

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.01.2020

+ **CRL.A. 405/2018 & CRL.M. (BAIL) 576/2018**

NARESH @ PAPPU PAGER

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Salman Hashmi, Mr Mohd Adil,
Advocates (DHCLSC).
For the Respondent: Ms Kusum Dhalla, APP for State.
SI Sunny Kumar, P.S. Mukherjee Nagar.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal arises out of a judgment dated 03.06.2017 passed by the Learned ASJ, (North), Rohini Courts, whereby the appellant has been convicted for the offences under Sections 392/394/34 and Section 397 of the Indian Penal Code, 1860 (IPC). By an order dated 07.06.2017, the appellant has been sentenced to rigorous imprisonment for a period of five years and a fine of ₹2,000/- for the offence punishable under Sections 393/34 of the IPC; five years of rigorous imprisonment and a fine of ₹2000/- for the offence punishable under Sections 394/34 of the IPC and in default, simple imprisonment for a further period of three months; and seven years

rigorous imprisonment and a fine for ₹3000/- for the offence punishable under Section 397 of the IPC and in default, simple imprisonment for a further period of four months. All the sentences are directed to run concurrently.

2. The brief facts of the prosecution's case are that in the intervening night of 15.12.2012 and 16.12.2012, on receipt of DD no. 2B, PSI Pawan Kumar reached the spot, that is, near Kotak Mahindra Bank, ATM, Hudson Lane, Kingsway Camp where he met Beat Ct. Om Prakash and came to know that injured had already been moved to B.J.R.M Hospital by P.C.R Van. He, along with HC Om Prakash, went to the hospital and collected the MLC of Saurav and Hritvik Singh and accused Pradeep and Naresh. He also met HC Jitender (Incharge of P.C.R Van), who produced a knife that was handed to him by the injured Saurav. Saurav had, in turn, grasped it from the appellant. PSI Pawan recovered a ₹500/- currency note from the pocket of the appellant, which was taken into possession and a Titan wrist watch from the other accused, which too was taken into possession as the same was claimed to be robbed from Saurav (Complainant).

3. The investigating officer (IO) recorded the statement of Saurav, who stated that on 15.12.2012/16.12.2012 at around 12 at night, he had come to GTB Nagar from Netaji Subash Place by Auto and had withdrawn ₹500/- from the ATM of Kotak Mahindra Bank. After withdrawing the amount from the ATM when he had moved ahead, the appellant had caught hold of his neck and pointed a knife on his

waist and under the said threat, demanded to surrender his belongings. The complainant gave ₹500/- note from his pocket, which was snatched by the appellant. In the meanwhile, two other accused reached the spot. One of them (Pradeep) snatched complainant's wrist watch and the other accused (Gaurav@ Deepak@ Nitin) removed his purse from his pocket, which contained ATM Cards, PAN Card, etc. The complainant resisted the accused and on his doing so, the appellant delivered a blow towards the abdomen of the complainant. The complainant moved his hand over his abdomen due to which the knife struck his hand. The other two accused assaulted the complainant with kicks and fists blows. Consequently, the complainant raised an alarm. Some public persons reached the spot and caught hold of the appellant and the other accused. However, one of the accused (Gaurav@ Deepak@ Nitin) managed to escape. The officials of PCR van reached there and he handed over the knife snatched from the appellant. The PCR van took all of them to BJRM hospital, where the two accused were arrested and subsequently, the third accused was arrested on 1.02.2013.

4. Pursuant to the aforesaid events, a FIR was lodged under Sections 392/394/397/34/411 of the IPC and Section 27 of the Arms Act, 1959 (hereafter the 'Arms Act'). Charges under Sections 392/394/34 of the IPC were framed against all the accused and separate charges under Section 397 of the IPC and under Sections 25/27 of the Arms Act were framed against the appellant.

5. During the trial, the prosecution examined the following

witnesses: PW-1 (HC Sanjay Kumar, No. 273/NW, PS Mukherjee Nagar), PW-2 (Mr. Hritvik Singh), PW-3 (HC Jitendra, No. 771/PCR, North West Zone, Delhi), PW-4 (HC Om Prakash, No 154/NW, CAW Cell, North West District, Maurya Enclave, Delhi), PW-5 (the complainant), PW-6 (Ct. Pankaj), PW-7 (Ct. Narpal), PW-8 (HC Sikander, No. 1905, NW, PS Mukherjee Nagar, Delhi), PW-9 (Ct. Mahesh), PW-10 (Rishu Rahul, Branch Manager, ICICI Bank, Murkherji Nagar, Delhi), PW-11 (Ct. Pradeep), PW-12 (Dr. R.S Mishra, C.M.O. BJRM Hospital), PW-13 (SI Pawan Kumar), PW-14 (HC Kailash Chand, No. 109/L, Old Police Line, Rajpur Road, Delhi). The statement of all the accused was also recorded under Section 313 of the Cr.P.C., wherein they denied all the allegations levelled against them.

6. The Trial Court, after perusing the evidence, held the appellant guilty under Sections 392/394/34 of the IPC and Section 397 of the IPC. The Trial Court observed that the testimony of the witnesses was consistent with the prosecution's version and was sufficient to prove that the appellant had placed a knife on their neck for the purpose of committing robbery. The Trial Court further held that the cross examination of the said witnesses did not create an iota of suspicion against the prosecution's version of the incident. The Trial Court observed that the IO had sufficiently explained as to why no public witnesses were joined and held that the non-joinder of the PCR caller was not fatal to the prosecution's case. The appellant had, in his statement under Section 313 of the Cr.P.C., claimed that he was

falsely implicated in the present case but the same did not give rise to any doubts as to the case set up by the prosecution. However, the Trial Court acquitted the appellant of the charges under Sections 25/27 of the Arms Act. The Trial Court observed inconsistencies in the testimony of PW 2 and PW 5 with regard to possession of the knife. As per the prosecution case, only one knife was involved and as per the testimony of PW 2, the knife was recovered from the possession of Pradeep and not from the possession of the appellant, whereas, the testimony of PW 5 revealed the involvement of two knives. The Trial Court observed that the contention with regards to possession of knife created a doubt in the mind as to whether the appellant or co-accused Pradeep was in possession of knife and hence it gave the benefit of doubt to the appellant.

7. In this view, the Trial Court held that the charges levelled against the accused (appellant) were proved against him beyond reasonable doubt. The Trial Court held that *“the contentions of the learned counsel for accused persons in respect of discrepancies is not tenable since they have not been able to point out any material discrepancy in the testimony of the witnesses and minor discrepancies in the testimony are normal due to observations error”* and thus, the prosecution had successfully established its case against the accused. Consequently, the appellant was found guilty of the offences under Sections 392/394/34 of the IPC and were sentenced accordingly. Further, the appellant was also convicted for the offence punishable under Section 397 of the IPC and was sentenced to rigorous

imprisonment for a period of seven years with a fine of ₹3,000/-. The Trial Court gave the appellant the benefit of doubt for the offence punishable under Sections 25/27 of the Arms Act and he was acquitted for the offence punishable under Sections 25/27 of the Arms Act.

8. The learned counsel appearing for the appellant has assailed the impugned judgment on the ground that the Trial Court erred in holding that the prosecution had discharged its duty to prove beyond a reasonable doubt. The appellant submits that the prosecution has relied on the weakness of defence to supplement their case and there has been huge miscarriage of justice. It is submitted that all the prosecution witnesses are interested witnesses and no effort has been made on the part of the investigating agency to contact the public persons who were present around the incident. The Trial Court erred in relying solely on the statements of the complainant. It is further submitted by the learned counsel for the appellant that the Trial Court failed to appreciate the contradictions and discrepancies in the testimony of the witnesses. It is further submitted that the present case is based on circumstantial evidence and the prosecution has failed to connect the chain of events to prove its case against the appellant beyond reasonable doubt. The Trial Court has erred in holding that the contradictions and discrepancies so pointed out by the police official, who had carried the investigations are not material and would not be fatal to the prosecution case.

9. The learned APP appearing for the State has countered the aforesaid submissions and submitted that there was no material

inconsistency in the testimony of witnesses and the evidence led clearly established that the appellant was guilty of the offences for which he had been convicted.

Evidence

10. Before proceeding further, it is important to examine the testimonies of the relevant witnesses.

11. Saurabh was examined as PW-5. He deposed that on 15.12.2012, he was residing as paying guest at Hudson Lane, Ist floor, Shop No. 26, Main Market. On 15/16.12.2012, at about 12.00 midnight, he was coming from Netaji Subash Palace to Hudson lane by TSR. He stopped at the ATM of Kotak Mahindra Bank, Kingsway Camp as he had to withdraw ₹500/-. As PW-5 came out after withdrawing the money, he was caught hold of by the appellant and his associate (co-accused) and the appellant put a knife on his neck. In the meantime, the other accused tried to stab PW-5 at his stomach, which he caught hold with his left hand and sustained injuries on his left palm due to the knife and on right elbow due to the beatings given by the accused. Meanwhile, the third accused (Gaurav@ Deepak@ Nitin) had taken his wrist watch and wallet from his pocket and snatched ₹500/- from his hand. PW-5 started shouting for help and as a result, some people came there and started beating the accused. Thereafter, a PCR came and saw the appellant and overpowered the second accused, while the third accused (Gaurav @ Deepak @ Nitin) fled away from the spot. PW-5 snatched the knife from the accused

and handed over to the police and then, was taken to the hospital by the PCR van. The local police came to the hospital and IO prepared the sketch of the knife. The knife and wrist watch recovered from Pradeep and the currency note recovered from the appellant were sealed and were taken into possession by seizure memos (Ex. PW2/B, Ex. PW2/C, Ex. PW2/D respectively). Thereafter, they came back to the incident site from the hospital and on the instance of PW-5, IO prepared the site plan. PW-5 further deposed that after two days, he was called to BJRM hospital and his blood sample was taken. After one month, he was called by the CMO in BJRM hospital where the doctor inspected his injury and the knife.

12. In his cross-examination, PW-5 deposed that there is a time gap between the statement and examination in chief in respect of the entry of accused Pradeep in the crime scene. As per examination in chief, entry of accused Pradeep in the crime scene is just after the neck of the witness was pressed by the appellant but as per his statement, the entry of accused Pradeep is quite later. PW-5 further deposed that he snatched the knife from the appellant and has no knowledge about what happened to the knife held by Pradeep. He deposed that except his wrist watch, purse and a currency note of ₹500/-, no other article was robbed and all the shops near the ATM were closed. Further, at that time, no one was present at the bus stand of Kingsway Camp located in front of the ATM. The persons that came to help were 3-4 unknown passers-by. The PCR van came at the said spot on its own.

13. Hritvik Singh, the complainant was examined as PW-2. He

deposed that on 15/16.12.2012, he went to meet his friend at Mukherjee Nagar at about 11/11.30 PM. When he was coming back to his home, he noticed that 4-5 boys were consuming liquor outside the toilets near old tempo stand. When PW-2 was crossing from there, the appellant caught him from behind and put a knife on his neck. In the meantime, two other associates of the appellant, namely Pradeep and Gaurav @ Deepak @ Nitin, snatched all of his belongings including two mobiles, ATM cards, PAN card, debit card and thereafter, he was assaulted and beaten with fists and kicks. PW-2 started running to save himself and then went towards PS Mukherjee Nagar and saw PCR van outside the gate of PS Mukherjee Nagar. He told them about the incident and then along with PCR officials, went in search of the accused persons at the spot but they were not found. One auto rickshaw driver met them and told the PCR officials that three persons were committing the robbery at knife point outside the Kotak Mahindra ATM. On reaching there, they noticed that Pradeep was caught by the public persons and the remaining two were trying to evade on seeing the PCR officials but the appellant was caught by the PCR officials. The search was conducted on the accused, where the wrist watch belonging to Saurav and a knife was recovered from Pradeep. Further, a currency note of ₹500/- denomination was recovered from the appellant. All the said articles were then taken into possession. PW-2 deposed that the IO prepared the sketch of the knife (Ex. PW2/A) and the knife was measured and kept in a *pullanda*, which was sealed and taken into the possession (seizure memo Ex. PW2/B). Thereafter, PW-2, Saurav and the accused were taken to the

hospital, where they were medically examined and statement of Saurav was recorded. The accused were arrested in the hospital. PW-2 identified the case properties during TIP proceedings.

14. In his cross examination, PW-2 deposed that he screamed for help when the incident took place but as it was the night time, there was no public. He further stated that he did not remember as to who had taken away his mobile. PW-2 further deposed that he had not stated to the police that on a formal search of accused conducted by public persons, one knife was recovered. He had stated to the police that PCR officials handed over the knife to the IO at BJRM hospital. He further deposed that it will be wrong to suggest that the incident took place in complete darkness and nothing was visible. He also stated that the police had neither carried out personal search of the accused persons nor they had done any written work at the place, where the incident happened with PW-2. He further deposed in his cross examination that he was not having the bill of Nokia mobile phone, which was robbed and he did not remember his PAN card or Debit Card number.

15. HC Jitendra, who was the Duty Commander 8 of PCR Van from 8.00 PM to 8.00 AM at Camp Chowk on the night of the incident, was examined as PW-3. He deposed that at about 11.45 PM, PW-2 came to him and informed him regarding the robbery committed on him by the accused on the point of the knife at the stand of Phat-Phat Sewa, Mukherjee Nagar. He along with PW-2 went at the spot of the incident but could not find the accused there. One auto rickshaw

driver then informed them that some boys have committed robbery at ATM Kotak Mahindra, Hudson Lane. PW-3 further deposed that when he along with PW-2 reached there, they noticed that the public persons have gathered and the accused have received injuries. PW-5 complained of the robbery and PW-2 identified the accused. PW-3 deposed that he then took the complainant and the accused to BJRM hospital. He handed over the blood-stained knife recovered from the appellant to the IO SI Pawan Kumar, who prepared a sketch of the same (Ex. PW2/A). The knife was sealed and taken into the possession (Ex PW2/B). Thereafter, PW-3 left the hospital and his statements were recorded by the IO at about 7.00 AM on 16.12.2012.

16. In his cross-examination, PW-3 deposed that he could not remember whether the driver of the PCR Van made a log entry in the logbook regarding the spot of *phat-phat sewa* and ATM Kotak Mahindra. He further deposed that he gave the information regarding the incident after the apprehension of the accused at the ATM Kotak Mahindra and entered the contents of the information in a call register, after visiting the hospital. However, PW-3 was unable to provide the exact details of the robbed articles of Hritvik.

17. HC Sanjay Kumar, who was working as Duty Officer from 1.00 AM to 9.00 AM at Mukherjee Nagar on the night of the incident, was examined as PW-1. He deposed that at about 4.15 AM, he received *rukka* brought by HC Om Prakash, which was sent by PSI Pawan Kumar. Consequently, he recorded a FIR on a computer through computer operator and brought certificate under Section 65B of the

Indian Evidence Act, 1872 (Ex. PW1/C). He also made endorsement on *rukka* regarding *kayami mukadma*.

18. HC Om Prakash, who was on patrolling duty in the area of beat No. 7 of PS Hudson Lane on the night of the incident, was examined as PW-4. He deposed that when they reached the service road, ring road, many people were gathered there and the appellant along with the co-accused was overpowered by the public persons and they were taken to BJRM hospital along with the complainants. Meanwhile SI Pawan Kumar, PW-4 reached the hospital where they met the complainants and the accused along with officials of PCR van. He further deposed that a knife was recovered from the appellant, of which IO had prepared a sketch. *Rukka* was prepared and handed over to PW-4 for registration of an FIR. He then went to the PS along with *rukka* and got the FIR registered and thereafter, handed over the computerized copy of FIR and original *rukka* to SI Pawan Kumar.

19. In his cross-examination, PW-4 deposed that he does not remember the make, colour or number of the private vehicle of SI Pawan Kumar, in which they reached the hospital. He further deposed that IO did not take the formal search of the accused in his presence and it was the IO who told PW-4 about the knife that was recovered from the appellant. On that basis, only PW-4 deposed that the knife was recovered from the appellant.

20. Ct. Pankaj, who had accompanied Saurav and SI Pawan Kumar to BJRM Hospital, was examined as PW-6. He deposed that the doctor

examined the injury of Gaurav and the knife used in the offence. The doctor gave his opinion and handed over the *pullanda* with the seal of MS, BJRM, Jahangirpuri hospital along with the sample seal. Thereafter, the same was taken into possession (Ex PW6/A).

21. In his cross-examination, he deposed that the *pullanda* was not opened by the doctor in his presence.

22. HC Sikander was examined as PW-8. He deposed that he had taken one sealed parcel containing a knife along with one sample seal to FSL on the direction of the IO and after depositing the same in FSL, he handed over the received copy of RC to MHC(M). PW-8 further deposed that no tampering of the case property took place, when it was in his custody.

23. Ct. Mahesh was examined as PW-9. He deposed that he accompanied the IO during the investigation. In BJRM hospital, the doctor took the blood sample of Saurav on the gauge piece and kept the same in a plastic *dibbi* and after closing the same with the tape, he put the seal of the hospital and handed it over to PW-9. Thereafter, the same was handed over by PW-9 to the IO, who seized the said article (PW9/A).

24. Rishu Rahul, who had brought the statement of accounts of Saurav Dhawan, was examined as PW-10. He deposed that as per record, ₹500/- was withdrawn by Saurav from the ATM, Hudson Lane, Kingsway Camp, Delhi and a certified copy of the statement account was given (Ex. PW10/A).

25. Dr. R.S. Mishra, CMO of BJRM hospital deposing on behalf of Dr Gagan, was examined as PW-12. He deposed that he had seen the MLC in respect of Hritvik and Saurav. PW-2 was medically examined by doctor Gagan and multiple abrasions on the dorsal aspect of the right hand were found and pain was present in the lower back. PW-5 too was examined by Dr. Gagan. On examination, he found that PW-5 sustained clean lacerated wound of size 2x5 cm on palmer aspect of left hand. Abrasion of size 1 cm on dorsal aspect of left elbow was also found. Further, some tenderness was also detected on right elbow with forearm and consequently, PW-5 was referred to Orthopedic department for further treatment.

26. In his cross-examination, PW-12 deposed that none of the MLC mentioned the nature of the injury. It also did not mention the kind of weapon used. He further deposed that there is a possibility that the injuries mentioned may be caused due to sudden fall on a hard surface.

27. SI Pawan Kumar was examined as PW-13. He deposed that he reached the Service road, Hudson Lane near the ATM and found nobody. Then, he came to know that the PCR Van took the injured to BJRM Hospital. PW-13 along with HC Om Prakash reached the hospital, where PW-13 obtained the MLC of PW-5, PW-2 and of the accused persons, including the appellant. HC Jitendra of PCR handed over one knife recovered from the appellant, of which PW-13 prepared a sketch (Ex. PW2/A). The knife was kept in the *pullanda*, which was sealed with the seal of PK and taken into possession (Ex. PW2/B). PW-13 further deposed that he had taken formal search of

the appellant and a currency note of denomination found ₹500/- was recovered from the back pocket of the pant of the appellant. It was then kept in a plastic transparent polythene and the same was sealed with the seal of PK and taken into possession (Ex. PW2/D). On formal search of the co-accused (Pradeep), a wrist watch was recovered from the back pocket of his pant and the same was kept in a *pullanda*, which was sealed and taken into the possession (Ex. PW2/C). PW-13 recorded the statement of PW-5 and made endorsement on the *rukka* which was handed over to HC Om Prakash for the registration of the case. PW-13 further made inquiries from the accused. The accused were arrested by PW-13. PW-13 deposed that he came to Camp Chowk where he recorded the statement of PCR official (HC Jitender). He then came back to PS and deposited the case property in Malkhana. PW-13 recorded the statement of HC Om Prakash and accused were produced before the court and they were sent to JC. PW-13 further deposed that he took the PC of the accused of one day in order to trace the other accused. On 18.12.2012 PW-13 took complainant PW-5 to BJRM Hospital and doctor took the blood sample of PW-5 and the same was preserved in a plastic dibbi and was handed over to PW-13. On 18.01.2013, PW-13 obtained one sealed parcel containing knife with the seal of PK from MHC (M) and the same was produced before the doctor alongwith PW-5 and, PW-13 obtained the opinion of the doctor regarding the injury.

28. HC Kailash Chand, who was working as MHC (M) on the day of the incident, was examined as PW-14. He deposed that SI Pawan

Kumar deposited three sealed *pullandas* sealed with the seal of PK, which were containing knife, one watch and currency note of ₹500/- denomination, in Malkhana. PW-14 made an entry in the register no 19 in this regard. On 18.12.2012 SI pawan Kumar deposited one sealed plastic *dibbi* containing blood sample on gauze piece, duly sealed with seal of MS BJRM J. Puri Delhi alongwith sample seal of the same specimen in Malkhana and the same was entered by PW-14 in the register. On 6.02.2013, PW-14 handed over two sealed parcels containing blood stained knife and blood sample of victim on guaze piece, both sealed with the seal of MS BJRM J Puri Delhi and sample seal of the same specimen to Ct. Sikander for being deposited in FSL Rohini. PW-14 further deposed that the case property has not been tampered when it was in his custody.

29. In his cross-examination, he deposed that he had not mentioned any specific time as to when the aforesaid exhibits were deposited with him. The exhibits were neither seized nor sealed in the presence of PW-14.

Reasons and Conclusion

30. At the outset it is necessary to note that the appellant was involved in two incidents of robbery; one, where Hritvik Singh (who deposed as PW2) was robbed and the other where Saurabh (PW5) was robbed.

31. Indisputably, there are certain inconsistencies in the testimonies of material witnesses, particularly, with regard to the recovery of

knife. PW-5 (Saurav) had, in his initial statement recorded on 16.12.2012, reported that he had been accosted by the appellant after he had withdrawn ₹500/- from the ATM. He alleged that the appellant had caught his neck with one hand and placed a knife on his waist and had demanded that all the possessions be delivered to him. He had threatened Saurav that on failure to do so, he would knife him (*chaku aar par ho jaayega*). Saurav reported that in view of the threats, he had removed ₹500/- from his pocket and has handed over the same to the appellant. The appellant had removed his hand from his neck and had taken the said amount. He further alleged that at that time, two other friends of the appellant (namely, Pradeep and Gaurav) had also joined. Pradeep had removed his watch (described as having black dial of the make Titan) from the wrist and the other accomplice (Gaurav) had removed his black colour purse from his pocket. Saurav stated that he had opposed their actions and on doing so, one of the boys who had held a knife, had struck a blow on his stomach. He had tried to protect himself by his hand; resultantly, the knife had struck his hand. He also alleged that both the boys (Pradeep and Gaurav) had attacked him by kicks and fists (*lat ghuso se hamla kar diya*). He raised an alarm and some people came to help him. They caught hold of two boys, while the third one (Gaurav) escaped. He stated that the people started beating the two boys (appellant and Pradeep) and he snatched the knife from the hands of the boy (*maine us ladke ke hath se chaku cheen liya*). It is relevant to note that in his initial statement, Saurav had not reported that two persons were armed with a knife. He had clearly stated that one of the boys (appellant) had placed a knife

on his waist. He had further stated that on his opposing their actions, the boy who held the knife had directed a blow towards his stomach (*maine jaise hi unka virodh kiya toh chaku pakde huye ladke ne badi tezi se mere pait ki aur vaar kiya*). Saurav proceeded to state that he had, thereafter, snatched the knife from the boy who held the knife (*maine use ladke ke hath se chaku cheen liya*). In his testimony before the court, Saurav had affirmed that the appellant had placed a knife on his neck, while the accused Pradeep had tried to stab him on his stomach but he had caught hold of the knife with his left hand. He stated that the third accused, namely, Deepak @ Gaurav had taken his wrist watch and wallet from his pocket. He had also snatched ₹500/- from his hand. He further stated that he had snatched the knife from the hand of the accused. In his cross-examination, he had clarified that he had snatched the knife from the appellant (Naresh @ Pappu Pager). He also clarified that both the accused (appellant and Pradeep) were armed with knives. He further clarified that he had warded off the blow, which was delivered by the accused Pradeep and he had snatched the knife from the appellant.

32. Although Saurav had not clearly stated in his statement (Ex.PW-5/A) that Pradeep was also armed with knife; there is no inconsistency in his aforesaid statement and his testimony. He had clearly stated that one of the boys had tried to deliver a blow from the knife towards his stomach, which he had protected by his hand. In his testimony, he had clarified that this blow was delivered by Pradeep. Similarly, he had also clarified that he had snatched the knife from the

appellant and he did not know what happened to the knife held by the accused Pradeep.

33. Saurav had handed over a knife to HC Jitender (who deposed as PW-3). He had deposed that he handed over the knife, which was recovered from the appellant, to the Investigating Officer (SI Pawan Kumar). This was confirmed by SI Pawan Kumar (PW-13) in his testimony. There does not appear to be any inconsistency between the statement recorded on 16.12.2012 (Ex.PW-5/A) and his testimony in regard to use of the knife by the appellant.

34. The testimony of PW-2 (Hritvik Singh) also indicates that the appellant had committed a robbery at knife point. PW-2 had also reported that he had been robbed by the appellant. He testified that on the intervening night of 15/16.12.2019, he was accosted by 4-5 boys who were consuming liquor near old tempo stand, Mukherjee Nagar. He stated that the appellant (whom he correctly identified in court) had caught him from behind and placed a knife on his neck. In the meantime, two other boys Pradeep and Gaurav (who were also identified by him in court) snatched all his belongings including two mobile phones, ATM card, PAN card and debit card. He stated that they had beaten him with fists and kicks. He had reported this to the PCR van outside the gate of PS Mukherjee Nagar and had accompanied the PCR officials in search of the accused persons.

35. Although the accused persons were not found at the spot, however, one auto rickshaw driver had met and had informed the PCR

officials that three persons were committing robbery on the point of knife outside Kotak Mahindra Bank ATM. He stated that he along with PCR officials reached there and observed that the accused Pradeep had been caught up by public persons. The remaining two accused (appellant and Gaurav) had tried to run away from the spot but the appellant was apprehended by the PCR officials. He stated that on a search of Pradeep conducted by public persons, one knife was recovered.

36. The testimony of PW-2 is inconsistent with the testimony of PW-5 with regard to recovery of knife. Whereas PW-5 states that he had snatched the same from the appellant, PW-2 states that the same was recovered by public persons from the accused Pradeep.

37. The Trial Court had also noticed that there were inconsistencies in the testimony of PW-2 and PW-5 regarding recovery of the knife. However, in the given facts, this inconsistency in the testimonies does not create any doubt as to whether a knife had been used for committing the robbery. Although, PW-2 and PW-5 had reported that they had been robbed by the appellant and the other accused on a knife point, PW-5 had also suffered injury which he had affirmed was caused by a blow by the knife. It does appear that PW-2's testimony that on a search being conducted, a knife was recovered from the accused Pradeep by public persons is inconsistent with the testimony of PW-5. This is so because PW-5 had deposed that he had snatched the knife from the appellant and had handed over to HC Jitender. He had also deposed that he had received a knife in question by PW-5 and

he had, subsequently, handed over the same to the IO at the hospital. However, PW-2's testimony does not raise any doubts as to robbery being committed on a knife point. It is well settled that recovery of a weapon is not necessary for establishing an offence under Section 397 of the IPC. If the use of deadly weapon in committing robbery is established, it does not matter whether the said weapon is recovered. It is also well settled that knife of any description would qualify as a deadly weapon for the purpose of Section 397 of the IPC.

38. In the given facts and circumstances of the case, there is sufficient evidence to establish that the appellant had used the knife to commit robbery. In this view, this Court finds no infirmity with the impugned judgment convicting the appellant of an offence for which he was charged. The appeal is, accordingly, dismissed.

39. The pending application is disposed of.

VIBHU BAKHRU, J

JANUARY 06, 2020
RK/MK