

**(2014) 04 DEL CK 0125**  
**In the Delhi High Court**  
**Case No : Crl. A. 249/2006**

Raju

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

**Date of Decision :** 03-04-2014

**Acts Referred:**

Arms Act, 1959 — Section 25  
Criminal Procedure Code, 1973 (CrPC) — Section 313, 428  
Penal Code, 1860 (IPC) — Section 34, 393, 397, 398

**Citation :** (2014) 142 DRJ 444 : (2014) 2 JCC 1251

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** Pramod Kumar Dubey, Advocate for the Appellant; Fizani Hussain, APP, Advocate for the Respondent

**Final Decision :** Disposed Off

## Judgement

Indermeet Kaur, J.—Appellants are aggrieved by the impugned judgment and order of sentence dated 24.12.2005 and 17.02.2006 respectively wherein the appellants had been convicted and sentenced to undergo RI for 7 years for the offence u/s 398 IPC; for the offence u/s 25/54/59 of the Arms Act they had been sentenced to undergo RI for three years. Both the sentences were to run concurrently; benefit of Section 428 Cr.P.C. had been granted to the appellants. Version of the prosecution is that on 10.01.2001 at about 7.00 p.m. in the evening while Satish Kumar (PW-1) along with his nephew Anshul (PW-2), his son Achin (PW-4) were in their shop along with their employee Amar Singh (PW-7) four persons entered; appellant Raju pointed a pistol at PW-4's head; he was also hurling abuses. PW-4 caught hold of right hand of the appellant Raju in which he was holding a pistol; they grappled with one another. PW-1, PW-2 and PW-7 tried to save PW-4; two of the accused persons who were standing near the door ran away; the other two accused i.e. appellant Raju and the appellant Paras Ram (holding a knife in his hand) had been apprehended at the spot.

2. Statement of PW-1 Ex. PW-1/A was recorded at 7.50 p.m. pursuant to which the present FIR was registered at 11.40 p.m. Apart from the statement of PW-1 statements of PW-2, PW-4 and PW-7 were also got recorded by the investigating officer Suresh Chand (PW-18).

3. The MLCs of the victim i.e. PW-2, PW-4 were proved through Dr. Nazhat Parveen as Ex. PW-19/A and Ex. PW-19/B. The injuries reported on both the victims were simple.

4. Katta recovered from the appellant Raju was taken into possession vide memo Ex. PW-1/D. Three live cartridges were also recovered from his personal search. A knife was found to be in possession of the second appellant Paras Ram. Sketch of the knife was prepared and it was taken into possession vide memo Ex. PW-1/C.

5. Statements of the accused were recorded; Raju in his statement recorded u/s 313 Cr.P.C. had stated that he was an employee of the complainant and he had gone to take his balance salary from his employer (PW-1) wherein he was falsely implicated.

6. One witness was led in defence. He was Ram Sharan Gupta (DW-1). He has also deposed that his brother-in-law Raju was an employee of PW-1. He had gone to collect his salary where he has been falsely implicated. In cross-examination, he admitted that there is no documentary evidence to show that Raju was an employee with PW-1; details and description of PW-1 also could not be given by him.

7. On the basis of the aforementioned evidence collected by the prosecution both the accused persons were convicted and sentenced as aforementioned. Defence was disbelieved.

8. On behalf of the appellants, it is pointed out that the judgment of the trial court suffers from inherent improbabilities. Versions of PW-1, PW-2, PW-4 and PW-7 are contrary; there have been improvements in their versions; to support this argument attention has been drawn to cross-examination of PW-1 wherein on oath in Court he stated that the appellant Raju had pointed a revolver at the head of his son but this was not mentioned in his statement Ex. PW-1/A; this is the only improvement which has been pointed out by learned defence counsel qua the aforementioned version of the aforementioned witnesses. His second submission is that after the apprehension of the accused the Katta and the knife were already recovered when the police reached the spot. Attention has been drawn to the documents i.e. Ex. PW-1/A, Ex. PW-1/B, Ex. PW-1/D and Ex. PW-18/A; submission being that in all these documents the FIR number has been written by the same pen and ink; it is clearly a case when the documents are either ante dated or the documents were not prepared at the spot. Benefit of doubt must accrue to the appellants.

9. The State has refuted the submission. It is pointed out that on no count does

the impugned judgment call for any interference. It is stated that the versions of the eye-witnesses PW-1, PW-2, PW-4 and PW-7 are corroborative of one another; there was no reason as to why they would falsely implicate the appellants. Further submission being that the appellants were admittedly caught at the spot; the knife and the Katta were also recovered from them; they had also been medically examined and their MLCs show injuries on each of them; which clearly substantiate the version of the prosecution that the appellants have been beaten up by the public. This has come in the version of all the eyewitnesses. On no count do the appellants deserve any leniency.

10. Arguments have been heard and record perused.

11. Nominal rolls of the appellants have been summoned. The nominal roll reflects that as on the date when the appellant Raju has been granted bail he has suffered incarceration of 41/2 years out of total period of 7 years of sentence which had been awarded against him. Qua the appellant Paras Ram as on the date when he has been granted bail he has suffered incarceration of 5 years out of the total period of 7 years sentence which had been awarded qua him.

12. The testimony of all the witnesses is coherent and cogent. PW-1 is the complainant. He has on oath deposed that he has a dry fruit shop in Khadi Bawdi; on 10.10.2001 at about 7.00 p.m. after closing his shop he along with PW-2, PW-4 and PW-7 gone to their office for sorting out their accounts and papers when four persons entered into their office from the open door; one of them pointed a pistol on his son's head and told him to take out whatever he had. He was also hurling abuses. PW-4 caught hold of the hand of the said person; PW-2 and PW-7 also grappled with the said persons; out of the four accused two of them were standing at the door and ran away when alarm was raised. Public persons gathered. The accused persons were beaten up by the public. Appellant Raju had a pistol in his hand and Param Ram had a knife. In the scuffle PW-2 had also sustained injuries. His statement Ex. PW-1/A was recovered. The recovered pistol and knife as also three live cartridges which were recovered from the possession of the appellant Raju and Para Ram were taken into possession.

13. PW-1 was subjected to a lengthy cross-examination. He admitted that there is a busy market where the incident had occurred; he used to open his shop at 11.00 a.m. and closes it at 7.00 p.m. 10-15 persons were gathered at the spot. The place where the incident had taken place consists of two rooms of which one room was the place where PW-1 along with other complainant party were sitting to sort out their accounts. The improvement pointed out the learned defence counsel as noted supra is not material to detract from his otherwise clear and coherent version.

14. PW-2 who was the nephew of PW-1 has also toed the version of PW-1; so also are the versions of PW-4 and PW-7 the other eyewitnesses. No cross-examination has been effected on either of these PWs on the defence which is

now sought to be set up by the appellants. Trite it is to state that this defence that appellant Raju was an employee has been built up only as an afterthought. DW-1 being a close relative of appellant Raju could not give any detail or description of this so-called employer (PW-1); this was clearly for the reason that PW-1 was not the employer of appellant Raju. PW-19 had proved the MLC of PW-2 and PW-4 as Ex. PW-19/A and Ex. PW-19/B. This medical record shows that all of them have received simple injuries; they had been discharged on the same day. PW-18 was the Investigating Officer. The investigation further revealed that the appellants Raju and Paras Ram had also sustained injuries; this is clear from the testimony of Cont. Ramesh Chand (PW-14) who had taken both Raju and Paras Ram for their medical examination in the Hindu Rao Hospital. The MLCs had been handed over to the investigating officer. This medical record of Raju and Paras Ram who were also examined on the same day in the Hindu Rao Hospital substantiates the other oral and documentary evidence collected by the prosecution that both of them had received these injuries on account of the beatings given to them by the public.

15. The impugned judgment in view of the evidence collected by the prosecution does not call for any interference. The arguments of the learned defence counsel that the FIR number which has been mentioned in the documents (Ex. PW-1/A, Ex. PW-1/B, Ex. PW-1/D and Ex. PW-18/A) in the same ink and writing is an argument completely bereft of force. Apart from the fact that FIR number, details of the case have been mentioned in all the aforementioned documents in different ink and in different writing; even otherwise it is a matter of common knowledge that in the course of the investigation the investigating officer details the number of the FIR on the documents prepared by him for cross-verification and in order that they remain connected with the case and this is for his administrative purpose. In this context a Bench. of this Court had answered this argument in *Rattan @ Ratan Singh Vs. State (Govt. of Nct of Delhi)*, which reads as follows:

It is true that the seizure memos Exs. PW-3/E and PW-3/F do contain the FIR number on the top left side. SI Balbir Singh (I) duly proved the seizure memos. No explanation was obtained by the defence counsel as to the presence of the FIR number thereon, particularly when the FIR had not come into existence by the time seizure memos were written. Thus, the contention raised on behalf of the State that the FIR number was subsequently mentioned by the IO for the purpose of the record is convincing and must be accepted. A similar contention was raised before the Delhi High Court in *Ramesh Kumar Rajput @ Khan v. The State of NCT of Delhi*, Criminal Appeal No. 755/2004, decided on 02.05.2008 where after referring to *Radhey Sham Vs. State of Haryana*, the learned Single Judge of this Court held as under:

15. In any event the law as explained by the Supreme Court is that the mere writing of the FIR number on the arrest and search memos cannot entirely falsify those documents. Significant among the decisions is *Radhey Sham Vs. State of Haryana*, . Also, there is merit in the contention of the Respondent that there

was no specific question put to the officers concerned in their cross-examination. What the counsel for the accused appears to have been done is to ask the witness whether the portion of the document from "point A to A" (which included the portion containing the FIR number) was written at the same time. This might be intelligent cross-examination but if the defence wants to prove that the FIR number was in fact written at a later point in time the witness ought to have been asked that question. The failure to elicit any answer from the witnesses on this point can only indicate that the defence may have been inconvenienced by the possible answer that might have been given by the witness or that the witness may have explained that the writing of the FIR number was only for cross verification of the details and therefore the FIR number was written at a subsequent point in time.

16. In this background it can by no stretch of imagination said that the documents prepared in this case were either ante-dated or that they were not prepared at the spot.

17. As noted supra, both the accused persons have been convicted and sentenced RI for a period of 7 years for the offence u/s 398 read with Section 34 IPC and they have been convicted and sentenced RI for 3 years for the offence u/s 25/54/59 of the Arms Act.

18. Although the language used in Section 398 IPC is "armed with any deadly weapon" but the use of the expression "armed" has to be read in relation to the use of "deadly weapon" in connection with commission of an offence of robbery or dacoity. This was held by the Supreme Court in *Shri Phool Kumar Vs. Delhi Administration*, . In this judgment of the Hon'ble Apex Court has noted as under:

....."armed" with any deadly weapon" and the minimum punishment provided therein is also 7 years if at the time of attempting to commit robbery the offender is armed with any deadly weapon. This had created an anomaly. It is unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of 7 years u/s 398, if he is merely armed with any deadly weapon, while an offender so armed will not incur the liability of the minimum punishment u/s 397 if he succeeded in committing the robbery. But then, what was the purport behind the use of the different words by the Legislature in the two sections, viz. "uses" in Section 397 and "is armed" in Section 398. In our judgment the anomaly is resolved if the two terms are given the identical expressions in the sections. When the offence of robbery is committed by an offender be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand, if an offender was armed with a deadly weapon was not put any fruitful use because it would have been of use only when the offender succeeded in committing the robbery.

19. The Supreme Court in *Ashfaq Vs. State (Govt. of NCT of Delhi)*, and 1997

(70) DLT 595 Madan Lal Vs. State (Delhi Administration) had followed with approval the principles laid down in Phool Kumar's case.

20. In this case although it has come on record that the appellant Raju was armed with a pistol and Paras Ram had a knife yet there is no such evidence on record which can establish that either of these two weapons come within the definition of "deadly". Admittedly these weapons were not the cause of the simple injuries which have been received by PW-2 and PW-4. In this background, the conviction of the appellant u/s 398 IPC is set aside and they are convicted u/s 393 IPC. The conviction of the appellant under Sections 25/54/59 of the Arms Act is, however, upheld.

21. However on the point of the sentence, the submission made by the learned counsel for the appellant which is largely to the effect that the offence is of the year is 2001 i.e. almost 13 years old; appellant Raju has suffered sentenced for 4 1/2 years and the appellant Paras Ram has suffered incarceration for 5 years; the sentence which has since been suffered by the appellants be taken into account at the time of final sentence to be imposed by this Court. Both the appellants are present in the course of hearing. Appellant Raju aged 34 years; he is married and has four daughters. Appellant Paras Ram is aged 28 years; he is also married and has two minor children-four years and two years old.

22. In view of the period of incarceration (as noted supra) already undergone by each of the appellants, keeping in view the modified conviction, they are sentenced to the period already undergone by each of them.

23. They are on bail. Their bail bonds are cancelled. Surety discharged. Appeals are disposed of in the above terms.