

**Ram Vilas Vs. State**

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**Court :** Delhi

**Decided On :** Jan-15-2014

**Judge :** Indermeet Kaur

**Appellant :** Ram Vilas

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:08.01.2014. Judgment delivered on 15.01.2014. CRL. APPEAL202006 RAM VILAS Through ..... Appellant Mr. Bhupesh Narula, Adv. versus STATE Through + ..... Respondent Ms. Kusum Dhalla, APP CRL. APPEAL722006 ASHOK KUMAR Through versus ..... Appellant Mr. Bhupesh Narula, Adv. STATE Through + ..... Respondent Ms. Kusum Dhalla, APP CRL. APPEAL802006 RAJU YADAV alias PAPPU Through ..... Appellant Mr. Bhupesh Narula, Adv. versus STATE Through ..... Respondent Ms. Kusum Dhalla, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 There are three appellants before this Court. They are Raju Yadav, Ashok Kumar and Ram Vilas. They are aggrieved by the impugned judgment dated 17.09.2005 and order on sentence dated 21.09.2005 vide which accused Raju Yadav and Ashok Kumar were convicted for the offence under Sections 394/34 read with Section 397 of the IPC. Raju Yadav and Ashok had been sentenced to under RI for a period of 7 years and to pay a fine of Rs.2,000/- each and in default

of payment of fine, to undergo RI for a period of 1 month for the offence under Section 394/34 read with Section 397 of the IPC. Accused Ram Vilas had been held guilty for the offence under Section 394/34 of the IPC. Convict Ram Vilas was sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo RI for a period of 1 month. Accused Ashok Kumar had been acquitted for the offence under Sections 25 & 27 of the Arms Act. 2 The present FIR was registered on the complaint of Prichita Virmani (PW-1). Complaint was dated 05.09.2002. The incident had taken place on 04.09.2002. In terms of the complaint at about 09:45 PM on 04.09.2002 while PW-1 was waiting at the red light of Nizammudin bridge crossing, a TSR No.DL1CR-7338 stopped. The driver of the TSR inquired as to where he wished to go; there was one passenger already sitting in the TSR; the driver informed him that he was to be dropped at Kalkaji Mandir and then he would take PW-1 to Ambedkar Nagar. PW-1 sat in the TSR; after 10 paces, another person sat in the TSR; after another 10 paces, one more person sat with the driver; he had to go near Modi Mills. The TSR reached the Escorts hospital; at this point, the driver whose name PW-1 learnt later on was Vijay told Raju (person sitting in the right side of the TSR) to slap PW-1. Raju inflicted a fist blow on PW-1; he was threatened that he would be cut with a knife. Raju pointed a knife on his neck. The person sitting on the left side (later on identified as Ashok) pointed a knife on his stomach. The person sitting next to the driver (whose name was later on known as Ram Vilas) threw chilli powder in the eyes of PW-1 and pushed him out of the TSR. Complaint was accordingly lodged. This was at the Modi flyover, all the aforementioned persons thereupon while forcibly brandishing the knives upon the victim snatched his watch, gold ring, gold chain and his mobile Nokia as also Rs.500/-. 3 Rukka was taken by constable Girish (PW-3) on the basis of which FIR No.406/2002 was registered in the handwriting of PW-2 (Ex.PW-2/A). 4 Investigation was initially marked to PW-3. He was accompanied the Investigating Officer SI Vijay Singh (PW-6). On 06.09.2002, the investigating team i.e. PW-6 along with PW-3 and HC Devender (PW4) reached the Kale Khan bus stand in search of the TSR where it was found parked. The said TSR was owned by Subhash Chand (PW-5). It was taken into possession vide memo Ex.PW-3/C. Three boys were sitting in the TSR. They were identified by PW-1 as Vijay Kumar, Ram Vilas and Raju Yadav; they

were all arrested vide arrest memos Ex.PW3/G, PW-3/H and PW-3/F. Their personal search was taken. Their disclosure statements were also recorded; the disclosure statements of accused Raju Yadav and Ram Vilas were proved Ex.PW-3/P and Ex.PW-3/O. Raju Yadav led the police party to his house in Trilok Puri from where a Nokia mobile of the complainant was got recovered; it was taken into possession vide memo Ex.PW-3/D. Accused Ram Vilas had got recovered a gold ring which was taken into possession vide memo Ex.PW-3/K. The case property was deposited in the malkhana. The fourth accused Ashok Kumar surrendered in the Court on 12.09.2002. He was arrested vide memo Ex.PW-6/B. He was put to TIP. These proceedings were conducted on 16.09.2002 and he was correctly identified by the complainant in the said proceedings (Ex.PW-1/E). Pursuant to the disclosure statement of accused Ashok Kumar (Ex.PW3/R), he got recovered a buttandar knife from under the flyover where he had thrown it after commission of the offence. The sketch of the knife was proved as Ex.PW-6/A. Seizure memo of the knife was proved as Ex.PW-3/M. 5 Challan was accordingly filed. Charges were framed. The prosecution in support of its case has examined 7 witnesses. In the statement of accused persons recorded under Section 313 of the Cr.PC, they have pleaded innocence. Submission being that they have been falsely roped in the present case. In defence, 7 witnesses have been brought in the witness-box. They were qua the roles of accused persons Raju Yadav, Ashok Kumar and Ram Vilas. The defence as sought to be set up through these witnesses was that the accused persons had been picked up from their houses and they have been falsely implicated in the present case. 6 The accused persons were convicted for the offence as noted supra and sentenced accordingly. 7 On behalf of the appellants, arguments had been addressed by Mr. Bhupesh Narula, Advocate in detail. It is pointed out that the judgment of the trial Court suffers from inherent improbabilities. It is based on the conjectures and surmises; there are contradictions in the version of the prosecution and for this purpose, attention has been drawn to the versions of PW-1, PW-3, PW-4 and PW-6. It is pointed out that these inconsistencies are irreconcilable. PW-1 had deposed that he had been given fist blows but no injury has been noted upon his person. His MLC has not been proved. The delay in lodging the report i.e. when the incident had occurred at 09:45 pm on the previous night i.e. on 04.09.2002 and the FIR having been

registered only at 06:00 pm on the following day i.e. 05.09.2002 has remained unexplained. PW-3 has stated that the TSR was recovered from near the bus stand whereas PW-6, the Investigating Officer has stated that the TSR was in motion when it was stopped near Sarai Kale Khan. PW-5 the owner of the TSR has not identified Vijay Kumar (having undergone his sentence) as the person to whom he had handed over the TSR; the whole version of the prosecution is tainted. Attention has been drawn to the TIP proceedings qua Ashok Kumar. It is pointed out that as per memo (Ex.PW-1/E), the complainant had identified the person at serial No.6, who is Braham Pal and not Ashok. The explanation given by PW-7 in his cross-examination on this score is clearly suspicious as reading of this document shows that accused Ashok Kumar had changed his position but the explanation is clearly suspicious. The mobile phone which was purported to have been recovered from accused Raju shows that the documents of purchase had been created; even as per PW-1, they had been submitted to the Investigating Officer only 2-3 days after the date of the incident for which there is no explanation. The knife purported to have been recovered at the behest of accused Ashok even as per the recovery memo (Ex.PW-3/M) was from an open space; recovery is clearly doubtful. On all counts, the accused persons are entitled to a benefit of doubt and a consequent acquittal. 8 Learned public prosecutor has refuted these submissions. It is pointed out that the version of PW-1 who is the complainant is clear and categorical. He has not faulted in his deposition on any count. His version has been fully corroborated by the other members of the investigating team who have been examined as PW-3, PW-4 and PW-6. The defence is clearly liable to be rejected as this defence has emanated only at the stage of defence evidence wherein this defence has sought to be projected that they had been picked from their houses. This defence has neither put to any of the witness of the prosecution and nor in their statements recorded under Section 313 of the Cr.PC. 9 I have heard the learned counsels for the parties and perused the record. 10 The accused persons have been convicted on the testimony of PW-1. He is the star witness of the prosecution. Before adverting to his testimony, it would be relevant to stated that the incident has occurred at 09:45 pm on 04.09.2002. The FIR had been lodged on the following day at 06:00 pm i.e. on 05.09.2002. The delay in lodging the FIR has been explained by PW-1 in his

cross-examination wherein he had explained that he could not lodge the report on 04.09.2002 as he was feeling pain because of the injury suffered by him in the incident as accused person had thrown chilli powder in his eyes; on the next day, he went to the police station to lodge the FIR. This explanation which has been furnished by PW-1 is satisfactory. In this background, delay in lodging the FIR cannot be read against the prosecution. 11 In this context, the Supreme Court in AIR 2001 SC3570 Ravinder Kumar and Anr. Vs. State of Punjab has under: The attack on prosecution cases on the ground of delay in lodging F.I.R. has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence, a delayed F.I.R. is not illegal. Of course, a prompt and immediate lodging of the F.I.R. is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged F.I.R., the demerits of the delayed F.I.R. cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged F.I.R. is not an unreserved guarantee for the genuineness of the version incorporated therein. 12 Delay in lodging the FIR in all cases is thus not fatal and especially wherein the delay has been satisfactorily explained. 13 PW-1 has been categorical in his version on oath in Court. He has come into the witness box in August, 2003 i.e. after almost one year of the date of incident; he has given graphic details of the incident. He has described the manner in which he was asked to sit in the TSR where one passenger was already sitting. The driver of the vehicle was Vijay. Thereafter after ten paces, another person sat in the car and after the next ten paces, the fourth person also sat in the vehicle. The person sitting on the right side of PW-1 was Raju. He had given him a fist blow; thereafter he brandished a knife on his neck; the person sitting on his left side was Ashok. He threatened PW-1 by putting a knife on his stomach. The fourth person (whose name was later on learnt as Ram Vilas) has put chilli powder in his eyes. PW-1 was robbed of his mobile phone (Nokia), gold ring, Titan watch as also Rs.500/-. The witness could not be discredited even in his cross-examination. He stuck to

his stand. He admitted that he was examined by Dr. Vasist at 11:30 pm but he did not have the medical evidence to support his ocular submission. He admitted that the spot is at a distance of 10 kms from his house and the police post was at a distance of 4 km. Obviously since the victim was in a state of emotional trauma as also physical pain, he thought it best to reach his home first and after taking medical help, he had lodged the report on the next date. In another part of the cross-examination, PW-1 had admitted that he had deposited the invoice of his mobile phone 2-3 days after the incident; the name of the dealer was M/s Yours Communication situated at Geeta Colony. This mobile had been given to him by his employer for use. He denied the suggestion that the accused had been falsely implicated by him in the present case. Relevant would it be to state that this suggestion has not progressed beyond this stage; it does not state as to why the victim would have falsely implicated the accused. There is no ulterior motive for PW-1 to have deposed against them; it was also not as if PW-1 was nursing any grudge to falsely implicate them. 14 PW-6 was the Investigating Officer. In this investigation, he was accompanied by PW-3 and PW-4. All of them were consistent in their versions. On 05.09.2002, after the registration of the FIR, they had reached the Sarai Kale Khan bus stand where the TSR was parked near the bus stand. Version of PW-3 and PW-6 is consistent on this score. There is no discrepancy as has been pointed out by the learned counsel for the appellants. PW-6 has stated that the TSR was stopped near the Kale Khan bus stand in which three persons were found; it was being driven by Vijay Kumar; Ram Vilas and Raju were sitting in the vehicle. Version of PW-3 on this score is that at the time of checking the TSR, it was parked at the bus stop. There is no conflict in these two versions. From this TSR, a packet of chilli powder was also recovered. All the three accused persons namely Vijay, Ram Vilas and Raju were arrested. 15 Accused Raju Yadav had got recovered the mobile phone from his house. The recovery memo was proved as Ex.PW-3/D attested by PW-3 and PW-4 who have also been consistent on this score. It was a Nokia phone. Version of PW-1 that this mobile phone had been given to him by his employer matched with the document marked which was an invoice dated 29.08.2002 evidencing that this Nokia phone 3350 having IMEI No.350686605551961 had been sold to M/s Yours Communication who was the employer of PW-1. 16 The TIP of this phone had

been conducted by learned Metropolitan Magistrate Mr. L.K. Gaur vide proceedings Ex.PW-1/D on 18.10.2002. The invoice dated 29.08.2002 also formed a part of these TIP proceedings. This was the same mobile which had been stolen from PW-1 and had got recovered at the behest of accused Raju. 17 Accused Ram Vilas had got recovered the gold ring of the victim. This recovery had been effected from an iron box of his bed room at house No.12/145, Trilok Puri; it had been taken into possession vide memo Ex.PW-3/A. Ex.PW-3/A has been attested by PW-3 and PW-4 who have both testified to this effect. This recovery had also been put to TIP along with mobile phone in the proceedings dated 18.10.2002 and had been correctly identified amongst the various gold rings of similar nature by the complainant. 18 Accused Ashok Kumar had not been arrested along with the other co-accused. He had surrendered before the Court on 10.09.2002. He was arrested vide memo Ex.PW-6/B. He was put to TIP on 16.09.2002 i.e. after about 11 days from the date of the incident. The TIP proceedings Ex.PW-1/E were conducted by the learned Magistrate and he has come into the witness box as PW-7. The correctness of the proceedings were certified by PW-7 at point B. 19 Perusal of Ex.PW-1/E shows that the complainant had taken two rounds and thereafter identified accused Ashok at serial No.6. The name of Braham Pal appears at serial No.6 and not of Ashok. This has been vehemently pointed out by the learned counsel for the appellants. It has also been stated that the explanation given by PW-7 in his cross-examination is suspect for the reason that this explanation appears to have been added later on. This submission of the learned counsel for the appellants is bereft of force. First and foremost, it must be remembered that the TIP has been conducted by a judicial officer; he is Magistrate; he has no role in the investigation and has no stake in the matter. The proceedings clearly state that PW-1 has identified Ashok who was at serial No.7. Thereafter it has been explained in the document itself (Ex.PW-1/E) that accused Ashok was standing at serial No.6 and Wazir Singh and Braham Pal are on the left and right side of accused Ashok. This finds mention in the document itself and has been reiterated in the explanation given by PW-7 in his cross-examination. There is no reason whatsoever to disbelieve this version. 20 The Supreme Court has reiterated in (2000) 1 SCC471 State of Maharashtra Vs. Suresh as under:

We remind ourselves that identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.

21 In these circumstances, benefit of this argument cannot accrue to accused Ashok. 22 Pursuant to the disclosure statement of Ashok Kumar, a batandar knife was recovered. This recovery was effected on 18.09.2002 i.e. on the same day on which the disclosure statement of Ashok was recorded. Recovery was effected from near the flyover. Recovery memo is Ex.PW-3/M. Perusal of this document shows that this recovery has been effected from an open place. It was found lying under the grass. The recovery has been effected on 18.09.2002 i.e. after a gap of two weeks from the date of the incident; it was in the day time. Admittedly no public witness had joined this recovery. It would be difficult to imagine and believe that two weeks after the date of the incident, the weapon of offence was still lying in the same place where the accused had thrown it and that too in an open place. Passerbys were admittedly going and coming. The fact that this knife was not picked up from the open place is highly improbable. This recovery does not inspire confidence. It is disbelieved. 23 As noted supra, the accused persons have sought to project a defence that they have been falsely implicated and had been picked up from their residence. 7 witnesses had come into the witness box. Nanak Chand (DW-1) and Dev Narain (DW-2) have appeared on behalf of accused Ashok. DW-2 is the father of Ashok; his version along with that of DW-1 is only to the effect that Ashok bears a good moral character. Ashu (DW-3), Bhim Singh (DW-4) and Kanhaya Lal (DW-6) have appeared on behalf of accused Raju. DW-3 stated that her husband was arrested on 06.09.2002. So also is the version of DW-4 who is his neighbour. Testimony of DW-6 is wholly airy. He has stated that Raju Yadav was arrested on 06.02.2002 from the house. Arjun (DW-5) and Krishna (DW-7) have appeared on behalf of accused Ram Vilas. DW-7 along with DW-5 has deposed that Ram Vilas was arrested from the house. 24 As noted supra, this defence has not been substantiated by any documentary evidence. Admittedly

after this arrest which as per the version of the DWs was illegal, no complaint has been lodged by anyone of them to any higher authority about the illegal detention of the accused persons. Moreover, this defence has also not been projected either in the cross-examination of the witnesses of the prosecution or in the statements of the accused recorded under Section 313 of the Cr.PC; the arrest memos were specifically put to each one of them as an incriminating piece of evidence. This defence is clearly appears to be an afterthought. It is rejected. 25 Section 394 of the IPC deals with the offence of robbery or in an attempt to commit robbery hurt is caused to that person, the offence under Section 394 of the IPC is made out. To establish the ingredients of Section 397, the offender must use the deadly weapon. As such what is required to establish the ingredients of Section 397 is the use of the deadly weapon. What is a deadly weapon has also been enunciated by the Courts time and again. A brandishing of the weapon without its actual use also qualifies as a use. 26 In the instant case, as per the version of PW-1, both accused Raju Yadav and Ashok Kumar had brandished knives upon him; one was put on his neck and one upon his stomach. Even as per the version of the prosecution, only one knife was recovered. No knife has been recovered at the behest of accused Raju. The recovery of knife purported to have been made at the behest of accused Ashok has been disbelieved. 27 Section 397 postulates only the individual act of accused to be relevant to attract Section 397; this Section is not based on the principle of constructive or vicarious liability engrafted in Section 34 of the IPC. 28 The observations of the Supreme Court in AIR 2004 SC1253 Ashfaq Vs. State are relevant:

Thus, what is essential to satisfy the word Uses for the purpose 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.

29 The purpose of using a deadly weapon at the time of committing robbery or dacoity or an attempt to do so is obviously to overawe and instill a fear in the victim. The legislative mandate prescribes that to convict a person under Section 397 of the IPC, it must be established as a fact that the weapon was in fact deadly.

As noted supra no recovery has been effected from either of the two accused i.e. accused Ram Vilas or Ashok. What we have before us is the ocular version of PW-1. The version of PW-1 has not described the nature of the knife which had been used; there is nothing in the ocular version of PW-1 to establish the version of the prosecution that the knife which was used was a deadly weapon. It is also not the case of the victim that any injury had been effected upon him by the said knife. As per his version, he has suffered a fist blow but he has no medical evidence to establish his version of having sustained any injury. PW-1 in this context has stated that the prescription of the doctor had been destroyed. 30 In these circumstances, the conviction of the accused under Section 397 is not sustainable. All the accused persons are accordingly convicted under Section 394 of the IPC. 31 The impugned judgment had convicted Ram Vilas under Section 394 of the IPC and sentenced him to undergo imprisonment for 5 years and in default of payment of fine, to undergo RI for 1 month. The nominal roll of convict Ram Vilas has been summoned. This shows that accused as on 03.04.2006 i.e. at the time when his application for bail was considered had suffered incarceration of 3 years 7 months and 3 days inclusive of remission of 2 months. On the date when the bail was granted to him which was on 19.04.2006, he had undergone imprisonment for 3 years and 10 months. 32 Nominal roll of accused Ashok shows that as on 19.01.2006 (when his application for bail was to be considered) he had undergone incarceration for 3 years 4 months and 8 days. He had earned remission of 1 month. He was granted bail on 13.12.2006 i.e. 11 months thereafter meaning thereby that on the date when he had granted bail, he had suffered incarceration for about 4 years and 4 months. 33 Nominal roll of accused Raju Yadav shows that as on 27.01.2006, he has suffered incarceration for 3 years 4 months and 20 days. He had earned remission for 15 days. He had granted bail on 25.08.2006 i.e. 7 months thereafter meaning thereby that when he had granted bail, he had suffered incarceration for about 4 years and 2 months. 34 Offence is related to the year 2002. The accused persons/appellants have been on bail since the respective dates noted supra. They have not abused that process. 35 In this background, keeping in view the period of incarceration already having been undergone by each of the aforementioned appellants, the sentence already undergone by each one of them is the sentence imposed upon them. However, each of the

appellants shall pay Rs.20,000/- as a fine to be paid to the victim (PW-1) within a period of two weeks from today failing which they shall all suffer incarceration for a period of 5 years each meaning thereby that the unexpired period of sentence will have to be undergone by each one of them. The Investigating Officer shall ensure that this payment of Rs.20,000/- is paid to PW-1 Parchita Virmani. 36 With these directions, appeals are disposed of. INDERMEET KAUR, J JANUARY15 2014 A

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