



\$~22

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

Date of decision: 26th May, 2025

+ CRL.A. 67/2011

MOHD.WASIM

.....Appellant

Through: Mr. Rajat Aneja and Mr. Abhinav
Chauhan, Advocates.

versus

THE STATE

.....Respondent

Through: Ms. Priyanka Dalal, APP for the
State.

Insp. Yakub Khan, PS NDRS ND.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J. (ORAL)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed under Section 374(2) of the CrPC assailing the judgment of conviction and order on sentence dated 04.12.2010 and 07.12.2010 respectively, passed by the learned ASJ-01, North Delhi arising out of SC No. 83/2009 in FIR No. 269/2009 under Sections 392/397/34/411 of the IPC registered at PS New Delhi Railway Station.
3. *Vide* the impugned judgment of conviction and order on sentence the appellant was convicted under Sections 392/34 read with Section 397 of the IPC and was sentenced to undergo rigorous imprisonment for 7 years alongwith a fine of Rs.1000/- for the offences punishable under Sections 392/34 read with Section 397 of the IPC, in default of payment of fine further



simple imprisonment for one month.

4. Brief facts necessary for the disposal of the present appeal are as under:

4.1 On 05.08.2009 SI Sohan Lal was present at PS New Delhi Railway Station and at about 5:15 PM certain officials of PS Lahori Gate produced the complainant alongwith the accused persons. It was alleged by the complainant in a letter addressed to the SHO, New Delhi Railway Station that he came to the said station to meet a known person and while he was coming to the station from the side of Nabi Karim Masjid, two boys came from the front and asked him about the time. While he was taking out his phone to tell them the time, one of the boys took out a knife and put it on his neck and snatched the phone. Thereafter, having snatched the mobile phone of the complainant both the accused started to flee and on the complainant raising an alarm five RPF *jawans* who were passing by chased them. Both the accused fell down and were apprehended by the RPF officials.

4.2 The accused persons were handed over to the police so that appropriate action could be taken and a knife and mobile phone were recovered from them. On the basis of the aforesaid incident the present FIR was registered bearing no. 269/2009 under Sections 392/397/34/411 of the IPC at PS New Delhi Railway Station. During investigation the place of incident was inspected and a map was prepared. Statements of the witnesses were also recorded and it was revealed that the person who put the knife on the neck of the accused was one Javed. The knife was recovered at the instance of the said Javed and the mobile phone was recovered from Mohd. Wasim i.e. present



appellant which were seized *vide* Seizure Memos dated 05.08.2009 (Ex-PW3/A and Ex. PW3/B)

4.3 After the completion of investigation chargesheet dated 25.09.2009 was filed before the learned Trial Court *qua* the accused persons for the offences punishable under Sections 392/393/411/34 IPC. *Vide* order dated 30.11.2009 learned Trial Court framed charges *qua* the present appellant and the co-accused Javed for the offences punishable under Sections 392/34 read with section 397 IPC, who pleaded not guilty and claimed trial.

4.4 During the course of the trial prosecution examined seven witnesses. Statements of both the accused persons were recorded under Section 313 of the CrPC on 23.10.2010 wherein both of them stated that they have been falsely implicated in the present case by the police officials. Initially both the accused chose to lead evidence in defence but subsequently they submitted that they do not want to lead any evidence. After hearing final arguments on behalf of the parties, impugned judgment dated 04.12.2010 and order on sentence dated 07.12.2010 was passed.

5. Learned counsel appearing on behalf of the appellant at the very outset submits that he is not challenging the judgment of conviction for the offences punishable under Section 392/34 of the IPC and confines his challenge to conviction under Section 397 of the IPC.

6. Learned counsel draws the attention of this Court to the charge-sheet filed in the present case wherein it has been recorded that at the time of the apprehension of the present appellant along with his co-accused, it is the case



of the prosecution that the knife was recovered from the other co-accused namely Javed and at that point of time the complainant had stated that it was Javed who had put the knife on his neck. It is further submitted that PW-3 and PW-4 during their testimony had given statements to the aforesaid effect. It is submitted that it is a settled law that for the purpose of Section 397 of the IPC only the accused who has used the deadly weapon shall be liable for the same. Reliance is placed on the following judgments of Hon'ble Supreme Court, ***Dilawar Singh vs. State of Delhi, (2007) 12 SCC 641***, on the following paragraphs: -

“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.
3. “Offender” refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 IPC is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But the other accused are not vicariously liable under that section for acts of the co-accused.

20. As noted by this Court in *Phool Kumar v. Delhi Admn.* [(1975) 1 SCC 797 : 1975 SCC (Cri) 336 : AIR 1975 SC 905] the term “offender” under Section 397 IPC is confined to the offender who uses any deadly weapon. Use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who had not used any deadly weapon. There is distinction between “uses” as used in Sections 397 IPC and 398 IPC. Section 397 IPC connotes something more than merely being armed with deadly weapon.”

and ***Ashfaq vs. State (Govt. of NCT of Delhi), (2004), 3 SCC 116***,



9. The further plea that one accused alone was in any event in possession of the country-made pistol and the others could not have been vicariously held liable under Section 397 IPC with the assistance of Section 34 IPC overlooks the other vital facts on record found by the courts below that the others were also armed with and used their knives and that knife is equally a deadly weapon, for purposes of Section 397 IPC. The decision of the Division Bench of the Bombay High Court relied upon turned on the peculiar facts found as to the nature of the weapon held by the accused therein and the nature of injuries caused and the same does not support the stand taken on behalf of the appellants in this case. The provisions of Section 397, do not create any new substantive offence as such but merely serve as being complementary to Sections 392 and 395 by regulating the punishment already provided for dacoity by fixing a minimum term of imprisonment when the dacoity committed was found attendant upon certain aggravating circumstances viz. use of a deadly weapon or causing of grievous hurt or attempting to cause death or grievous hurt. For that reason, no doubt the provision postulates only the individual act of the accused to be relevant to attract Section 397 IPC and thereby inevitably negates the use of the principle of constructive or vicarious liability engrafted in Section 34 IPC. Consequently, the challenge made to the conviction under Section 397 even after excluding the applicability of Section 34 IPC does not merit countenance, for the reason that each one of the accused in this case were said to have been wielding a deadly weapon of their own, and thereby squarely fulfilled the ingredients of Section 397 IPC, de hors any reference to Section 34 IPC.
7. On the basis of the aforesaid judgments, it is submitted that offence under Section 397 of the IPC *qua* the present appellant is not made out.
8. Heard the learned counsel for the parties and perused the records.
9. PW-2, the complainant in his examination had said that one of the accused had put a knife on his neck and threatened him, however he does not



say which of the accused persons had put a knife on him. However, in the complaint given by PW-2 on the basis of which the FIR was registered, it was stated that one of the boys had put a knife on his neck and the other one snatched his mobile phone and thereafter after being caught it was revealed that the person who had put the knife on his neck was Javed and not the present applicant

10. The case of the prosecution as per the charge-sheet was that the appellant along with the other co-accused persons had been apprehended by PW-3 and PW-4 who in their testimony before the learned Trial Court have stated that when they chased the two boys, they fell down and one boy was having an open knife in his hand and on enquiry the person who had the knife disclosed his name as Javed.

11. As pointed out by learned counsel for the appellant, it is a settled law that a person can be convicted under Section 397 of the IPC if he has used a deadly weapon as been held by Hon'ble Supreme Court in *Dilawar Singh (supra)* that the aforesaid Section “*envisages the individual liability and not any constructive liability.*” The prosecution in the present case as per the charge-sheet had attributed the role of using the deadly weapon to the other co-accused person Javed. In these circumstances, the conviction of the appellant under Section 397 of the IPC is set-aside. His conviction under Section 392 read with Section 34 of the IPC is upheld.

12. As per the order on sentence the appellant has been sentenced to undergo rigorous imprisonment for a period of 7 years along with a fine of



Rs. 1000/- and in default to undergo simple imprisonment for a period of one month for the offence under Sections 392/34 read with Section 397 of the IPC.

13. In view of the aforesaid findings, the sentence of the appellant under Section 392 read with Section 34 of the IPC is reduced to the period already undergone by him.

14. As per the nominal roll dated 04.01.2020, the appellant had already undergone 4 years 1 month and 20 days including remission. It is further reflected that the fine has already been paid by the appellant.

15. The appeal is partly allowed and disposed of.

16. Judgment be uploaded on the website of this Court *forthwith*.

17. Copy of the Judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.

AMIT SHARMA, J

MAY 26, 2025/kr

Click here to check corrigendum, if any