
In the Delhi High Court
Case No : CRL.A. 124/2016

Vikram @ Tannu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Criminal Procedure Code, 1973 — Section 374(2)
Indian Penal Code, 1860 — Sections 394, 397, 457
Arms Act, 1959 — Sections 25 and 27
IPC — Sections 394, 397, 411, 457
Arms Act — Sections 25, 27, 54 and 59, Section 25(1B)(b), Section 5, Section 7
Cr.P.C. — Section 235(1)

Hon'ble Judges : Chandrasekharan Sudha, J

Bench : Single Bench

Advocate : Ms. Sunita Arora, Advocate (DHCLSC), Mr. Ukarsh, APP for State with SI Sanjay Bansal

Final Decision : Appeal is partly allowed

Judgement

CNR No. DLHC010265572016 + CRL.A. 124/2016 VIKRAM @ TANNUAppellant Through: Ms. Sunita Arora, Advocate (DHCLSC) Versus STATERespondent Through: Mr. Ukarsh, APP for State with SI Sanjay Bansal
CORAM: HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA JUDGMENT CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) of the Criminal Procedure Code, 1973 (the CrPC) has been filed by the sole accused, in Sessions Case No. 131/2014 on the file of Additional Sessions Judge-06, Central, Tis Hazari Courts, Delhi, assailing the judgment dated 22.04.2015 and order on sentence dated 29.04.2015 as per which he has been convicted for the offences punishable under Sections 394, 397, 457 of the Indian Penal Code, 1860 (the IPC) and Sections 25 and 27 of the Arms Act, 1959 (the Arms Act).

2. The prosecution case is that on 01.09.2014 at about 11:45 p.m. at 3019, Katra Neel Kanth, Kuncha Chalan, Darya Ganj, Delhi, the accused committed lurking house trespass by breaking into the godown of PW3, and at knife point

robbed the latter of his belongings. During the course of commission of the robbery, the accused also voluntarily caused hurt to PW3. Hence, as per the charge-sheet/final report, the accused is alleged to have committed the offences punishable under Sections 394, 397, 411, 457 IPC and Sections 25, 27, 54 and 59 of the Arms Act.

3. On the basis of Ext. PW3/A FIS/FIR of PW3, given on 02.09.2014, Crime No. 458/2014, Darya Ganj Police Station i.e. Ext. PW1/A FIR was registered by PW1, Assistant Sub-Inspector. PW5, Assistant Sub-Inspector, conducted investigation into the crime and on completion of the same, filed the chargesheet/final report against the accused alleging the commission of the offences punishable under abovementioned sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 CrPC. As per order dated 04.12.2014, the matter was committed to the Court of Session under Section 209 Cr.P.C.

5. After hearing both sides, the trial court, vide order dated 10.12.2014, framed a Charge under Sections 394, 397, 457 IPC and Sections 25, 27, 54 and 59 of the Arms Act against the accused. The Charge was read over and explained to the accused, to which he pleaded not guilty.

6. On behalf of the prosecution, PWs 1 to 9 were examined and Exts. PW 1/A-C, PW 2/A, PW3/A-H, PW4/A, PW8/A-I, PW9/A, PA and PB were marked in support of the case.

7. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) CrPC regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that he has been falsely implicated. On the date of the incident, he had gone to PW3's godown as he felt an urge to eat ice cream and was attempting to open the lock of the ice cream. The owner (PW3) woke up at that time. There were about eight or nine persons inside the godown, who closed the shutter and mercilessly beat him up. He further submitted that although he had not made any disclosure statement to the police, he had admitted at the spot that he had attempted to eat ice cream without the permission of the owner.

8. After questioning the accused under Section 313(1)(b) CrPC, compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 CrPC is seen done by the trial court. However, non-compliance of the said provision does not, ipso facto vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See Moidu K. v. State of Kerala, 2009 SCC OnLine Ker 2888 : 2009 (3) KHC 89). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

9. No oral or documentary evidence was adduced by the accused.

10. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court vide impugned judgment dated 22.04.2015 held the accused guilty of the offences punishable under Sections 394, 397, 457 IPC and Sections 25 and 27 of the Arms Act. Accordingly, vide order on sentence dated 29.04.2015, the accused has been sentenced to rigorous imprisonment for a period of 07 years as well as fine ₹ 1,000/- and in default of payment of fine, to simple imprisonment for one month for the offence punishable under Sections 394 and 397 IPC; to simple imprisonment for a period of one year as well as ₹ 1,000/- and in default of payment of fine, to simple imprisonment for 15 days for the offence punishable under Section 457 IPC; to simple imprisonment for a period of 01 years as well as fine of ₹ 500/- and in default of payment of fine, to simple imprisonment for one month for the offence punishable under Section 25 of the Arms Act and to simple imprisonment for a period of 01 years as well as fine of ₹ 500/- and in default of payment of fine, to simple imprisonment for one month for the offence punishable under Section 27 of the Arms Act. The sentences have been directed to run concurrently. Aggrieved, the accused has come up in appeal.

11. It was submitted by the learned counsel for the appellant/accused that the conviction of the appellant under Section 397 IPC cannot be sustained, as the weapon used does not qualify as a "deadly weapon". The sketch of Ext. PW3/B knife reveals a total length of 17.4 cm (6.8 inches), a blade length of 7.8 cm (3 inches), and a blade width of 2.4 cm (0.9 inches). Referring to Category V in Schedule 1 of the Arms Rules, 1962, it was submitted that a knife is categorised as a "deadly weapon" only if the blade measures longer than 9 inches and wider than 2 inches. Since the Indian Penal Code does not explicitly define "deadly weapon," it was submitted that this criterion given in the Arms Rules must be relied upon, which would show that the weapon in question falls outside the definition. Further, no recovery of the knife was made from the possession of the accused. On the other hand, the weapon was handed over to the police directly by PW3. It was also submitted that the mobile phone of PW3, alleged to have been recovered from the accused, was planted. With respect to Section 394 IPC, it was submitted that no visible physical injury was caused to PW3. Regarding Section 457 IPC, while the presence of the accused at the godown was admitted, it was submitted that he had merely entered to eat ice cream and then a dispute had arisen over payment. Therefore, there was no criminal intent. It was prayed that the impugned judgment be set aside and the appellant be given the benefit of doubt.

12. Per contra, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the impugned judgment calling for an interference by this Court. The materials on record, according to the prosecutor, are sufficient to convict the accused. It was submitted that the contention regarding the dimensions of the knife under the Arms Rules is inapplicable to the facts of the

present case. He submitted that the question whether a weapon is dangerous or lethal is a matter that has to be determined based on the manner in which it was used in the crime rather than on its statutory classification. It was further submitted that even if the knife does not strictly meet the dimensions given in the Arms Rules, the manner in which it was used, specifically to threaten PW3 during the commission of robbery, is sufficient to bring it within the ambit of the relevant provisions. It was submitted that a knife is certainly a deadly weapon depending on the manner and circumstances in which it is used and therefore, the conviction and sentence awarded by the trial court ought to be upheld.

13. Heard both sides and perused the records.

14. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgment warranting an interference by this Court.

15. I shall briefly refer to the evidence on record relied on by the prosecution in support of the case. Ext. PW3/A FIS/FIR given on 02.09.2014 by PW3 in Hindi translated reads thus: - "I run a godown of Kwaliti Ice Cream at Darya Ganj. My elder son, namely, Kamlesh (PW6), also lives with me and both of us sleep in the godown. At around 10:00 p.m., after having dinner, we pulled down the godown shutter and had gone to sleep. Suddenly, at about 11:45 p.m., on hearing a noise (khatpat) inside the godown, I woke up and saw a young man searching through my bags hanging on the peg inside the godown. The clothes from my bags were scattered all over the godown. The man had entered my godown after opening the shutter, I got up and attempted to catch him. The person took out a button-operated knife from the right pocket of his pants, opened it by pressing the button, and threatened me to lie down, or he would stab me with his knife (चुप चाप पढ़ा रहे नहीं तो चाकू घुसेड दूंगा). Initially, I got scared by his threat. My son Kamlesh (PW6) also woke up. When Kamlesh (PW6) and I tried to catch him, the man with one hand pointed the knife at me and, with the other, twisted my right wrist. Kamlesh (PW6) caught hold of the man from behind. While Kamlesh was holding him, I snatched the button-operated knife from his right hand and recovered my stolen mobile phone, make Intex, black and red colour, SIM No. 8860854354, from the upper pocket of his shirt. Hearing the noise and commotion, people from the neighbourhood gathered and beat the man. In the meantime, the police arrived. I handed over the said person, along with the button-operated knife and my stolen mobile phone recovered from him, to the police. Vikram @ Tannu (the accused) entered my godown, attempted to loot my goods, stole my mobile phone by keeping it in his pocket, and caused injury to me by threatening me with a knife and twisting my right wrist. Legal action should be taken against him."

16. PW3, the injured/informant, when examined deposed that he is running a godown of Kwaliti Ice Cream. His elder son, namely, Kamlesh (PW6), also resides with him. He sleeps with his elder son (PW6) inside the godown. On 01.09.2014 at about 10:00 p.m., he and his son (PW6), went to sleep in the godown after closing the shutter. At about 11:30 -11:45 p.m., he heard a

khatpat noise and woke up. He saw the accused rummaging his bag, which was hanging from a peg on the wall. The clothes from his bag were lying scattered on the floor. When he questioned the accused, the latter pulled out a knife from the right pocket of his pants and threatened him, saying, "chup chap pada reh verna chaku ghused dunga". Initially he was frightened, but then he attempted to apprehend the accused. As the accused ran towards the back, he caught hold of the former's hand. However, the accused twisted his hand, causing him to cry out in pain. Hearing his cry, his son, Kamlesh (PW6), woke up and caught the accused from behind. He then snatched a black, button-operated knife (buttondar) from the right hand of the accused. Hearing the commotion, several people gathered at the spot and started beating the accused. His mobile phone was recovered from the shirt pocket of the accused. Meanwhile, three police officials, who were on patrolling duty, reached the spot. He narrated the entire incident to them and produced the button-operated knife and his robbed mobile phone, which had been recovered from the accused's shirt pocket. Ext. PW3/B sketch plan of the knife was prepared on the spot. As the accused had twisted his hand, his right hand developed a swelling. He was taken to LNJP Hospital for medical examination. PW3 identified Ext. P1 mobile phone and Ext. P2 knife, alleged to have been used by the accused during the course of robbing.

16.1. PW3 in his cross-examination deposed that he had not seen the accused enter the godown, but only saw the latter searching his bag. Apart from his mobile phone, no other object/article had been robbed.

17. PW6, the son of PW3, has supported the version of PW3. He identified Exts. P1 and P2.

17.1. PW6 in his cross-examination denied the suggestion that the accused had entered the godown to purchase ice cream, for which a higher price was demanded, resulting in a quarrel and hence the false implication.

18. As noticed earlier, the accused has been convicted by the trial court for the offences punishable under Sections 394, 397, 457 IPC and Sections 25, 27 of the Arms Act. Section 457 IPC penalises lurking house-trespass or house-breaking by night committed in order to commit an offence punishable with imprisonment. To bring home an offence under Section 457 IPC, the prosecution must establish: (i) that the accused committed lurking house-trespass or house-breaking; (ii) that such entry was effected during the night; and (iii) that the entry was made in order to commit an offence punishable with imprisonment. The prosecution primarily relies on the testimony of PW3 and PW6 to establish the case. Both of them stand by the prosecution case and nothing was brought out to discredit their testimony. The appellant/accused has never disputed his presence inside the godown of PW3 during the night of the incident. Infact, in his Section 313(1) (b) CrPC statement, he admitted that he had entered the premises without the permission of the owner. According to him, he felt an urge to eat ice cream and hence entered the godown and was attempting to open the lock of the ice cream, when he was caught. This admission of the appellant/accused along with the

testimony of PW3 and PW6 establish the prosecution case that the appellant had committed lurking house-trespass by night with the intention of committing theft, and thus, the ingredients of Section 457 IPC stand proved beyond reasonable doubt.

19. Section 394 IPC provides punishment where, in committing or attempting to commit robbery, the offender voluntarily causes hurt. To attract the provision, the prosecution must establish: (i) that robbery or an attempt to commit robbery was committed; (ii) that hurt was voluntarily caused during the commission or attempted commission of such robbery; and (iii) that there exists a direct nexus between the act of causing hurt and the robbery. The expression "hurt" is defined under Section 319 IPC to mean causing bodily pain, disease or infirmity to any person. Therefore, the existence of a visible external injury is not a sine qua non for attracting Section 394 IPC. Causing bodily pain is also sufficient to constitute hurt.

20. In the case on hand, PW3 has deposed that upon finding the accused inside the godown rummaging through his bags, he attempted to apprehend the latter. Thereupon, the accused threatened him with a button-operated knife and twisted his hand, causing him pain and swelling. PW3 was examined by a doctor at Lok Nayak Hospital immediately thereafter. In Ext. PW9/A MLC of PW3, the injuries noted are tenderness over the right distal forearm and wrist joint. No visible deformity or injury was seen. PW3 was referred to Ortho Emergency for evaluation, treatment, and further management. As per clinical records and X-ray No. 6207, the nature of injury is stated to be simple from the orthopaedic point of view.

21. PW9, Medical Officer, Lok Nayak Hospital, New Delhi, was examined to prove Ext. PW9/A MLC of PW3. He deposed that Dr. Vikas, the doctor who had examined PW3, had left the services of the hospital and that the latter's whereabouts were not known to the hospital. According to PW9, "on local examination there was distal forearm and wrist joint" (Ext. PW9/A MLC says there was tenderness over right distal forearm and wrist joint). There was no deformity or injury seen. PW9 identified the signature and handwriting of Dr. Vikas.

22. The medical evidence supports the prosecution case of the accused voluntarily causing hurt to PW3. Thus, the ingredients under Section 394 IPC also stand established.

23. The principal challenge raised by the learned counsel for the appellant/accused is that the dimensions of the knife do not satisfy the description of a "deadly weapon" as given under Category V of Schedule I to the Arms Rules and that the trial court erred in arriving at a conviction under Section 397 IPC. The knife recovered herein measured only 17.4 cm in total length with a blade of approximately 7.8 cm and a width of 2.4 cm, and therefore does not answer the description of a prohibited knife under Category V in Schedule I of the Arms

Rules. Therefore, it was submitted that since the Penal Code does not define the expression "deadly weapon", the definition contained in the Arms Rules ought to be adopted.

24. Section 397 IPC states that 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. Thus, to attract this Section, the offender has to use any deadly weapon at the time of commission of robbery. Indeed, the term "deadly weapon" is not defined in the Penal Code. On the other hand, Category V in Schedule I of the Arms Rules defines "sharp-edged and deadly weapons" as including swords (including sword-sticks), daggers, bayonets, spears (including lances and javelins), battle-axes, knives (including Kirpans and Khukries), and other similar weapons with blades exceeding 9 inches in length or 2 inches in width, excluding those designed for domestic, agricultural, scientific, or industrial purposes. However, the Arms Act and the Penal Code operate in distinct fields and have different legislative objects. The classification of certain knives under the Arms Act or the Arms Rules is for the purpose of regulating their manufacture, possession and use. The definition under the Arms Rules cannot be applied while interpreting Section 397 IPC.

25. It has long been settled by the Apex Court in *Phool Kumar v. Delhi Administration* (1975) 1 SCC 797 that a knife is a deadly weapon for the purposes of Section 397 IPC. In *Salim v. State (Delhi Admn.)*, 1987 SCC OnLine Del 408, a co-ordinate bench of this Court held that the words 'deadly weapon' are of common use and do not need any definition or interpretation. It was further held that a knife, irrespective of its size, is capable of being used as a weapon of offence and whether it is a deadly weapon depends upon the nature of the weapon and the manner in which it is used. In the case on hand, PW3 deposed that when he confronted the accused inside the godown, the latter took out a buttondar knife from the right pocket of his pants, opened it and threatened him by saying, "chup chap pada reh, nahi to chaku ghused dunga." When PW3 attempted to apprehend the accused, the latter twisted his right wrist. PW6 has fully corroborated this version by deposing that he caught hold of the accused from behind and enabled PW3 to snatch the knife from the former's hand. The buttondar knife was thereafter handed over to the police, seized vide Ext. PW3/C seizure memo, and identified during trial as Ext. P2. The material on record establishes that the knife, a deadly weapon, was not merely in the possession of the accused but was brandished to intimidate PW3 and facilitate the commission of the robbery. Accordingly, the essential ingredients of Section 397 IPC stand established by the prosecution.

26. Now coming to the conviction under Sections 25 and 27 of the Arms Act. Section 25 prescribes punishment for certain offences under the Arms Act, including possession or acquisition of prescribed arms in violation of the Act,

Rules or a notification. Section 25(1B)(b) specifically provides punishment with imprisonment for a term which shall not be less than two years but which may extend to five years along with fine, for any person who acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as has been specified in that notification in contravention of that section. Further, Section 4 of the Arms Act empowers the Central Government to regulate, by notification, the acquisition, possession or carrying of arms, other than firearms, in any notified area, by requiring a licence for such acquisition, possession or carrying.

27. It is apposite to refer to Notification No. F/13/451/78-Home (G) dated 17.02.1979, which reads thus: "DELHI ADMINISTRATION, DELHI NOTIFICATION Delhi, the 17th February 1979 No. F.13/203/78-Home (G).-Whereas the Administrator is of the opinion that having regard to the circumstances prevailing in the Union Territory of Delhi, it is necessary and expedient in the public interest that the acquisition, possession and carrying of spring-actuated knives, graridar knives, buttondar knives which open or close with any mechanical device with a blade of any size, or folding knives having a sharp-edged blade of 7.62 centimetres or more in length and 1.72 centimetres or more in breadth, in public places should be regulated; Now, therefore, in exercise of the powers conferred by Section 4 of the Arms Act, 1959 (54 of 1959), read with the Government of India, Ministry of Home Affairs Notification No. 2/2/69-UTL(II) dated 21 June 1969, and in supersession of Delhi Administration Notification No. F.13(71)/78-Home (G) dated 10 May 1978, the Administrator hereby directs that Section 4 of the Arms Act, 1959 shall apply to the Union Territory of Delhi with effect from the date of publication of this notification in the Delhi Gazette in respect of the acquisition, possession and carrying of the said arms in public places only." (Emphasis supplied)

28. Pursuant to the Notification dated 17.02.1979, the acquisition, possession and carrying in public places of buttondar knives having a sharp-edged blade of 7.62 cm or more in length and 1.72 cm or more in breadth, stand regulated in the Union Territory of Delhi. In the case on hand, Ext. PW3/B the sketch of the knife shows that the buttondar knife had a blade measuring 7.8 cm in length and 2.4 cm in width. The accused was found carrying the knife in a public place without any licence in contravention of the said Notification. Consequently, the essential ingredients of the offence punishable under Section 25(1B)(b) of the Arms Act stand proved.

29. To bring home the Charge under Section 27, the prosecution must prove that the use of the knife was in contravention of Section 5 or Section 7 of the Arms Act. The prosecution has neither alleged nor proved any contravention of Sections 5 or 7 of the Arms Act. The conviction and sentence of the appellant under Section 27 of the Arms Act, therefore, cannot be sustained.

30. That being the position, the trial court has rightly convicted the accused for the offences punishable under Sections 394, 397, 457 IPC and Section 25 of the

Arms Act. Having considered the nature and gravity of the offences, the manner in which the appellant committed lurking house-trespass by night, committed robbery after causing hurt to PW3 and threatened him with a deadly weapon, this Court finds no mitigating circumstance warranting interference with the sentence imposed by the trial court. Accordingly, the sentence awarded by the trial court for commission of the aforesaid offences is affirmed.

31. In the result, the appeal is partly allowed. The conviction and sentence of the appellant/accused under Section 27 of the Arms Act is set aside. The appellant/accused is acquitted under Section 235(1) Cr.P.C. of the charge under Section 27 of the Arms Act. The conviction and sentence under Sections 394, 397 and 457 IPC and Section 25 of the Arms Act are affirmed. The appeal stands disposed of, accordingly.

32. Application(s), if any, pending, shall stand closed. CHANDRASEKHARAN SUDHA (JUDGE) AUGUST 05, 2026 p'ma