

(2019) 11 DEL CK 0218

In the Delhi High Court

Case No : Criminal Appeal No. 1141 Of 2017

Sonu @ Shahnawaz

APPELLANT

Vs

State (Nct Govt Of Delhi)

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 148, 324, 392, 394, 397, 398, 411
Code Of Criminal Procedure, 1973 — Section 173, 313

Citation : (2019) 11 DEL CK 0218

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Suhil Kumar Jain, Krishnashree Devi, Amit Gupta

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The present appeal arises out of a judgement dated 31.05.2017 passed by the Learned ASJ, (North-East), Karkardooma Courts, whereby the Appellant has been convicted for the offences under Sections 397/392/411/34 of the Indian Penal Code, 1860 (hereafter IPC). By an order dated 08.06.2017, the appellant has been sentenced to seven years of rigorous imprisonment for the offence under Section 397 IPC; three years of rigorous imprisonment and fine of Rs. 1000/- for the offence under Section 392 IPC and in default, simple imprisonment for one month; and simple imprisonment for six months for the offence under Section 411 IPC and a fine of Rs. 500/- and in case of default, to undergo simple imprisonment for fifteen days. All the sentences are directed to run concurrently.

2. The case set up by the prosecution is that on 04.06.2014, at around 3-3:30 AM, two persons (including the appellant) had surrounded the Complainant (Mr Rohit) near Tikona Park, while he was on his way to the dairy of his employer and had started to take out currency notes out of his pocket. The complainant

resisted and as a result, one of the said persons put a knife on the complainant's back and the other person took two currency notes of Rs. 500/- from the pocket of the complainant and ran away. It is stated that in the meanwhile, the owner of the dairy, one Sh Praveen, reached the spot of the incident and both of them - the complainant and Praveen - apprehended one of the said persons near the place of incident. Thereafter, Praveen dialed 100 and informed the police about the incident. Consequently, Ct. Sanjeev and Ct. Ram Kishan reached at the spot while on beat duty. The apprehended person was then searched by Ct. Sanjeev and a currency note of Rs. 500/- and a knife was found in his possession. The apprehended person was identified as one Mr Sonu (the appellant) and he disclosed that the other assailant, who had managed to escape from the spot of the incident, was named Akbar.

3. Pursuant to the aforesaid events, an FIR was lodged under Sections 392/397/34 IPC. Subsequently, a final report under Section 173 of the CrPC was filed, and the offence under Section 411 of the IPC was also added to the offences alleged against the accused.

4. During the trial, the prosecution examined the following witnesses: PW-1 (the complainant), PW-2 (Sh Praveen - the owner of the Dairy), PW-3 (HC Brigender Singh, no.812 RB, Security, Delhi), PW-4 (Ct. Sanjeev Kumar, Beat Constable), PW-5 (HC Dhanraj, Duty Officer at the concerned Police Station), PW-6 (SI Yogesh) and PW-7 (Ct. Ajay Singh). The statement of the accused Sonu was also recorded under Section 313 of the Cr.P.C., wherein he denied all the allegations levelled against him.

5. The Trial Court, after perusing the evidence, held the appellant guilty under Sections 392/397/411 of the IPC. The Trial Court observed that the testimony of the witnesses was consistent with the prosecution's version and it was sufficient to prove that the appellant had put a kitchen knife on his back while robbing Rs. 1000/- from his pocket. The Trial Court further held that nothing could be noted down from the cross examination of the said witnesses, which would create an iota of suspicion against the prosecution's version of the incident. The Trial Court further observed that in his cross examination, the accused (appellant) did not dispute that he, along with his accomplice (the co-accused), was present at the incident spot and that the co-accused had managed to escape therefrom. The Trial Court further held that the accused had also failed to establish any doubt as to his involvement in the incident by his statement under Section 313 of the Cr.P.C., wherein he had stated that he was falsely implicated in the case at the instance of PW-2. The Trial Court further held that the use of a knife during the commission of the robbery amounts to the use of a "deadly weapon" within the meaning under Section 397 of the IPC and thus, the accused was also guilty of an offence under Section 397 of the IPC.

6. 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 "there is unbreakable chain of the entire narration since the very

starting point, i.e robbing of the complainant upto the conclusion of the entire exercise there at the spot and afterwards." and thus, the prosecution had successfully established its case against the accused. Consequently, the accused (appellant herein) was found guilty of the offences under Sections 392/397/411/34 of the IPC and was sentenced accordingly.

7. The learned counsel appearing for the appellant has assailed the impugned judgment on the ground that the Trial Court erred in holding that knife falls under the definition of "deadly weapon" under Section 397 of the IPC. The appellant submits that the Trial Court found that the knife used by the appellant was a kitchen knife and thus, it could not be construed as a deadly weapon. It is further submitted by the learned counsel for the appellant that there is an error in the Trial Court's judgment, inasmuch as, it failed to appreciate that from the two currency notes that had been looted from the complainant as per the FIR, only one was recovered from his pocket. It is submitted that as per the prosecution's version of the incident, the appellant was apprehended by PW-1 and PW-2 at a distance of 100 yards while the appellant was running and in the relevant circumstances, the appellant could not have shared the currency note with the other accused.

Evidence

8. Before proceeding further, it is important to examine all the witnesses. Seven witnesses in total were examined by the Trial Court.

9. Rohit was examined as PW-1. He deposed that he had been working at the dairy for a while. On 04.06.2014, at about 3:30 AM, PW-1 while on his way to the dairy, met Sonu and Akbar (the accused) near Tikona Park. It was deposed that the said accused put a knife at his back and took out two notes of Rs. 500/- each from the pocket of shirt which PW-1 was wearing. Thereafter, the accused tried to run away from the spot. At the same time, Praveen, the owner of the dairy reached at the spot and he alongwith PW-1, chased the accused and caught hold of Sonu in the process. Thereafter, the police were informed about the incident. The police reached on the spot, where accused Sonu was handed over to them. Search of the accused was conducted by the police and consequently, a currency note of Rs. 500/- and one knife was recovered from the possession of Sonu. The knife and the currency note were sealed and they were taken into possession by seizure memos (Ex. PW-1/B and Ex. PW-1/C respectively). In his disclosure statement, Sonu revealed the name of the co-accused as Akbar. Accused Sonu was also identified by PW-1 in the court.

10. Praveen, the owner of the dairy, was examined as PW-2. He deposed that on 14.06.2014, at around 3:45 PM, he reached Tikona Park where he found his employee Rohit. Rohit informed him about the incident that he was robbed of two currency notes at the knife point, by two boys (the accused). The accused were then chased by Praveen and PW-1 and they apprehended the accused Sonu. He deposed that in the meantime, police also reached at the spot and conducted

search of the accused. A currency note of Rs. 500/- and a knife was recovered from the possession of the accused Sonu. The said objects were seized in two separate cloth parcels. Thereafter, the accused was arrested and taken to the police station.

11. Ct. Sanjeev Kumar, who was on patrolling duty on the night of incident, was examined as PW-4. He deposed that on the intervening night between 03.06.2014 to 04.06.2014, at around 2-2:30 AM, he was patrolling in the area Main Bazar, Bhajanpura. He stated that the area in which he was patrolling was around 3-4 kms away from the incident spot. After hearing some noise, they reached the incident spot where they found PW-1 and PW-2. The accused was under the custody of PW-1 and PW-2, however, the other co-accused had already escaped from the said place.

12. HC Dhanraj was posted as Duty Officer at PS Bhajanpura on the intervening night and he was examined as PW-5. It was deposed by him that on 03/04.06.2014, at around 4 AM, he received a PCR call informing that "tikona park Gamri gali no. 14 do teen ladko ne ek ladke se paise cheen liye unme se ek ladka pakad rakha hai". The said information was reduced to writing and was communicated to HC Brigender (PW-3) through phone. At about 6:50 AM, PW-5 received rukka through Ct. Ajay (PW-7) sent by HC Brigender (PW-3). Thereafter, a case was registered (FIR No. 684/2014 under Sections 392/397/34 IPC).

13. Ct. Ajay Singh was posted on emergency duty at PS Bhajanpura on the intervening night of 03/04.06.2014 and he was examined as PW-7. He deposed that he along with HC Brigender, after receiving DD No. 8A, reached Tikona Park, Gamri, Gali no.14. On reaching there, they met PW-1 and PW-2 and accused Sonu was in the custody of Ct. Sanjeev and Ct. Ram Kishan. A knife and a currency note of Rs. 500/- was handed over to HC Brigender by Ct. Sanjeev, which were recovered from the accused. A sketch of the knife was prepared by the IO (Ex.PW-1/A) and it was sealed in a cloth parcel. The said parcel and the currency note were taken into possession (Ex.PW-1/B and Ex.PW-1/C, respectively). The said currency note was also taken into possession. Thereafter, the IO recorded the statement of Rohit (PW-1) and on the basis of the said statement, a rukka was prepared (Ex.PW-3/A). The said rukka was taken to the Police Station for registration of the case.

Reasons and Conclusion

14. A plain reading of the testimonies of PW-1 and PW-2 clearly established that the appellant had been pursued and caught. Their testimonies leave no room for any doubt that the appellant was involved in the commission of the offence as described.

15. The learned counsel appearing for the appellant had advanced contentions to assail the impugned order on two fronts. First, he contended that only Rs. 500/- had been recovered from the appellant. He stated that although PW-1 had deposed that two currency notes of Rs. 500/- each had been removed by the

appellant, however, only one currency note of Rs. 500/- had been recovered from him. He submitted that this inconsistency raises a serious doubt as to the involvement of the appellant in the offence. Second, he submitted that the knife recovered from the appellant was a kitchen knife and the same did not qualify to be considered as a deadly weapon. He submitted that in view of the above, the appellant could not be convicted for an offence under Section 397 of the IPC.

16. The contention that recovery of only one currency note of Rs. 500/- raises any doubt as to the testimony of PW-1, is unmerited. It is relevant to note that PW-1 had deposed that there were two persons involved in the crime and one of the persons was not apprehended. Therefore, it is not essential that both the currency notes should have been found in possession of the appellant.

17. Insofar as the issue whether a kitchen knife is a deadly weapon is concerned; the learned counsel had relied upon the decisions of the Coordinate Bench of this Court in *Rahul v. State*: 2014 (9) AD (Delhi) 497; *Jagdish and etc. v. State*: 1985 Cri.L.J. 1621; and *Rajender Yadav v. The State (NCT of Delhi)*: 2013 (7) AD (Delhi) 359 in support of his contention.

18. In *Rahul v. State*: 2015 (1) JCC 228 (supra), the knife was described as "one knife of vegetable". The Court referred to the earlier decisions in *Sukhvinder Singh v. State (Govt. of NCT of Delhi)*: CrI.A. No. 1358/2012 and held that the knife recovered could not be considered as a deadly weapon. The Court found that such a knife was not capable of producing death or serious bodily injury and therefore, set aside the conviction under Section 398 of the IPC. In *Sukhvinder Singh v. State* (supra), this Court had referred to various earlier decisions wherein the issue whether a knife could be considered as a deadly weapon had been examined. One of the earlier decisions in this regard was the case of *Balik Ram v. State*: 1983 CrI.L.J. 1438 Del, wherein the Court had held that "What would make a knife deadly is its design or the method of its use such as is calculated to or is likely to produce death. It is, therefore, a question of fact to be proved and the prosecution should prove that the knife used by the accused was a deadly one."

19. The decision in the case of *Balik Ram* (supra) was subsequently followed in the case of *Bishan v. The State*: 1983 (1) Crimes 155 and *Mohan Singh v. State*: 1987 (13) DRJ 176. A similar view was expressed by this Court in *Jagdish and etc. v. The State*: 1985 Cri.L.J. 1621. In that case, the Court had observed that "It would be a question of fact in each case whether the particular weapon which may even be a knife can be said to be a deadly weapon. In the instant case, there is evidence to the effect that the knives which the accused were having were small in size. They were ordinary vegetable cutting knives. This renders the possibility of those knives being deadly weapons highly doubtful and as such the appellants shall be entitled to benefit thereof."

20. There is also a line of decisions wherein this Court had held that it is essential to produce convincing evidence that the knife used in the offence is a

deadly weapon to attract the provisions of Section 397 of the IPC. In those cases, the court had held that in absence of non-recovery of the weapon, the conviction under Section 397 of the IPC would not be sustainable (See: Charan Singh v. State: 1988 Cr.L.J. NOC 28 (Del); Gulab @ Bablu v. The State (N.C.T. of Delhi): 2013 (3) JCC 2213; and Rajender Yadav v. The State (NCT of Delhi): 2013 (7) AD (Delhi) 359).

21. However, it is noticed that these decisions did not take note of the earlier decision of this Court in Salim v. State (Delhi Admn.): (1988) 14 DRJ 85. In that case, this Court had referred to the decision of the Supreme Court in Phool Kumar v. Delhi Administration: 1975 (1) SCC 797, wherein the Supreme Court had observed that a knife is also a deadly weapon. This Court had further noticed that the said decision in Phool Kumar v. Delhi Administration (supra) had not been noticed by the Court in Balik Ram v. State (supra). The relevant extract of the said decision is set out below:-

"This decision of the Supreme Court wherein it is held that knife is a deadly weapon was not referred to in the aforesaid two decisions of this court and the same are not, therefore, a binding precedent. Under Section 397 I.P.C. an offender is guilty if he uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person. The words deadly weapon are of common use and do not need any definition or interpretation. The words deadly weapon have also been used in Section 148 Penal Code, 1860. Section 324 I.P.C. uses the words dangerous weapons in its heading. It says whoever voluntarily causes hurt by any instrument for shooting, stabbing or cutting, or any instrument which used as a weapon of offence is likely to cause death, etc., is liable to punishment. In Lakshmiammal v. Samiappa (AIR 1968 Madras 310), the accused were armed with weapons like knife, hammer, crowbar and spades. It was held that these were undoubtedly deadly weapons. The Concise Oxford Dictionary defines the word weapon as material thing designed or used or usable as an instrument for inflicting bodily harm, e.g. gun, bomb, rifle, sword, spear, stick hammer, poker, horn, claw . The word deadly , according to this Dictionary, means causing fatal injury . Also, according to this Dictionary, knife means blade with sharpened longitudinal edge fixed in handle either rigidlyor with hinge used as cutting instrument or as weapon . As per Webster s Third New International Dictionary a knife" is a simple instrument used for cutting consisting of a sharp-edged usually steel blade provided with a handle . Longman Dictionary of Contemporary English defines knife as a blade fixed in a handle used for cutting as a tool or weapon . These definitions in various dictionaries can be multiplied. 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 what was the size of the knife to attract the provisions of Section 397 I.P.C, as was contended by Mrs. Ahlawat. This contention that case under Section 397 I.P.C. is not made out fails.

22. In *Ashfaq v. State (Govt. of NCT of Delhi)*: (2004) 3 SCC 166, the Supreme Court had noticed with approval the findings of the Courts below that "knife is equally a deadly weapon, for purposes of Section 394 IPC".

23. In a recent decision, titled *Ikram Ansari v. State (NCT of Delhi) and Other Connected Matters*: (2014) 8 High Court Cases Del 277, this Court had followed the decision in *Salim v. State (Delhi Admn)* (supra) and had sustained the conviction under Section 397 of the IPC, since the appellant (Mahfooz Islam) was "carrying a knife which is a deadly weapon at the time he participated in the dacoity."

24. It is also relevant to note that in *Ikram Ansari v. State* (supra), the Court had also noticed several other decisions of this Court where this Court had expressed the view that whether a knife was deadly weapon would depend on the kind and dimensions of the knife. However, the Court held that the said view was not in conformity with the observations made by the Supreme Court in *Phool Kumar v. Delhi Administration* (supra), as also noticed by this Court in *Salim v. State (Delhi Admn.)* (supra).

25. It is also relevant to refer to a later decision of this Court in *Sanjay Kumar v. State*: 2014 SCC OnLine Del 4846, wherein this Court referred to the decision of the Supreme Court in *Phool Kumar v. Delhi Administration* (supra); *Ashfaq v. State (Govt. of NCT of Delhi)* (supra); and *Salim v. State (Delhi Admn.)* (supra) and sustained the conviction under Section 397 of the IPC, even though the weapon (knife) had not been recovered in that case.

26. In *State of Maharashtra v. Vinayak Tukaram Utekar and Anr.*: 1997 (2) Mh.L.J. 527, the Court observed that "there can be no quarrel that knife is a deadly weapon within the ambit of expression "deadly weapon" as used in section 397, Indian Penal Code."

27. It is apparent from the above that the issue with respect to the divergent views in regard to whether a knife ought to be categorized as a "deadly weapon" depending on its dimensions or other features, stands resolved. The decisions rendered by this Court holding that the question whether a knife is a deadly weapon would depend on the facts of the case, are not good law as none of the decisions had referred to the observations made by the Supreme Court in *Phool Kumar v. Delhi Administration* (supra) and *Ashfaq v. State (Govt. of NCT of Delhi)* (supra). The said decisions had also not noticed the earlier decision of this Court in *Salim v. State (Delhi Admn.)* (supra).

28. In view of the observations made by the Supreme Court in Phool Kumar v. Delhi Administration (supra); and Ashfaq v. State (Govt. of NCT of Delhi) (supra) and decisions of this Court in Salim v. State (Delhi Admn.) (supra), Ikram Ansari v. State (supra) and Sanjay Kumar v. State (supra), it is not essential to categorize the knife in order to determine whether it is a deadly weapon. Thus, irrespective of whether a knife is a kitchen knife, or a butcher knife, it would qualify as a deadly weapon for the purposes of Section 397 of the IPC.

29. In view of the above, this Court finds no merit in the contention that since the knife used by the appellant in committing the offence was a kitchen knife, the same was not punishable under Section 397 of the IPC.

30. This Court finds no reason to interfere with the impugned judgment convicting the appellant for the offence under Section 397 of the IPC.

31. The appeal is, accordingly, dismissed.