under Section 397 IPC is not made out. The knife which was recovered which was the subject matter of the FIR was only a kitchen knife. Even presuming that this weapon had been used by the appellant, the weapon not being a “deadly weapon” within the meaning of Section 397 of the IPC, the conviction of the appellant under the aforementioned provisions of law is unsustainable.

3 Arguments have been countered.

4 Record shows that the PW1 is the complainant. She has given a descriptive detail of the manner in which the incident had occurred. She had deposed that her husband is a dialysis patient and he had to get his treatment from the Max Hospital, Patparganj. Her servant Naresh had gone to his village for some work. The substitutive servant was the present appellant namely Manoj Kumar @ Rohit. After working for two days in the house, the appellant informed the PW1 that his mother is hospitalized and he wanted an advance of Rs. 500/-. PW1 only gave him Rs. 200/-. The appellant left the house with Rs. 200/-. The next day at about 8 am the appellant again returned back to the house of PW1. At night the appellant told the PW1 that

he was afraid of sleeping in the room at the first floor; the husband of PW1 asked the appellant to sleep in the drawing room. The appellant slept in the drawing room and kept his belongings outside the gate. In the morning at about 6.15 am, PW1 and her husband got up. When her husband had gone to the toilet and the toilet having two doors, the appellant came from one of the two doors and put a knife on PW1 and pressed her mouth with his hand. He threatened her not to raise an alarm failing which he would cut her into pieces and said “tune mujhe 500 rupey nahi diye ab iska maja dekh”. He removed her gold chain having pendant and also four bangles. The appellant managed to flee from the spot. In her cross examination she stuck to her stand. She admitted that a vegetable knife was used by the appellant which was later on recovered by the police; recovered articles also included a gold chain from the appellant.

5 The second investigating officer SI Arjun Kumar was examined as PW11. He had arrested the co-accused Satish. The first investigating officer SI Anand Pratap / PW13 had seized the knife which had been used for the incident. The sketch of the knife was prepared; it was a vegetable cutting knife.

6 A perusal of Ex.PW13/A (sketch of the knife) shows the dimensions of the knife. The seizure memo is Ex.P6. The size of the knife is 22.8 cm; blade is 11cm and the handle is 11.8cm; width is 1.2cm.

7 The knife is admittedly a vegetable cutting knife. The term deadly weapon has been defined in Black's dictionary to mean "*any fire arm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury*". The word deadly means causing a fatal injury. A knife can be of various types: pocket knife, pen knife, table knife or kitchen knife. The term deadly weapon has been discussed in a judgment of this court delivered in **Sukhvinder Singh vs State (Govt. of NCT of Delhi) Crl A. No. 1358/2012** inter alia as:-

"any fire arm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury"

".....Knives are weapon available in various sizes and may just cause little hurt or may be the deadliest. They

are not deadly weapons per se such as would ordinarily result in death by their use. What would make a knife deadly is its design or the manner of its use such as is calculated to or is likely to produce death. It is, therefore, a question of fact to be proved and prosecution should prove that the knife used by the accused was a deadly one. Though the knife that was recovered from the accused a few hours of the occurrence, was no doubt a deadly one on account of its size and design but it was not shown to the victim when he came to depose nor has he given any description of the knife so that it could be held that the knife alleged to have been placed by the accused on his abdomen was the one recovered or the one similar to that one. The accused can, therefore, legitimately claim that the weapon used by him has not been proved to be a deadly one. And if there is want of proper proof, the benefit should go to the accused, and the prosecution cannot invoke section 397 IPC, IPC to fix him up in the minimum sentence of seven years.”

8 The version of the prosecution itself is that the weapon in the instant case is a vegetable cutting knife, it cannot really be considered as a “deadly weapon”. This is taking into account the size of the blade as also the nature of injury suffered by the victim.

9 The prosecution thus having failed to prove that the knife which was used fell within the four corners of the definition of a “deadly weapon”; this Court is inclined to modify the conviction.

10 Admittedly, PW1 also did not suffer any injury. That may not be relevant for deciding the invocation of the provisions of Section 397 IPC but before Section 397 IPC is proved the use of deadly weapon is a necessary ingredient. The conviction from Section 397 IPC is accordingly altered to a conviction under Section 392 IPC. The sentence is also accordingly altered. The appellant will undergo a sentence of RI for a period of 3½ years. A fine of Rs 2000/- is imposed upon him and in default of payment of fine he shall suffer simple imprisonment for a period of 2 months.

10 Appeal disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 23, 2018
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