

Bishan Vs. the State

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Court : Delhi

Decided On : Nov-11-1983

Reported in : 1983(1)Crimes155; 1984(6)DRJ78

Judge : M.L. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392

Appeal No. : Criminal Appeal No. 68 of 1983

Appellant : Bishan

Respondent : The State

Advocate for Pet/Ap. : W.N. Gujral and; D.R. Sethi, Advs

Judgement :

M.L. Jain, J.

(1) This judgment will dispose of Cr.A.23/83 and Cr.A. 68/83. The appellants were convicted under Section 392 and sentenced with the aid of Section 397 Indian Penal Code to rigorous imprisonment for seven years. Hence, these appeals.

(2) On 4-10-1981 at about 3.00 p.m. the accused appellants threatened Ram Sumer (Public Witness 4) near the public latrine in Subzi Mandi with knives and relieved him of a purse which contained Rs. 73.00 and two receipts. When

accused had gone about 20 paces Ram Sumer raised an alarm. The public chased the accused, apprehended them and recovered knives. Ram Sumer snatched his purse from accused Bishan. The public had also given beatings to the accused persons. In the meanwhile, the police had been informed by one Ganga Ram Pradhan. Si Om Prakash (Public Witness 5) came and arrested the accused who were smelling of liquor. Ram Sumer produced before him the purse, currency notes and receipts. He also got the accused examined by a medical officer. Shiv Dayal (Public Witness 1) corroborated the version of Ram Sumer.

(3) The case of the accused Bishan is that Ganga Ram Pradhan was inimical to Bishan and he falsely implicated him. The case of Lalla accused is that he had consumed some liquor and was standing amongst the spectators.

(4) It was pointed out that the police claimed that there was on the spot a large number of people but the police produced only the complainant and sweeper Shiv Dayal, while other independent witnesses were available. It is also in evidence that the accused persons were drunk and were falsely implicated. Ganga Ram who is said to be inimical to Bishan and as whose instance the accused were implicated was also present there, but the police withhold him. . It was urged that the prosecution case was false. The learned trial Judge was .however, of the view that Shiv Dayal is a resident of the same place and had come to use the public latrine when the occurrence took place and had seen Bishan snatching the purse from Ram Sarup and then running away. The learned Judge believed the story put forward by Ram Sumer and Shiv Dayal. It was urged before him that the knives recovered in the case are meant for cutting vegetables and they were not deadly weapons. The learned Judge observed that the knives were no doubt meant for cutting vegetables, but they could be used as a weapon of offence and if they are so used they were capable of causing death and penetration of blade of such a knife in the vital organ could be fatal. He, therefore, held that the knives that were recovered were deadly weapons.

(5) As far as the merits of the case are concerned, the learned counsel for the appellants did not have much to say. Indeed. I see no reason to disbelieve the testimony of Ram Sumer and Shiv Dayal and the police officers as to the

sequence of arrest and recovery made by the police in the aforesaid manner. The sole question that was earnestly urged before me was whether the weapons recovered could be considered deadly weapons so as to attract the provisions of Section 397 IPC. According to the recovery memo, the knives that were recovered from both the accused were knives meant for cutting vegetables, though the blade of one was 6' long and of the other was 3' long. Can such weapons be described as deadly weapons ?

(6) The learned counsel for the accused cited *Balik Ram v. The State* : 24(1983)DLT142 . In that decision, I have observed as follows :

'Knives are weapons available in various sizes and may just cause little hurt or may be the deadliest. They are not deadly weapons per se such as would ordinarily result in death by their use. What would make a knife deadly is its design or the manner 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 prosecution should prove that the knife used by the accused was a deadly one.'

The learned Additional Public Prosecutor Shri D.R. Sethi, on the other hand, drew my attention to *Phool Kumar v. Delhi Administration*, : [1975]3SCR917 . It was observed therein as follows :

'So far as he is concerned he is said to be armed with a knife which is also a deadly weapon. To be more precise, from the evidence of Pw 16 'Phool Kumar had a knife in his hand'. He was, therefore, carrying a deadly Weapon open to the view of the victims sufficient to frighten or terrorize them.'

It was pointed out that nothing was said in this case on the design of the knife and yet the Supreme Court held that the knife is a deadly weapon. Another decision on which Mr. Sethi relies is *State of Himachal Pradesh v. Wazir Chand and others*, : 1978 CriLJ347 , in para 25 whereof it was observed that the accused has wielded a weapon like a knife, indisputably a dangerous weapon. On the basis of these observations, Mr. Sethi urged that the knife is indisputably a dangerous weapon and, therefore, it should be held that the knives which the appellants used in this case should be held to be deadly weapons. The cases on which Mr. Sethi relies

do not in any way run counter' to the view that I have adopted in *Balik Ram* (supra). In *Phool Kumar* (supra) the Question turned upon the interpretation of use' of the weapon and who actually used the Weapon. Nobody raised the question whether the knife recovered was a deadly one or not. But I should presume that it was of a design which was likely to cause death. The other case *Wazir Chand* (supra) was a case under Section 304 Part I Indian Penal Code and not a case under Sec 397 Indian Penal Code dealing with a deadly weapon as such. Yet, what was said was that a knife is a dangerous weapon. In that case the accused had caused with it four injuries out of which one in the chest was fatal. We do not know about its design but the manner of use was certainly deadly. I, therefore, do not see any reason to depart from the view I have taken in *Balik Ram* (supra). It is proved in this case from the recovery memo itself that the knives were designed for cutting vegetables and could not be considered to be deadly. Their manner of use was also not such as was likely to cause death. I am, therefore, unable to agree that the accused can be sentenced under Section 397 Indian Penal Code In the interests of justice, I think the sentence of four years will meet the ends of justice for an offence under Section 392 IPC.

(7) Accordingly, I partly accept these appeals. While maintaining the convictions under Section 392 Indian Penal Code, I reduce the sentences of the appellants from rigorous imprisonment for seven years to four years.

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