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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1325/2015**
R RAVI & ANR Appellants

Through: Mohd. Ehraz Zafar and Mr. Akash
Tyagi, Advs. for Appellant No.1.
Mr. Aditya Vikram, Adv. (DHCLSC)
and Mr. Avinash, Adv. for Appellant
No.2.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through: Ms. Rajni Gupta, APP with SI Ram
Bhau, P.S. Khyala.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **19.01.2018**

Both the appellants have been convicted under Sections 392/34 IPC as well as under Section 411 IPC, by the trial court. Appellant no.1 has also been convicted under Section 397 IPC. Appellants have been sentenced to rigorous imprisonment for 5 years each with fine of ₹2,000/- each and in default of payment of fine to undergo simple imprisonment for 15 days each for the offence under Section 392/34 IPC. Trial court further directed that ₹2,000/- shall be paid to the complainant out of the fine of ₹4,000/-. Appellants have further been sentenced to rigorous imprisonment for 2 years each with fine of ₹1,000/- and in default of payment of fine to undergo

simple imprisonment for 15 days for the offence under Section 411 IPC. Appellant no. 1 has also been handed down rigorous imprisonment of 7 years with fine of ₹3,000/- and in default of payment of fine to undergo simple imprisonment for 15 days for the offence under Section 397 IPC. It has been further ordered that ₹1,500/- shall be paid to complainant out of the fine of ₹3,000/- so realised. All the sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given to appellants.

Aggrieved by their conviction and also the sentences handed down to them, appellant have preferred this appeal.

Arguments heard and trial court record perused.

As per the prosecution, HC Subhash Chander along with Const. Lajpat reached Madrasi Mandir Colony, Khayala on receipt of DD No. 30A where they met complainant PW1-Joginder Yadav. Statement of Joginder Yadav was recorded wherein he stated that on 13th April, 2014 he had received salary of ₹4,000/- from his employer. After finishing his work he was returning to his room and when he reached near E Block, Dharampuri Road at about 08:10 pm appellants stopped him and caught hold of his hands. Appellant no.1 took out a knife from his pants' pocket and asked

him to hand over money which he was having in his possession. In the meanwhile, appellant no.2 forcibly took out a Lava make mobile phone from his shirt's pocket and ₹4,000/- from his pants' pocket. Thereafter, they ran away. He also ran towards his room where he met his uncle who informed the police at number 100. On 14th April, 2014, appellants were arrested in presence of PW1-Joginder Yadav. Out of the robbed amount of ₹1,000/- each was recovered from the appellants' possession. Appellant no.1 was arrested vide arrest memo Ex. PW-1/F; whereas appellant no.2 was arrested vide arrest memo Ex. PW-1/G and money was seized vide seizure memos Es. PW1/B and Ex. PW1/C.

While deposing in Court, PW1 Joginder Yadav has supported the prosecution version. He has deposed that on 13th April, 2014 he was returning home from his factory. He had received ₹4,000/- towards his salary which he was having in his possession. At about 08:10 pm when he reached at E Block, Dharampuri Road appellants stopped him and caught hold of his hands. Appellant no.1 took out a knife and commanded him by uttering "*jo kuch bhi tere pass hai nikal de*". In the meanwhile, appellant no.2 forcibly removed his mobile phone from his shirt's pocket and ₹4,000/- from his pants' pocket. Thereafter, they ran away. PW1 ran towards his

room and met his uncle who made a call at number 100. Police came at the spot and recorded his statement Ex. PW1/A. It is noted that pursuant to this statement FIR Ex. PW4/A was registered. On the next day, he joined the investigation. Appellants were arrested and ₹1,000/- each was recovered from them out of the robbed amount of ₹4,000/-. Seizure memos Ex. PW1/B and Ex. PW1/C were prepared. He has identified his signatures on the seizure memos. He also identified his signatures on the arrest memos of the appellants Ex. PW-1/F and PW-1/G. He correctly identified the appellants in Court. Testimony of PW1 is in line with the prosecution story as set out in the charge-sheet. PW1 was cross-examined at length but his version, in examination-in-chief, has remained unimpeached.

PW2 Kamlesh Yadav is the uncle of PW1 Joginder Yadav. PW2 has corroborated the version of PW1. He deposed that on 13th April, 2014 at about 09:10 pm he came to know about the incident of robbery from his nephew-Joginder Yadav. He informed the police at number 100 about the incident. PW3 Const. Lajpat has deposed that he along with HC Subhash Chander reached the spot on receipt of DD No. 30A at about 09:10 pm, where Joginder Yadav met them. HC Subhash Chand recorded his statement. He took the rukka to the police station and got the FIR registered. PW4 SI

Ravi Dutt has proved the FIR as Ex. PW4/A. PW5 HC Nawal Singh is MHC(M) has proved the relevant entries in the Malkhana Register regarding deposit of two sealed envelopes containing currency notes of ₹1,000/- in each envelope. PW6 SI Ram Bhau is the Investigating Officer who has deposed about the investigation conducted by him which included the arrest of appellants and recoveries effected from them. He has also deposed about the arrest memos, seizure memos etc. and has proved them. PW7 HC Sajjan Kumar was joined by SI Ram Bhau in the investigation conducted by him on 14th April, 2014 when appellants were apprehended and arrested and recoveries were effected from them. He has deposed in this regard. PW8 HC Subhash Chander has deposed about the recording of the statement of the complainant Ex. PW1/A and also preparation of rukka Ex. PW8/A by him.

I have perused the testimonies of aforesaid witnesses and I am in agreement with the trial court's findings that from their statements prosecution had succeeded in proving that appellants had robbed the complainant-Joginder Yadav and that they were arrested on the pointing of complainant and ₹1,000/- each out of the robbed amount of ₹4,000/-, were recovered from appellants. During the course of hearing, learned counsel

for the appellants have failed to point out any material discrepancy or inconsistency in the statements of the above referred witnesses nor any illegality in the impugned judgment could be pointed out, inasmuch as, they have given up the challenge to conviction of appellants under Section 392 and 411 IPC.

The only argument advanced by the learned counsel for the appellant no.1 is that ingredients of offence under Section 397 IPC were not attracted, therefore, trial court had committed a patent error in convicting the appellant no.1 under Section 397 IPC. It is contended that prosecution had failed to prove, as a fact, that any 'deadly weapon' was used by the appellant no.1 at the time of commission of offence of robbery. Appellant no.1 was arrested on the very next day of the incident. However, no knife was recovered from him. In absence of recovery of knife it had remained unproved that appellant had used a 'deadly weapon' at the time of commission of robbery. I find force in this contention of learned counsel. In Charan Singh vs. The State, 1988 CrL. L.J. NOC 28 (Del), it was held that in order to bring home a charge under Section 397 IPC, the prosecution must produce convincing evidence that the knife used by the accused was a 'deadly weapon'. What would make knife deadly is its design or the method of its use such as it is

calculated to or is likely to produce death. It is, therefore, a question of fact to be proved by the prosecution that the knife use by the accused was a 'deadly weapon' and in absence of such evidence and particularly, the non-recovery of the weapon would certainly bring the case out of the ambit of Section 397.

In the present case also, it is an undisputed fact that the knife allegedly used in the crime was not recovered. Prosecution has not led any evidence to show that knife used by the appellant was a 'deadly weapon'. In absence of this fact, in my view, trial court was not right in convicting the appellant no.1 for the offence under Section 397 IPC and his conviction under this provision is set aside.

As a result of the above discussions, appellants stand convicted under Section 392 IPC.

Learned counsel for the appellants next contended that appellant no.1 is aged about 32 years and is ailing. In the year 2016, it was detected that appellant no.1 was suffering from tuberculosis. He was given anti-tuberculosis treatment in jail. Both the appellants belong to lower strata of society. Families of appellants are leading life of vagrancy in their absence, therefore, their sentences may be reduced.

Keeping in mind the facts and circumstances of this case, sentences of appellants are reduced to the period already undergone by them. Appellants be released from jail, if not required in any other case.

Appeal is disposed of in the above terms.

Copy of the order be sent to Superintendent Jail for serving it on the appellants and for compliance.

A.K. PATHAK, J.

JANUARY 19, 2018

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