

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.02.2020

+ **CRL.A. 391/2016**

GULFAM @ ZAHOOR

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sunil Kumar (DHCLSC) and Mr Harsh
: Prabhakar (*amicus curiae*).
For the Respondent : Ms Meenakshi Chauhan, APP for State.
: ASI Krishan Pal, PS Seelam Pur.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 16.12.2015, whereby he was convicted for the offences punishable under Sections 392/397 of the Indian Penal Code, 1860 (IPC). The appellant also impugns an order on sentence dated 23.12.2015, whereby he was sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 397 of the IPC; rigorous imprisonment for a period of five years for the offence under Section 392 of the IPC; and a fine of ₹500/- was imposed on him, in default of which, the appellant would have to undergo fifteen days of simple imprisonment. All the aforesaid sentences were directed to run concurrently.

2. Briefly stated, the case of the prosecution is that on 13.12.2014 at about 11:00 pm, near red light Welcome towards Seelam Pur, Delhi the appellant committed the robbery of a mobile phone belonging to Mohd. Firoz (the complainant) and during this incident, the appellant used a weapon – a paper cutter. Thereafter, certain public persons apprehended the appellant and gave him beatings. Consequently, FIR No. 853/2014 under Sections 397/392 of the IPC was registered with PS Seelam Pur, thus setting criminal law into motion.

3. The charge sheet was filed against the appellant and by an order dated 03.02.2015, he was charged with the commission of the offences punishable under Sections 392/397 of the IPC. The appellant pleaded not guilty and the case was set down for trial. During the course of the trial, the prosecution examined six witnesses and the defence did not lead any evidence.

Evidence

4. The complainant (Mohd. Firoz) was examined PW1. He stated that he worked in computer designing at Netaji Subhash Place, Delhi. On 13.12.2014, at night time, he was going home from office. At about 11:00-11:15 pm, he was going to the Welcome side on foot to take an auto after deboarding at the Seelampur Metro Station. Suddenly, one person came from behind him, caught hold of his collar and put a paper cutter on his neck and told him to hand over all his belongings to him. PW1 stated that he did not have any valuable items. The assailant then put his hand into PW1's pocket and took out his mobile phone (Redmi

Note make). He also tried to take money (about ₹30-₹40), however, he did not take the same. Thereafter, the assailant told PW1 to go away from the spot. PW1 then ran away from the spot and after about fifteen paces, he found 3-4 persons of the locality who PW1 informed about the incident. The said 3-4 persons then apprehended the assailant and gave beatings to him. PW1's mobile phone and the paper cutter were recovered from the assailant. Thereafter, he made a call at 100 number following which, a PCR and the local police came to the spot.

5. In his cross-examination, PW1 affirmed that the accused came from his back side. Thereafter, PW1 stated that the accused put his hand on the pocket of his pant and felt the mobile phone; he asked PW1 what the article was and thereafter, PW1 took his phone out and handed the same over to the accused due to fear. PW1 denied informing the police that the accused had put his hand into PW1's pocket and took out the mobile phone. PW1 stated that the accused did not take any other articles from the person of PW1 and did not check his bag either. PW1 stated that the incident occurred at a public spot and at the material time, there was traffic on the road. However, he did not try to stop any vehicle to ask for help. PW1 affirmed that he handed over his mobile phone and the paper cutter, which he had recovered from the accused, to the police when the police reached the spot.

6. HC Anil Dutt, PCR NE Zone, deposed as PW2. He stated that on 13.12.2014 at about 11:24 pm, a call was received from the PCR control room that a mobile phone was robbed from the informant near Shyam Medical store double storey Welcome and the assailant was caught hold

of by the informant. The PCR reached there at about 11:30 pm. PW2 stated that public persons were present at the spot. The informant (Firoz) met them there and produced the accused Gulfam before the police officials and stated that the accused had been apprehended with the help of public persons. The informant handed over the mobile phone and the paper cutter (weapon of the offence) to ASI Gopal Das. In his cross-examination, PW2 affirmed that the IO did not ask any public persons to join the investigation in his presence.

7. ASI Gopal Das, PCR Line Model Town, deposed as PW3. He deposed that when he, along with Ct Subhash, reached the spot the PCR was already present there. The complainant produced the accused before PW3 and made allegations that the accused had robbed his mobile phone by putting a knife on his neck. The complainant produced one mobile phone and one paper cutter and alleged that the said mobile phone was robbed and the paper cutter was used by the accused in the incident. The accused was in an injured condition and thus, PW3 sent him to GTB Hospital for medical examination. PW3 affirmed his signatures on the *rukka* (Ex. PW-3/A) at point A. PW3 correctly identified the paper cutter allegedly used by the accused. In his cross-examination, PW3 stated that the custody of the accused was handed over to the police officials by the complainant and the accused was intoxicated. He denied asking public persons to join the investigations.

8. HC Rakesh Kumar, PS Seelampur, deposed as PW4. He proved the FIR on the basis of the *rukka* and the DD entry for the registration of the FIR (Ex. PW-2/A).

9. Ct Subhash, PS Seelampur, deposed as PW5. PW5 deposed that on 13.12.2014, he was posted at PS Seelampur. He along with ASI Gopal Das reached at the spot where the complainant met them and produced the accused. Many public persons were present at the spot. Thereafter, PW5 stated that he was sent to PS Seelampur along with *rukka* for the registration of an FIR. He proved the sketch of the paper cutter (Ex. PW-3/B). Thereafter, he stated that the IO sealed the paper cutter in a cloth *pullanda* bearing the seal of RK. IO also seized the mobile phone of Red Me make and affixed the seal of RK on the same. In his cross-examination, he stated that the colour of the paper cutter was deep blue (*firozi*). Further, he deposed that one mobile phone of Samsung make was recovered from the accused from his search and nothing else was recovered. He could not recollect whether the IO had asked any public persons to join the investigations. He denied the suggestion that efforts were not made to join any public persons.

10. SI Rizwan Khan, PS Seelampur, deposed as PW-6. He stated that in the intervening night of 13/14.12.2014 at about 01:20 am, he was present at the PS and Ct Subhash came to him and handed him a copy of the FIR of this case and the original *rukka* for further investigation. He reached the spot with Ct Subhash where he met ASI Gopal Das who produced one mobile phone of Red Me make and one paper cutter as produced by the complainant to him and was allegedly recovered from the accused Mohd. Gulfam. On checking the phone, it contained two SIM cards. He also checked the IMEI number of the said mobile phone. PW6 stated that he interrogated the accused and thereafter, arrested him.

PW6 also stated that on a search of the accused, one mobile phone of Samsung make was recovered from his person. PW6 correctly identified the accused in open court.

11. In his cross-examination, he affirmed that he had requested some persons to join the proceedings, however, none agreed. He denied the suggestion that since he had not earlier stated that he had made efforts to join public persons, thus, he had conducted the proceedings while in the PS.

12. The accused's statement under Section 313 of the CrPC was recorded on 17.11.2015. In his statement, conducted in a question-answer format, he denied all suggestions made and stated that he is innocent and has been falsely implicated in the case.

Reasons and Conclusion

13. The learned counsel appearing for the appellant contended that a paper cutter is not a deadly weapon and therefore, even if it is accepted that the appellant had used a paper cutter for the purposes of robbing the complainant, an offence under Section 397 of the IPC was not established. He relied on the decision of the Coordinate Bench of this Court in ***Guddu v. State: Crl. A. 721/2018 decided on 19.03.2019***, in support of his contention. He further contended that a paper cutter could not be equated with a knife, as it was stationery item. He submitted that the blade of a paper cutter is not robust and usually breaks if it is met with any resistance. He submitted that therefore, a paper cutter could not be equated with a knife.

14. Next, he relied on the decision of this Court in ***Bishan v. The State: (1984) 6 DRJ 78***, wherein the Coordinate Bench of this Court has held that a vegetable knife could not be considered as a deadly weapon. He referred to the decision of ***Mathai v. State of Kerala: (2005) 3 SCC 260*** and drew the attention of this Court to the following observations made by the Supreme Court: “*The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not.*” He submitted that in the present case, there was no evidence that the paper cutter was a sharp one and in fact the sketch (Ex. PW 3/B), produced on record, has indicated that the edges of the paper cutter were blunt.

15. The evidence on record clearly establishes that the appellant had used the paper cutter for the purposes of robbing the complainant’s mobile phone. There are minor inconsistencies in the testimony of the complainant; however, the same are not material. The learned counsel appearing for the appellant also did not seriously canvas that the appellant was not involved in the incident, as described by the complainant and as found by the Trial Court.

16. In view of the above, the only question that needs to be addressed is whether the use of the paper cutter in committing the robbery would justify the appellant being punished under Section 397 of the IPC. In ***Guddu*** (*supra*), this Court had referred to earlier decisions of this Court in ***Rajender Yadav v. The State (NCT of Delhi): (2013) VII AD (Delhi) 359***, wherein this Court has held that a vegetable knife could not be

considered as a deadly weapon so as to attract the punitive provision of Section 397 of the IPC. The Court has also relied on an earlier decision in ***Charan Singh v. State: (1998) Crl. L.J. NOC 28 (Delhi)***, wherein this Court has held that it was essential for the prosecution to produce evidence establishing that the knife used was a deadly weapon.

17. There is a divergence of opinion in various decisions of this Court as to whether it was necessary to establish that a knife is a deadly weapon. One line of cases follows the view that the question whether a knife is a deadly weapon is to be determined by various factors, including the design of a knife and the manner in which it was used. There was yet another line of cases where this Court had taken a view that a knife of any description is, still, a knife and the same is a deadly weapon.

18. In ***Phool Kumar v. Delhi Administration: (1975) 1 SCC 797***, the Supreme Court had observed that the appellant therein had a knife in his hand and “*he was, therefore, carrying a deadly weapon open to the view of the victims sufficient to frighten or terrorize them.*”.

19. In ***Balik Ram v. The State: (1983) Crl. L.J. 1438***, this Court observed: “*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.*”. In a later decision in ***Salim v. State (Delhi Admin.): (1988) 14 DRJ 85***, this Court referred to the decision of the Supreme Court in ***Phool Kumar*** (*supra*) and relying on the observation that a knife is a deadly weapon, did not accept the view as articulated in ***Balik Ram*** (*supra*) and held as

under:

“9.....We all understand what a knife means and to categorise it or to fix its size for it to be a deadly weapon may not be appropriate. A knife has also been' described as a pocket knife, pen knife, table knife, kitchen knife, etc. It cannot be denied that a knife can be used as a weapon of offence. It can cut, it can pierce, it can be deadly. To say that a knife to be a deadly weapon should be of a particular size would perhaps be not a correct statement. In the present case, the evidence shows that the injury was caused to Singh Ram witness by a sharp-edged weapon and there is a statement that the accused Salim was carrying a knife and it was with that knife that the injury was caused to the witness. It would not be necessary for the witness to further state as to that was the size of the knife to attract the provisions of Section 397 Indian Penal Code as was contended by Mrs. Ahlawat. This contention that case under Section 397 Indian Penal Code is not made out fails.”

20. This Court observed that in **Balik Ram** (*supra*), the Court had not taken note of the decision of the Supreme Court in **Phool Kumar** (*supra*), wherein the Supreme Court had held that a knife is a deadly weapon. In **Bishan** (*supra*), this Court followed its earlier decision in **Balik Ram** (*supra*) and sought to distinguish the decision of **Phool Kumar** (*supra*). Further, the decision in **Bishan** (*supra*) was not considered or referred to by this Court in **Salim** (*supra*).

21. In the aforesaid facts, it is contended that the line of cases following the decision in **Salim** (*supra*) ought not to be relied upon, as they are not good precedent because this Court had not taken note of the earlier decision in **Bishan** (*supra*).

22. This Court is unable to accept the aforesaid contention. It is correct that in **Bishan** (*supra*), this Court had distinguished the decision in the case **Phool Kumar** (*supra*) by observing that in that case, the question turned upon the interpretation of the use of the weapon and who actually used the weapon. Although **Bishan** (*supra*) was not referred to in **Salim** (*supra*), the Court had relied on the observations made in **Phool Kumar** (*supra*) and had clearly not interpreted the same in the manner as done in **Bishan** (*supra*). Be that as it may, the observations made by this Court in **Salim** (*supra*) are unambiguous.

23. It is also relevant to refer to the decision of the Supreme Court in **Ashfaq v. State (Govt. of NCT of Delhi): (2004) 3 SCC 116**, wherein the Supreme Court had approved the findings of the Court below that “a knife is equally a deadly weapon, for purposes of Section 394 IPC”.

24. In **Sonu @ Shahnawaz v. State (NCT Govt. of Delhi): Crl. 1141/2017 decided on 19.11.2019**, this Court had examined the two lines of cases and had held that in view of the observations made by the Supreme Court in **Phool Kumar** (*supra*) and **Ashfaq** (*supra*) as well as the decisions of this Court in **Salim** (*supra*); **Ikram Ansari and Ors. v. State (NCT of Delhi) and Ors.: (2014) 8 High Court Cases (Del) 277** and **Sanjay Kumar v. State: Crl. A. 442/2014 decided on 18.09.2014**, and held that it was not essential to categorize a weapon in order to determine whether it is a deadly weapon or not.

25. A paper cutter is also a species of knife inasmuch as, it has a handle and a blade. Although it is meant for a specific purpose of cutting paper, there is no denying the fact that its blade is very sharp and is capable of delivering a fatal injury.

26. In the present case, the paper cutter had been placed on the complainant's neck. Undeniably, a deep cut on the neck – which could be easily inflicted by the said instrument – could be fatal. Indisputably, such an instrument used as a weapon and placed on the neck of a victim is sufficient to terrorize a victim into yielding under fear of an injury. In the given circumstances, this Court is not persuaded to accept that that use of a paper cutter in committing robbery did not invite a punishment under Section 397 of the IPC.

27. The appeal is unmerited and is, accordingly, dismissed.

FEBRUARY 03, 2020

pkv

VIBHU BAKHRU, J