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

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*Reserved on: 24.08.2023
Pronounced on: 04.09.2023*

+ **CRL.A. 470/2009**

FAIMUD

..... Appellant

Through: Mr. Sumeet Verma (Amicus Curiae)
with Mr. Mahinder Pratap singh, Mr.
Vinay Kumar, Advocates

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Satish Kumar, APP for State with
SI Mayank Istwal, PS Kalyanpuri

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, the appellant impugns judgment dated 12.12.2007 and order on point of sentence dated 13.12.2007 *vide* which the appellant has been convicted and sentenced for committing offences punishable under Section 392/397 of Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the facts of the present case are that an information was received at P.S. Kalyan Puri, Delhi, that a thief had



been apprehended in A-Block, near Balmiki Mandir, Trilok Puri, Delhi, after which the concerned police official had arrived at the site of incident, where one Subhash Kumar and Ram Singh had detained the accused/appellant Faimud, alongwith a purse and a *buttondar* knife which they had recovered from the accused. The accused alongwith the said purse and knife had then been handed over to the concerned police official. The complainant Subhash Kumar's statement was recorded, who stated that while he was enroute the market to purchase goods and had reached near Aggarwal Sweet House, the accused had pointed a knife at him, threatening to kill him if he raised an alarm, after which, the accused had forcibly taken out the complainant's purse from the pocket of his shirt and had begun to flee from the spot. Thereafter, the complainant had raised an alarm, leading to the apprehension of the accused with the help of other persons present at the spot. During the course of investigation, the identity of the accused was revealed as Faimud and on search, the purse belonging to the complainant, containing Rs. 265/- along with one visiting card of Subhash Chandela and three business cards of Subhash Kumar were recovered, all of which were found in the complainant's purse. The *buttondar* knife and the case property were duly sealed by the investigating officer, and an FIR was registered under Section 392/397 of IPC and Section 25 of Arms Act. The accused was arrested, and after investigation, chargesheet was filed against the accused and charges were framed.

3. Learned Trial Court had convicted the appellant under Section 392/397 of IPC and sentenced him to rigorous imprisonment for seven



years, alongwith payment of fine of Rs. 2000/- and in default of payment of same, he was sentenced to undergo a simple imprisonment for two months. He was further sentenced to rigorous imprisonment for two years for committing offence under Section 25 of Arms Act and payment of fine of Rs.2000/- and in default of payment of same, he was sentenced to undergo a simple imprisonment for two months.

4. Aggrieved by the aforesaid judgment and order on sentence, the present appeal was preferred. The appeal was admitted *vide* order dated 08.07.2009 and his sentence was suspended *vide* order dated 22.02.2010.

5. Learned counsel for appellant argues that the judgment had been passed by ignoring the cardinal principles of criminal jurisprudence and the accused was convicted on the basis of presumptions. It is also argued that there was no evidence against the accused to convict him for the alleged offence and the only basis for his conviction is the disclosure statements, which is not permissible in law. It is also stated that there is no independent witness who supports the case of prosecution. It is further argued that the learned Trial Court has failed to appreciate that PW-5 had deposed that the Investigating Officer had completed all the proceedings in the police station instead of the place of occurrence. It is also stated that there are material contradictions in the statements of witnesses in relation to the colour of the purse, wherein PW-3 has testified that the colour of the purse was green whereas PW-5 did not remember the colour of the purse. It is further stated that the purse, that is the main evidence in the entire case of the prosecution, only had Rs.18/- in it at the time of alleged



incident. It is also stated that the learned Trial Court has failed to appreciate that as per testimony of PW-2 Ram Singh, the police official had obtained his signatures on 4-5 papers but he did not know the contents of the same. It is thus argued that the present appeal be allowed.

6. Learned APP for the State, on the other hand, has argued that the prosecution had proved its case beyond reasonable doubt and the appellant was rightly convicted by the learned Trial Court, and thus, present appeal be dismissed.

7. This Court has heard arguments and has gone through the case file as well as the impugned judgment. The relevant portion of the judgment impugned before this Court reads as under:

“13. In the present case, PW1 Subhash Kumar is complainant in the case. FIR has been registered on his statement. He has deposed categorically that accused, present in court, namely Faimud put knife upon him and told that he would give knife blow if, he would cry. He also told that he would give knife injury to him, if he would resist. Accused took out purse containing Rs.265/ from his pocket. Purse containing the said money with some visiting cards was recovered from the accused. There is nothing in cross-examination by Ld. Counsel for accused to rebut the said deposition of PW1 Subhash Kumar, In the said cross-examination, the evidence of PW1 Subhash Kumar gets elaborated. The witness deposes that accused put knife at the right side of his abdomen. There is nothing in examination-in-chief of PW1 Subhash Kumar or in cross-examination of this witness by Ld. Counsel for accused that accused is innocent. In view of the clear evidence of PW1 Subhash Kumar, present case cannot be stated to be one of the mistaken identity regarding the accused. Further, in view of the categorical deposition of PW1 Subhash Kumar regarding accused putting knife at the right side of the abdomen of the witness with threat and taking out purse from his pocket. I am of the considered view that it is immaterial whether the purse and knife were handed over to the police by the witness or the same were recovered by police from the possession of the accused. It is worth noting that record proves beyond reasonable



doubt through evidence of PW1 Subhash Kumar and PW2 Ram Singh that accused Faimud was apprehended on the spot. Thus, there can be no doubt that accused Faimud used Buttondar knife for the purpose of committing robbery and while so using the same, he committed robbery of purse containing Rs.265/-. The Buttondar knife so used was recovered on the spot.

14. In view of the above discussion, I am of the considered view that prosecution has proved on record beyond reasonable doubt that on 3.2.2007 at about 3:00 PM at Main Road, Subhash Market in front of Balmiki Mandir, Block-6, Trilok Puri, Delhi within the jurisdiction of Police Station Kalyan Puri, accused Faimud committed robbery of purse containing Rs.265/- and visiting cards etc. from the possession of complainant Subhash Kumar which was recovered from his possession near the spot immediately after committing robbery and while committing robbery, he used deadly weapon i.e. knife and also that accused Faimud was found in possession of one button actuated knife in contravention of notification issued by Delhi Administration. In other words, prosecution, has brought home the guilt of accused Faimud in respect of offence u/s 392/397 IPG and also in respect of offence Li/s 25 (1-B) Arms Act. Hence, accused Faimud is convicted in respect of the said offences..”

8. Since the appellant has been convicted for offence under Sections 392/397 of IPC, it will be appropriate to discuss the relevant Sections which have been reproduced as under:

“Section 390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in



fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint. Illustrations

(a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high roads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Section 392. Punishment for robbery.—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Section 397. 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."

9. This Court has gone through the testimony of PW-1, Subhash Kumar, who is the complainant in the present case. The testimony of PW-1, as analyzed by the learned Trial Court, reveals that he had not



only identified the appellant in the Trial Court but had also apprehended him at the site of incident in the presence of other individuals. In his deposition, PW-1 specifically alleged that the accused had pointed a knife at him, threatening to stab him if he raised an alarm. Thereafter, the accused had forcibly removed purse from the possession of the complainant, after which, accused had been apprehended at the spot with the assistance of members of the public. He had further deposed that the police officials had been called at the site of incident, and they had recovered the case property, including the purse and the articles contained therein, as well as the knife used in committing the offence, from the accused/appellant. PW-1 had also identified both the case property and the weapon used in the commission of offence.

10. The cross-examination conducted by the appellant's counsel failed to undermine the testimony of the complainant, as no discrepancies had emerged in the testimonies of PW-1 and PW-2, or other witnesses. During cross-examination, the complainant steadfastly stood by his testimony. The argument put forth by the appellant's counsel, suggesting a discrepancy regarding the color of the purse, lacks significance in light of the fact that not only was the purse identified and produced before the police at the scene on the same day, but it was also identified by the complainant at the scene and in Court. The contention that such purses, as recovered in this case, are readily available in the market cannot be deemed a material contradiction or a basis for suspicion that the purse was planted. During cross-examination, the complainant reiterated his account of



the offence in question, the sequence of events related to its commission, the apprehension of the accused, the recovery of the case property, the retrieval of the weapon used in the offence, and the actions taken by the police at the scene. Despite extensive cross-examination, no material discrepancy in the complainant's statement has been found.

11. This Court further notes that another independent public witness, PW-2 Ram Singh, has corroborated the prosecution's case and stood by the statement he gave to the police under Section 161 Cr.P.C. His statement entirely supports the complainant's account of apprehending the accused at the spot, along with the knife used in the commission of the offence and the complainant's purse, which was recovered at the spot itself. In respect of PW-2 as well, no material contradictions emerged in his testimony despite cross-examination.

12. The case property, which was recovered from the appellant, reinforces the conclusion reached by the learned Trial Court that the prosecution had established the accused/applicant's guilt beyond a reasonable doubt in relation to the offence in question.

13. As far as the other contention of the learned counsel for the appellant that the knife was not used in this case to cover the offence under Section 397 of IPC is concerned, this Court is of the opinion that in case of *Ram Ratan v. State of Madhya Pradesh 2021 SCC OnLine SC 1279*, a three-judge bench of the Hon'ble Apex Court has laid down as under:

“17. From the position of law as enunciated by this Court and noted above, **firstly, it is clear that the use of the weapon to constitute the offence under Section 397 IPC does not require that the**



‘offender’ should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient.”

(Emphasis Supplied)

14. Further, in *Dilawar Singh v. State of Delhi* (2007) 12 SCC 641, it has been held by the Hon’ble Apex Court as under:

“19. The essential ingredients of **Section 397 IPC are as follows:**

1. The accused committed robbery.

2. While committing robbery or dacoity (i) the accused used deadly weapon (ii) to cause grievous hurt to any person (iii) attempted to cause death or grievous hurt to any person.

(Emphasis supplied)

15. In the present case admittedly no injury has been inflicted. However, the use of weapon by the appellant for creating terror in mind of the victim is sufficiently proved as it is stated that he had put the buttondar knife on the person of the victim and had threatened him that he will stab him in case he will raise alarm. The law does not require it to be actually used for cutting, stabbing or shooting, as the case may be.

16. The statements on record proved beyond reasonable doubt that the knife was used in the offence in question, and it was visible to the complainant which was kept on his body. The complainant was put in fear of death and the mere fact that it was not actually used, cannot absolve the accused of offence under Section 397 of IPC. A similar view had been taken in the case of *Ram Ratan v. State of Madhya Pradesh* (*supra*) by the Hon’ble Apex Court.



17. In light of established judicial precedents pertaining to the offence in question, it is essential to emphasise that the application of Section 397 of IPC, which deals with armed robbery, hinges on a broader understanding of the use of weapons. Contrary to a common misconception, this provision does not solely pertain to instances where firearms or edged weapons are physically used for commission of offence of robbery. In fact, legal jurisprudence has evolved to lay down that the mere display of a weapon, its menacing presence, or any action that induces fear or apprehension in the mind of the victim will attract the application of Section 397 of IPC.

18. Thus, as stipulated in Section 397 of IPC, it does not necessitate the actual discharge or use of the weapon for shooting or stabbing. Merely displaying the weapon, carrying it on one's person, or brandishing it in a manner that threatens or instills fear or apprehension in the victim's mind is adequate to invoke the provisions of Section 397 of IPC.

19. It is also apparent from the testimony of the witnesses which are proved beyond reasonable doubt that the accused had used a *buttondar* knife and had put the complainant in fear of death or instant hurt as he had threatened to stab him in case he would raise alarm, so as to attract Section 397 of IPC as well as recovery of same being affected from him attracts Section 392 of IPC.

20. Thus, in view of the aforesaid discussion, this Court finds no reasons to interfere with the impugned judgment and order on sentence passed by the learned Trial Court as far as conviction under Section 397/392 of IPC and Section 25 of Arms Act is concerned. The



impugned judgment dated 12.12.2007, and order on sentence dated 13.12.2007 are hereby upheld. His bail bond stands canceled and his surety stands discharged.

21. Accordingly, the present appeal along with pending application, if any, is dismissed.

22. A perusal of record also reveals that the appellant is also serving sentence of rigorous imprisonment for ten years as he has been convicted for committing offence under Section 506 of IPC and Section 6 of POCSO Act in a case arising out of FIR bearing no. 198/2015 registered at Police Station Jaitpur, Delhi.

23. Since the appellant is already serving sentence in the jail in some other case and his bail bond stands canceled and his surety stands discharged, he be considered to be in custody in the present case also from the date of announcement of the sentence since the learned counsel for the appellant states that it may be considered deemed surrender in this case also.

24. Since the appellant is in judicial custody, a copy of this judgment be sent to the Superintendent, Central Jail No. 2, Tihar, for intimation to the appellant.

25. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/ns