



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

% Reserved on : 09.02.2024
Pronounced on : 22.02.2024

+ **CRL.A. 885/2002**

IN THE MATTER OF:

ANIL KUMAR

..... Appellant

Through: Ms. Gunjan Sinha Jain and Mr.
Animesh Tripathi, Advs. along with
appellant in person.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Satish Kumar, P.S. Bara
Hindu Rao.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374 Cr.P.C. against the impugned judgment of conviction dated 05.09.2002 and order on sentence dated 07.09.2002 passed by the Sessions Court in Sessions Case No.56/1998 arising out of FIR No.285/1997 under Sections 392/397 IPC and FIR No.286/1997 under Sections 25/54/59 Arms Act both registered at P.S. Bara Hindu Rao, Delhi. Vide the aforesaid judgement and order on sentence, the appellant was convicted for the offence punishable under Sections 392/397 IPC and was sentenced to rigorous imprisonment for a period of seven years and to a fine of Rs.100/-. In default of payment of fine,



the appellant was directed to undergo simple imprisonment of three months. The appellant was also convicted for the offence under Section 25 of the Arms Act and was sentenced to rigorous imprisonment for one year. Benefit of Section 428 Cr.P.C was given and the said sentences were directed to run concurrently.

2. After completion of investigation, the challan came to be filed against the present appellant only, as his accomplice could not be arrested. The prosecution cited and examined six witnesses in support of its case. The appellant pleaded not guilty and claimed trial.

3. The facts, as found recorded in the impugned judgment are as under:-

“...On 25-10-98 at about 12.25 p.m. Sanjeev Kumar Gupta travelling in Blue Line bus from Gandhi Nagar to Sadar Bazar reached slightly ahead of Azad Mkt. crossing, Near Gurudwara there was a crowd and bus was moving slowly. Accused Anil Kumar was also travelling in the same bus and was standing on the right side of Sanjeev Kumar. One accomplice of Anil Kumar was also with him. Anil Kumar placed a knife in the arm pit of Sanjeev Kumar by his right hand and removed Rs.100 which Sanjeev Kumar was carrying in front pocket of his shirt. Sanjeev Kumar raised alarm and accused with the help of public was brought down from the bus with knife and 100 Rs. Accomplice of accused managed to escaped. Sanjeev Kumar was taking accused with knife and 100 Rs. to P.S. when S.I. Narender Tyagi met him near Azad Mkt. crossing. Accused alongwith knife and 100 rupees was handed over to S.I. Narender who recorded statement of Sanjeev Kumar Gupta and after making endorsement on the same got a case registered. In the meantime S.I. Satpal alongwith Const. Jeet Singh had also reached near S.I. Narender. While patrolling the area and investigation was taken over by him regarding recover of knife and he also got a case registered U/s 25/27 Arms Act.”



4. The prime witness of the prosecution was the complainant *Sanjeev Kumar*, who was examined as PW-3. He deposed that on 25.10.1997 at about 12.25 P.M., he was travelling in a blue line bus from Seelampur to Sadar Bazar. When the bus reached Azad Market Crossing, the appellant put a knife on his left armpit and took out Rs.100 from his pocket. Consequently, he raised alarm and the appellant was caught, brought down from the bus and taken to the police station. The accomplice of the accused however, managed to escape from the spot. The knife as well as Rs.100/- note was seized from the possession of the accused. In his cross-examination, he stated that he had felt some itching when the knife was put and suddenly the cash was taken out from his pocket. He raised noise when he saw that the accused had put a knife on him. He also stated that he was having a small pocket diary in his front pocket from where the amount was taken. He identified the knife (Ex.PW3/1) as well as his signatures on the seizure memo (Ex.PW3/B) and sketch of the knife (Ex.PW3/D). As per the sketch, the length of the knife was measured as 13 inches having a blade of 6 inches and a handle of 7 inches.

5. *SI Narender Tyagi* was examined as PW6. He stated that on 25.10.1997, he along with *Constable Jyoti Swaroop* were present at Azad Market Crossing and at about 12.30 pm, the complainant met him and handed over one currency note of Rs.100/-, one knife which was button actuated as well as the accused. He had recorded the statement of the complainant (Ex.PW1/A). At the same time, *SI Satpal* and *Constable Jeet Singh* also reached at the spot, whereafter the knife and currency note of Rs.100 were seized and sealed. The seal after use was handed over to *Constable Jyoti Swaroop*. The site plan was also prepared. The testimony of



the remaining police witnesses is cumulative in nature.

6. The appellant in his statement recorded under Section 313 Cr.P.C claimed false prosecution and denied his involvement in the case.

7. The appellant has also identified the knife and his signatures on the seizure memo, sketch, etc.

8. The appellant was caught at the spot along with the knife and Rs.100 currency note and was handed over to the police officials. The appellant's apprehension at the spot and seizure of knife as well as Rs.100 currency note stands proved in terms of the testimony of the complainant (PW3) and the remaining police witnesses. Though, it is contended on behalf of the appellant that the failure to join independent witness is fatal however, a perusal of the testimony of police witnesses would show that it has been clarified that a number of passersby were asked to join investigation however, none joined.

9. From the above, it stands proved that the appellant was apprehended at the spot and handed over to the police officials, along with the knife and Rs.100 currency note.

10. Insofar as the appellant's conviction under Section 397 IPC is concerned, this Court before proceeding further deems it appropriate first to reproduce the said section which reads as under:

“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...”



11. The ingredients of the offence under Section 397 IPC involve the use of any deadly weapon by the offender at the time of committing robbery. The removal of Rs.100 from the pocket of the complainant stands established in light of the testimony of the complainant. However, it is to be seen whether any deadly weapon was 'used' at the time of commission. The relevant part of cross examination of PW-3 on the aspect of use of knife is reproduced hereunder:-

"...the bus was full of passengers at the time of occurrence and he was standing in front portion of the bus. He admitted that bus was in motion when incident took place. He could not say whether the bus was stopped or not at the bus stand before red light or Azad Market. According to him, the bus was moving slowly due to traffic jam between Gurdwara and red light. According to him when knife was put on his armpit, he had felt itching and suddenly the cash was taken out. He admitted that he felt itching after crossing traffic light of Azad Market crossing. He admitted that he raised alarm when he saw accused putting knife on his armpit. According to him, the bus was stopped at a distance of 100 yards after he raised alarm. According to him after accused was apprehended by the passengers, the bus was stopped on the side of the road and 7/8 passengers got down from the bus and accompanied him when he was taking accused to PS. According to him, SI had met him at a distance of 150 yards from the bus and driver and conductor of the bus were not with him. He could not say if IO had recorded statement of persons accompanying him or not. He admitted that IO had not collected bus tickets from those persons and had not recorded their names and addresses. He could not tell how the knife was measured..."

12. From a reading of the above, it is evident that though the appellant was armed with a knife, which indeed is a deadly weapon, the same was however, not within the vision of the complainant. The complainant had



only felt some itching without having any notice of the knife in the hand of the appellant. Before he (complainant) could see the knife, the amount of Rs.100 had already been withdrawn from his pocket. In Ashfaq v. State (Govt. of NCT of Delhi)¹, the Supreme Court held as under:-

“xxx

8. Thus, what is essential to satisfy the word “uses” for the purposes of Section 397 IPC is the robbery being committed by an offender who was armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in the mind of the victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be.

9....the others were also armed with and used their knives and that knife is equally a deadly weapon ,for the purposes of Section 397...

xxx”

13. Similarly, the decision of this Court in Seetal v. State (NCT of Delhi)², is also apt in the fact situation. The relevant extract of the same is reproduced below:-

“xxx

19. The resultant position that emerges is that Section 397 would be attracted even if the accused, who possessed a knife during the robbery, does not actually use it to threaten the victim. A victim who has noticed the knife in the hand of the accused would undoubtedly feel threatened. It is possible that the victim may not have noticed what type of knife it is and whether it is capable of causing actually harm. In other words, the actual size or length of the knife would not matter. In Phool

¹ (2004) 3 SCC 116

² 2014 SCC OnLine Del 4043



Kumar, the Supreme Court noticed the observations of the Bombay High Court in Govind Dipaji More v. State AIR 1956 Bom 353 that if the knife "was used for the purpose of producing such an impression upon the mind of a person that he would be compelled to part with his property, that would amount to using the weapon within the meaning of Section 397." Therefore, the fact that the knife was not recovered at all, or that the recovered weapon was not shown during the course of trial to the victim, would not matter as long as the eye witnesses to the crime are able to convincingly and consistently recount the fact that they were threatened by the sight of the accused wielding the knife into parting with their belongings. (emphasis added)"

14. Indisputably, the complainant did not see or realise that a deadly weapon i.e., knife was being used, and thus the offence in terms of Section 397 IPC cannot be made out, in as much as the money was taken from the pocket of the complainant before the knife could be seen by the complainant. In light of the above, appellant's conviction is upheld qua the offence under Section 392 IPC however, he is acquitted of the offence under Section 397 IPC. The appellant's conviction under Section 25 Arms Act is also upheld.

15. The nominal roll of the appellant shows that the appellant has undergone sentence of 2 years 10 months along with remission of 8 months and 17 days. The appellant is also not found involved in any other case.

16. Considering the above, the appellant's sentence is modified to the period already undergone.

17. The appeal is allowed to the aforesaid extent and his bail bonds are cancelled and surety discharged.

18. A copy of this order be sent to the Trial Court as well as to the



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concerned Jail Superintendent.

19. The appeal is disposed of in above terms.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 22, 2024/rd