

**Ravinder Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/1135329](http://sooperkanoon.com/1135329)

**Court :** Delhi

**Decided On :** Mar-26-2014

**Judge :** V. K. Jain

**Appellant :** Ravinder

**Respondent :** State

**Advocate for Def. :** Mr. Feroz Khan Ghazi

**Advocate for Pet/Ap. :** Ms. Aishwarya Rao

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

26. 03.2014 + Crl. Appeal 1365/2010 RAVINDER Through: .Appellant Ms. Aishwarya Rao, Adv. Versus STATE Through: .Respondent Mr. Feroz Khan Ghazi, APP for State CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

**V.K.JAIN, J.**

(Oral) On 05.05.2007 at about 10.10 pm, Police Station Kalyan Puri was informed that a person had been stabbed by 4-5 persons near Chand Cinema and had been robbed of his cash and mobile phone. The information was recorded vide DD No.29B and a copy of the said DD was given to Head Constable Rakesh Kumar

for investigation. When he reached the spot, he came to know that the injured had been taken by PCR van to LBSH hospital. When he reached the hospital, the injured Pramod was found admitted there. The injured told the aforesaid police officer that on that date, at about 10 am, he was waiting for the bus at Chand Cinema bus stand, when 3-4 boys aged about 20-25 years, all of a sudden surrendered him. One of them gave a blow with a sharp object on his neck whereas the other one removed his purse. Thereafter those persons ran away through the park. The purse contained cash as well as identity card of the complainant. The complainant also found his mobile phone bearing number 9313532070 to be missing. He suspected that the aforesaid boys had also taken away his mobile phone.

2. The appellant - Ravinder was arrested in a case registered vide FIR No.340/2007 of Police Station Kalyan Puri under Section 27 of Arms Act and during interrogation, he confessed to his involvement in the above referred incident. On the basis of disclosure statement made by him, three other persons namely Sukudev Singh, Anuj and Bunty Singh were arrested. The appellant - Ravinder was identified in TIP held during investigation.

3. The appellant was charged under Section 397 of IPC whereas the other two accused persons were charged under Section 392/34 and 394/34 of IPC. Since the accused persons pleaded not guilty, as many as 16 witnesses were examined by the prosecution. Three witnesses were examined in defence.

4. Vide impugned judgment dated 26.07.2010, all the four accused persons were convicted. The appellant before this Court was convicted under Section 394 and 397 of IPC. Vide impugned order on sentence dated 30.07.2010, he was sentenced to RI for three years and to pay a fine of Rs.5,000/- under Section 394 of Indian Penal Code. He was further sentenced to undergo RI for seven years and to pay a fine of Rs.5,000/- or to undergo SI for six months in default of payment of fine under Section 397 of the Code. Being aggrieved from the conviction and the sentence awarded to him, the appellant is before this Court by way of this appeal. 5 The complainant - Pramod came in the witness box as PW1 and, inter alia, stated that on 05.05.2007, when he was standing at Chand Cinema

bus stand, waiting for the bus, 3-4 boys surrounded him. One of them put a sharp edged article on his neck and inflicted injury using that article whereas another person one took out the cash and identity card from his person and the third person removed mobile phone from the pocket of his shirt. Thereafter those persons ran away. One passerby informed the PCR and PCR van took him to hospital where his statement was recorded. He further stated that on 26.05.2007, he was called to Tihar Jail where he identified the person who had inflicted injury on his neck. He identified the appellant - Ravinder as the aforesaid person. In cross examination, he, inter alia, stated that he was near the bus stop, being at a distance of about 40-50 meter from it, when the aforesaid incident of robbery took.

6. PW4 - Shri Ajay Gupta is the Metropolitan Magistrate before whom PW1 identified the appellant on 26.05.2007. PW5 - Dr. Vivek Girodra has proved the MLC of the injured Pramod which has opinion of Dr. Shailender, opining the injuries to be simple. PW16 - Dr. R.N Das had examined the injured Pramod on 05.05.2007. He found one incised wound of 7 cm x 02 cm over nape of neck of the witness In this statement under Section 313 Cr.PC, the appellant denied the allegations against him and claimed to be innocent.

7. The impugned judgment has been assailed by the learned counsel for the appellant on the following grounds:a. No weapon was recovered from the appellant; b. There is discrepancy in the deposition of the complainant with respect to the place of incident. c. There is no evidence that the object which the appellant is alleged to have used for causing injury to the complainant was a deadly weapon and, therefore, he would not have been convicted under Section 397 of IPC.

8. As regards the place of the occurrence, the discrepancy cannot be said to be material. The witness was examined almost one year after the incident had taken place. It would be difficult for him to remember, after one year as to whether the place where the incident took place was exactly the bus stop or a nearby stop.

9. As regards no weapon having not been recovered from the appellant, that, in my view, cannot result in acquittal of the appellant under Section 397 of IPC since what is material for the purpose is the use and not the recovery of a deadly weapon. If the Court insist upon recovery of the weapon used in the robbery,

before a person can be convicted under Section 397 of IPC, it would be very easy for any person to get away with the rigors of the Section, simply by destroying or concealing the weapon used by him. In case a person uses a deadly weapon, while committing a robbery, he is liable to be punished with the aid of Section 397 of the Indian Penal Code. Even if the weapon is not actually used, but is in the view of the victim, that would amount to its usage within the meaning of Section 397 of the Act, the purpose being to scare the victim by showing the weapon to him so that he does not resist the robbery of articles which he is carrying with him.

10. Coming to the last contention, I find that according to the complainant some sharp edged article was used for causing injury to him. The witness obviously could not notice what precisely was the object used for causing injuries to him. A perusal of his MLC would show that he had an incised wound measuring 7 centimetre X 2 centimetre, which indicates that some sharp object was used by the appellant. But, every sharp object cannot be said to be a deadly weapon. There is no evidence of the object used by the appellant being a knife or a razor. In these circumstances, it would be difficult to say that the prosecution has been able to prove that the appellant had used a deadly weapon in commission of the robbery.

11. For the reasons stated hereinabove, the provisions of Section 397 of IPC could not have been applied for convicting the appellant. However, since injury was caused to the complainant in commission of the robbery, the offence under Section 394 of IPC stands fully proved against the appellant. Accordingly, the order of the learned Trial Judge to the extent Section 397 of IPC has been invoked is set aside, while maintaining the conviction of the appellant under Section 394 of the Indian Penal Code. In the facts and circumstances of the case, the appellant is sentenced to RI for three years and to pay fine of Rs 5,000/- or to undergo SI for three months in default. The appeal stands disposed of. LCR be sent back. One copy of this judgment be sent to the concerned Jail Superintendent for necessary information and compliance. MARCH 26 2014/rd/bharat V.K. JAIN, J.