

**Balik Ram Vs. the State**

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**Court :** Delhi

**Decided On :** Mar-02-1983

**Reported in :** 1983CriLJ1438; 24(1983)DLT142; 1983(5)DRJ12

**Judge :** M.L. Jain, J.

**Acts :** Indian Penal Code (IPC) - Sections 397

**Appeal No. :** Crl. Appeal No. 136 of 1981

**Appellant :** Balik Ram

**Respondent :** The State

**Advocate for Def. :** Harish Gulati, Adv.

**Advocate for Pet/Ap. :** Usha Kumar, Adv

**Judgement :**

**M.L. Jain, J.**

1. This is an appeal against the judgment of the learned Additional Sessions Judge, dated 27-1-1981 and order dated 30-1-1981 by which he convicted the appellant under Section 397 IPC and sentenced him to imprisonment for seven years. I have heard the learned amices curiae and the learned Addl. Public Prosecutor and seen the record.

2. An FIR 348/79 dated 8-9-1979 was lodged by one Rajinder Kumar in the Chanakya Puri Police Station that during the night intervening 7th and 8th September, 1979 his three wheeler scooter DHR 9272 was hired by two persons from Chandni Chowk for Govindpuri at about 12-30 a.m. At Govindpuri they asked him to take them to Officers Flats on Sardar Patel Marg, where the two occupants at the point of knife snatched from him a wrist watch and Rs. 36/- and ran away with his scooter. After investigation the police found that the accused were Balak Rain and Sunil Kumar. What was the result of that case is not known. But a mention of these facts is necessary as these are relevant because the identification memos relating to the accused and the case property filed in this case have shown some sort of mixing up.

3. FIR 374/79 was registered at the Chanakya Puri Police Station on 28-9-1979 that on the night between 27th and 28th September, 1979 at 2.15 a.m. Ganga Ram (PW 1) was driving his scooter DHR 8204. He was hired by two persons from Railway Station, Delhi Main, for Chanakya Puri, but when they reached near Chanakya Cinema, they asked him to stop for some time and then directed the witness to proceed towards Jesus and Marry College. There the younger companion Sunil Kumar caught hold of the scooter driver from the back by his collar and the appellant placed a knife at his abdomen and made him get down the scooter. Accused Balak Ram removed wrist watch and the purse containing Rs. 335/-. Thereafter they ran away with the scooter. A few hours after they were intercepted by the policenear the crossing of Mori Gate and Boulevard Road in Civil Lines area. One of them Sunil Kumar was driving the scooter and the appellant was sittinginside the scooter. Recovery Memo Ex. PG shows that accused Balak Ram was found to be in possession of a spring actuated knife and two wrist watchesone Roamer ladies and one Reicho. A case under the Arms Act was registered against him, vide FIR 926/79 Police Station Civil Lines. The recoverymemo Ex. PG further shows that cash of Rs. 338.55 and a wrist watch andthe scooter was taken into possession from Sunil Kumar.

4. On receiving information, Chanakya Puri Police Officer were to Civil Lines and arrested the two accused persons, produced them in the court of the Metropolitan Magistrate and made an application for test identification parade on 28-9-1979

itself. Sunil Kumar declined to take part in the test identification parade and is being tried separately perhaps in the Children's Court. Balak Ram consented to be subjected to test identification and on 16-10-1979 Shri S.K.Tandon, Metropolitan Magistrate went to the Jail for holding a test identification parade. The memo Ex. PC/2 shows that in FIR 374/79, two witnesses Rajinder Kumar and Ganga Ram were asked to identify the accused, though Rajinder Kumar was not at all concerned in FIR 374/79. However, he could not identify the accused. Ganga Ram witness identified the accused correctly. On the same day, he repeated the parade in FIR 348/ 79. Again the two witnesses, Rajinder Kumar and Ganga Ram were called, out of whom Rajinder Kumar did not identify while Ganga Ram correctly identified him, though he was not concerned in this FIR. The memo of this parade has not been exhibited though the Magistrate Shri S.K. Tandon (PW 6) has deposed about it. This test identification has exhibited veritable confusion on the part of the learned Magistrate and the Police. I will, therefore, attach no importance to the test identification.

5. Some confusion prevailed in the case of recognition of the watches. Two watches found sealed in one packet were of two different FIRs. 348/79 and 374/79. The first two watches were removed with almost twenty two days in between. On 29-10-1979, vide Ex. PF, a Roamer watch was identified by Ganga Ram. This test identification of the watch also fails to inspire confidence Again when the parcel of currency note was opened in the Court, vide statement of Ganga Ram the money in the parcel found was Rs. 247.55 as against the seizure of Rs. 3.38.55. Ganga Ram also deposed that the money removed from him was in fact Rs. 235/-. In spite of all this confusion there is no gain saying the fact that the accused Sunil Kumar and Balak Ram were caught with the stolen scooter by the Police in the Civil Lines area in respect of the identity whereof, there can be little doubt. There is also sufficient evidence to show that the scooter belonged to Ganga Ram. Similarly, the recovery of the knife can also not be questioned because it was proved by the testimony of the police officers and his conviction under Section 25 of the Arms Act in which the appellant was sentenced to nearly five months and which was not in challenge. Ganga Ram had said in the FIR that 'the taller' man of the two used the knife but in his deposition in the court he said the 'elder' of the two used the knife. Despite this contradiction he is categorical that

it was the appellant who used the knife. But was the knife so used was a deadly weapon within the meaning of Section 397 TPC What is a deadly weapon is not defined in the Code. It must, I think, therefore, be a weapon which if used was likely to cause death. In *Lakshmiammal v. Saniappa Gounder and Anrs.*, : AIR 1968 Mad 310, weapons like knife, hammer, crowbar and spades were held undoubtedly to be deadly weapons, but in *Mir Bayyan Khan v. Emperor*, AIR 1935 Pesh 65, it was said that a crowbar or spade may well be a deadly weapon if used as a weapon of offence, but not if used for destroying a bridge (that is, I think, for peaceful purposes). 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. Though the knife that was recovered from the accused a few hours of the occurrence, was no doubt a deadly one on account of its shape and design but it was not shown to the victim when he came to depose nor has he given any description of the knife so that it could be held that the knife alleged to have been placed by the accused on his abdomen was the one recovered or the one similar to that one. The accused can, therefore, legitimately claim that the weapon used by him has not been proved to be a deadly one. And if there is want of proper proof, the benefit should go to the accused and the prosecution cannot invoke section 397 I PC to fix him up in the minimum sentence of seven years. The crime of the accused is sheer devilry but he has urged that he has been in jail for over three years and five months and has old parents, and an ailing wife and little children who are suffering for want of care by anybody in his absence and prays for leniency in view of the new trends in penology.

6. Considering all the aspects, I partly accept this appeal and while upholding the conviction of the appellant under section 392 IPC reduce his sentence to what he has already undergone. He shall be released if not wanted in any other case.