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

+ **CRL.A. 721/2018**

Decided on 19th March, 2019

GUDDU @ FARMAN

..... Appellant

Through: Ms. Sunita Arora, Adv.
Appellant produced from Jail.

Versus

STATE

..... Respondent

Through: Ms. Manjeet Arya, APP for
State.

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

A.K. PATHAK, J. (ORAL)

1. Arguments heard and trial court record perused.
2. Learned counsel for the appellant, on instructions of appellant, submits that the present appeal is pressed only on the point that offence under Section 397 IPC is not made out against the appellant on the evidence adduced on record; and at best offence under Section 392 IPC is made out.

3. A perusal of impugned judgment shows that appellant has been convicted under Section 397 IPC by the trial court primarily, by placing reliance on the statement of PW1-Gulshan (victim) which has been found trustworthy and reliable. Further, that statements of PW3 and PW4 corroborate the statement of PW1.

4. I have also perused the deposition of PW1 carefully and find it to be trustworthy and reliable as regards incident of robbery is concerned. PW1 has categorically deposed that on 27.03.2017 at about 3:30 pm he was present near the bus stand Khajuri when two persons came to him and one of them placed a paper cutter blade on his belly and removed his purse containing Aadhar card and visiting card; while other person removed his mobile phone make VIVO V-3 from his pocket. PW1 identified the appellant as the person who had removed the purse from his pocket. PW1 deposed that he apprehended the appellant at the spot. He stated that his purse was recovered from the appellant. PW1 further stated that other person succeeded in escaping with his mobile phone. He dialled 100 number by taking a mobile from a passerby. He stated that police reached at the spot and recorded his statement and arrested the appellant.

5. PW1 identified his signatures on his statement Ex. PW1/A recorded by the Investigating Officer. He also identified his signatures on the seizure memos Ex. PW1/B and Ex. PW1/C of the purse and paper cutter blade. PW1 also identified his signatures on the arrest memo Ex. PW1/E and personal search memo Ex. PW1/E1 of the appellant. PW1 further deposed that site plan Ex. PW1/F was prepared on his pointing. PW1 also identified his purse, Aadhar card and visiting cards collectively as Ex. P-1. He also identified the paper cutter blade Ex. P-2. I find that his testimony has remained unshattered in his cross-examination on material points and am of the view that it has been rightly accepted by the trial court.

6. PW3 SI Sandeep is the Investigating Officer. He reached the spot along with Const. Jitender Goswami and recorded statement of PW1; arrested the appellant; prepared the site plan and sketch of paper cutter blade and conducted other proceedings at the spot. He has deposed in this regard. PW4 Const. Jitender Goswami has corroborated the statement of PW3 and PW1 regarding apprehension of appellant, recovery of purse and paper cutter blade.

7. The sketch of paper cutter blade has been proved as Ex. PW1/D, according to which length of the handle of the paper cutter blade was found 13.5 cm; and that of blade hardly 6.5 cm. It is also noted that it does not have pointed and sharp edge. The edge is round shaped.

8. Learned counsel for the appellant submits that paper cutter blade, recovered from the appellant, does not fall within the ambit and scope of 'deadly weapon'. She further contends that none of the witnesses have deposed that the paper cutter blade, recovered from the appellant, was a 'deadly weapon'. It is submitted that no licence was required to possess the paper cutter blade. It is submitted that for this reason only Section 25 of the Arms Act was not involved by the prosecution. She contends that as per the notifications dated 29.10.1980 and 02.10.1990 issued by the Delhi Administration licence was required for manufacturing, selling or possessing for sale button actuated knife, gararidar knife and other knives which opened or closed with any other mechanical device having sharp edged blade of 7.62 cm or more in length and 1.72 cm or more in breadth in the Union Territory of Delhi. Learned counsel further submits that in this case, prosecution had failed to prove that the paper cutter blade,

recovered from the appellant, can be termed even as 'knife'. The paper cutter blade was, thus, not a 'deadly weapon' within the meaning of expression used in Section 397 IPC.

9. Section 397 IPC reads as under :-

“Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years”.

10. Section 397 IPC envisages that if at the time of committing robbery or dacoity the offender uses any deadly weapon or causes grievous hurt or attempts to cause death or grievous hurt, the imprisonment with which such offender shall be punished shall not be less than seven years.

11. In *Rajender Yadav Vs. The State* (NCT of Delhi) 2013 VII AD (Delhi) 359, this Court has held that where the prosecution case itself is that only vegetable knife was found in the possession of the accused, the knife cannot be considered a 'deadly weapon' to award the sentence of seven years which is a minimum sentence to be given

with the aid of Section 397 IPC”. In Jagdish and etc. Vs. The State 1985 CrL. L.J. 1621, this Court has held thus:

“Para 9. “A deadly weapon is a thing designed to cause death, for instance, a gun, a bomb, a rifle, a sword or even a knife. A thing not so designed may also be used as a weapon to cause bodily injury and even death. It will be a question of fact in each case whether the particular weapon which may even be a knife can be said to be a deadly weapon. In the instant case, there is evidence to the effect that the knives which the accused were having were small in size. They were ordinary vegetable cutting knives. This renders the possibility of those knives being deadly weapons highly doubtful and as such the appellants shall be entitled to benefit thereof. Consequently it would be unfair to impose the minimum sentence contemplated in Section 397 on the appellants merely because they used those knives in the commission of the crime.”

12. In Rakesh Kumar Vs. State of NCT of Delhi 2005 (1) JCC 334, a Single Judge of this Court has held that there are knives of hundreds of type available in different length and width. All the knives cannot be graded as “deadly weapon” within the meaning of Section 397 IPC. It is the length, shape and the manner of use which makes a knife “deadly weapon”. In Charan Singh Vs. State 1998 CrL. L.J. NOC 28 (Delhi), it was held that in order to bring home a charge under Section

397, the prosecution must produce convincing evidence that the knife used by the accused was 'deadly weapon'.

13. In this case also, the paper cutter blade used was having blade of 6.5 cm, inasmuch as has no sharp and pointed edge, for which no licence was needed, as per the Notifications issued by the Delhi Administration, inasmuch as, no witness has deposed that the paper cutter blade recovered from the appellant qualified to be a knife and more particularly a 'deadly weapon'. In this case, prosecution has failed to lead any evidence to show that appellant had used a "deadly weapon" while committing robbery, thus, in my view, ingredients of offence under Section 397 IPC are not attracted in this case. In absence of necessary ingredients that have not been established by the prosecution, conviction of appellant under Section 397 IPC cannot be sustained. Accordingly, conviction of appellant is altered from Section 397 IPC to 392 IPC.

14. Learned counsel for the appellant next contended that in the facts and circumstances of this case, leniency may be shown while awarding the sentence more particularly, when appellant has no past criminal record. He is young in age and belongs to a poor family. He

is in custody for more than two and half years by now, therefore, appellant may be awarded sentence equivalent to the period he has remained in jail.

15. Keeping in mind the facts and circumstances of this case, appellant is sentenced to the period already undergone by him. As regards the sentence in default of payment of fine is concerned, the same shall form part of the sentence already undergone by the appellant.

16. Appeal is disposed of. Appellant be released from the jail forthwith, if not required in any other case.

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

A.K. PATHAK, J.

MARCH 19, 2019
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