

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

% *Reserved on: 24th May, 2019*
Decided on: 2nd July, 2019

+ **CRL.A. 1159/2017**

RAVI @ BATU

..... Appellant

Represented by: Ms. Naomi Chandra, Advocate

versus

STATE

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the
State with SI Prempal Singh,
PS Seelampur

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Ravi @ Batu challenges the impugned judgment dated 7th November 2017 convicting him for the offence punishable under Section 397 IPC in FIR No. 857/2014 registered at PS Seelampur and the order on sentence dated 9th November 2017 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default whereof to undergo simple imprisonment for a period of six months.
2. Learned counsel for the appellant contends that as per the personal search memo nothing has been recovered from the appellant. Moreover, the nature of injury is simple caused due to the scuffle. Hence the appellant be acquitted for the offence punishable under Section 397 IPC as its ingredients are not fulfilled.

3. Learned APP for the State on the other hand contends that the knife and phone were seized from the spot and a sketch of the knife was also prepared. Moreover, as per the MLC the injury has been opined to be simple but sharp. The injury was inflicted by a sharp weapon. Reliance is placed upon the decisions of the Delhi High Court reported as 2014 SCC Online Del 4043 Seetal v. State (NCT of Delhi), 2018 SCC Online Del 9401 Murlidhar v. State, 2014 SCC Online Del 861 Yaseen v. State.

4. Process of law was set into motion on 15th December 2014 at about 7:27 P.M. when telephonic information was received regarding a knife injury near Dharampura Red Light. Aforesaid information was recorded vide DD No.64B (Ex.PW13/A) and assigned to ASI Vijay Kumar. He along with Ct. Devender reached the spot where he met Ct. Surender, the appellant and the victim. The victim handed over his mobile phone and Ct. Surender handed over one knife recovered from the appellant. He recorded the statement of the complainant/victim Shahidul who stated that he had gone to Shastri Park for some work and was returning home when at around 7:15 P.M. he reached Tikona Park near Dharampura Red Light on Old GT Road where a man came from behind and caught him. At the point of knife, he asked him to hand over the articles he was carrying. When he tried to resist, the appellant hit him with a knife due to which he sustained injuries on his right-hand finger which started bleeding. He got scared and handed over his mobile phone Micromax X 325 (Black Colour) to him. He took it and ran towards Shiv Temple after crossing the red light. When he raised an alarm one police official who was standing near the Shiv Temple caught the appellant and seized the knife and stolen mobile phone from him. Thereafter he made a call to the police on 100 number from his mobile phone no.

8750211041. On arrival of the police, the knife and the mobile phone were handed over to them. On interrogation name of the appellant was revealed as Ravi @ Batu.

5. Aforesaid statement was recorded vide Ex. PW-2/A and Shahidul was sent to the hospital for medical aid with Ct. Devender. On the basis of the aforesaid statement, FIR No. 857/2014 (Ex.PW-5/A) was lodged at PS Seelampur for the offence punishable under Sections 394/411 IPC. Upon registration of FIR, Ct. Surender returned to the spot along with ASI Data Ram.

6. ASI Data Ram prepared the sketch of the knife vide Ex.PW-2/C and seized the same vide seizure memo Ex.PW-2/D. The mobile phone was seized vide Ex.PW-2/E. The site plan was prepared at the instance of the complainant vide Ex.PW-2/B. The appellant was arrested vide arrest memo Ex.PW-1/A, his personal search was conducted vide Ex.PW-2/B and his disclosure statement was recorded vide Ex.PW-1/C. On 16th December 2014 he collected the proof of ownership of the mobile phone vide Ex.PW-2/F and also collected the involvement of the appellant in other cases exhibited vide Ex.PW-4/A.

7. On completion of investigation, charge sheet was filed. Charge was framed for the offence punishable under Section 397 IPC vide order dated 3rd August 2015.

8. Mohd. Shahidul (PW-2), complainant deposed in sync with his complaint made to the police.

9. Dr. Raj Kapoor (PW-7), Chief Medical Officer, Jag Pravesh Chandra Hospital, Shastri Park stated that on 15th December 2014 he had examined the Mohd. Shahidul and prepared his MLC vide Ex.PW-7/A. On

examination, the following injuries were found:

- i. Sharp incised wound at middle of middle phalynx on palmar aspect at right index finger approximately 0.5cm X 0.2cm.*
- ii. No tendon injury.*

He opined the nature of injuries as simple caused by a sharp object.

10. The appellant in his statement recorded under Section 313 Cr.P.C. stated that he has been falsely implicated in the present case and the mobile phone and vegetable cutter were planted upon him.

11. Version of the complainant Mohd. Shahidul is corroborated by the testimony of Const. Virender, PW-1, who was on patrolling duty near Hanuman Mandir and had caught hold of the appellant at the spot with the mobile phone. The injury on Mohd. Shahidul has been opined to be simple but sharp as he had a sharp incised wound at the middle of middle phalynx on palmar aspect and at right index finger which shows signs of struggle and the weapon of offence being sharp. Contention of learned counsel for the petitioner that mobile phone was not recovered in the personal search deserves to be rejected for the reason on apprehension by Ct. Virender the money and mobile phone were recovered from the appellant whereafter the police was called and formal search was conducted. The recoveries of apprehension were not required to be noted in the formal personal search undertaken after FIR was registered. Version of the complainant is further corroborated by the nature of injuries received.

12. In view of the overwhelming evidence of the prosecution as noted above, this Court finds no error in the impugned judgment of conviction and order on sentence.

13. Appeal is accordingly dismissed.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

JULY 02, 2019
‘vj/rk’

