

**Ravinder Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Mar-14-1991

**Reported in :** 44(1991)DLT249

**Judge :** S.C. Jain, J.

**Acts :** [Arms Act, 1959](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 394

**Appeal No. :** Criminal Appeal No. 10 of 1988

**Appellant :** Ravinder Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** Neelam Grover and; S.K. Bhatia, Advs

**Judgement :**

**S.C. Jain, J.**

(1) This appeal and Cr. Appeal No. 68/89, Rajesh & Pahari v. Slate have arisen out of the same judgment passed by the Addl. Sessions Judge on 21.12.1987, and therefore, I dispose of both these appeals by this common judgment.

(2) In brief the facts giving rise to these appeals are that on 4.3.85, at about 11.15 p.m. Zaidavar, hereinafter referred to as the complainant, was going to bus stand

of Plaza cinema via Panchkuin Road. When he was 15 to 20 steps ahead from the crossing of outer road of Connaught Circus and Panchkuin Road the appellants apprehended him. They were armed with knives and they threatened and robbed the complainant of Rs. 25.00 which he was having in his pocket wrapped in a pay slip, and a wrist watch. He raised an alarm and a police beat constable and some public persons reached there and they chased the appellants. One of the appellants, Rajesh & Pahari succeeded in running away. whereas Ravinder Kumar was apprehended on the spot and from his possession currency notes of Rs. 25.00 (P1 and P2) and one knife (P3) were recovered. However, the wrist watch was not recovered. The prosecution version, further goes to say that in the process of committing robbery hurt was caused to the complaint on his thigh. The appellant Ravinder Kumar was arrested and was taken to the police station, whereas Shri Rajesh & Pahari was arrested later on the basis of disclosure statement allegedly made by him in another case. Nothing was recovered at his instance. Both these appellants were prosecuted and tried for offence punishable under Section 394/34 and under Section 397 IPC. Mr. Ravinder Kumar was also tried under Section 27 of the Arms Act.

(3) The trial Court after appreciating documentary as well as oral evidence found both the appellants guilty of offence under' Sections 394/34 read with Section 397 IPC. Ravinder Kumar appellant was also found guilty of offence under Section 27 of the Arms Act. After giving an opportunity of hearing the trial Court sentenced both the appellants to under go R1 for seven years under Section 394/34 read with Section 397 IPC. Ravinder was also sentenced to undergo R1 for three years under Section 27 of the Arms Act. However, both the sentences of Ravinder were ordered to run concurrently.

(4) As the appellants could not arrange their counsel, so Ms. Neelam Grover, Advocate, was appointed amicus curiae to argue the appeals on behalf of both the appellants. Shri S.K. Bhatia, APP, argued the case on behalf of the State.

(5) The entire case of the prosecution hinges upon the testimony of the complainant Zaldavar(P.W. 5). He deposed that on 4.3.85, at 11.15 p.m., he was coming from the house of his friend via Panchkuin Road when he was waylaid by

the appellants. They were having knives with them and they robbed him of Rs. 25.00 which he was having in his pocket wrapped in a pay slip. His wrist watch was also removed by them. After committing robbery and before running away one of them stabbed on his right thigh but tie could not say which of the appellants stabbed him. After committing robbery the appellants run away and he raised an alarm saying Chor CHOR. The appellants were chased by some public persons and a police head constable. Ravinder Kumar was apprehended near the place of occurrence, whereas the other appellant Rajesh succeeded in running away. From the possession of Ravinder Kumar currency notes of Rs. 25.00 (Pi and P2) along with a pay slip Ex. PW12/A, were recovered. Knife Ex, P3, was also recovered from Ravinder Kumar. Ravinder Kumar was taken to the police station and was arrested there. During the chase when Ravinder was apprehended, he also got some injuries. The complainant was got medically examined in Willingdon hospital. His pant (Ex. P4) which was having a cut mark was taken into possession. Rajesh & Pahari was arrested later on but nothing was recovered at his instance.

(6) Besides this statement of the complainant, the prosecution has examined as many as 15 witnesses in support of its version. The learned counsel for the appellants could not challenge the judgment of the trial Court on merits, but vehemently argued that the appellant Rajesh has been in judicial custody since the very day he was arrested and for more than five years he remained in jail as an undertrial. She also argued that the other appellant Ravinder Kumar had also been in jail for a considerable time as an undertrial and continuously since 21.12.87, when he was convicted and sentenced in this case. As both the appellants have been in Jail for a considerable length of time, and they have suffered a lot on account of the protracted litigation, ends of justice would be met if their sentence is reduced to already undergone. She pointed out that no case under Section 397 Indian Penal Code is made out against either of the accused. Recovery of the knife in this case is very much doubtful inasmuch as the complainant who has appeared as Public Witness . 5 has given different version regarding the recovery of the knife from Ravinder, one of the appellants. At one place he stated that Ravinder had kept the knife (P3) in his shirt, later on he stated that the knife was in the pocket of pant and head constable Karam Chand had

taken it out at the police post. Later on, when he was cross-examined on 14.3.86, he stated that the head constable had taken the knife from the hands of the accused at the place where he was apprehended. From this contradictory statement of the complainant on this aspect of the matter, it becomes clear that no knife was recovered from either of the appellants and it was planted by the police on Ravinder Kumar at the police station, where he was taken after the incident. She also pointed out that the complainant could not say as to which of the appellants caused injury to him. According to the counsel, at the most it is a case under Section 394/34 Indian Penal Code which provides that if any person in committing or attempting to commit robbery voluntarily cause: hurt such a person and any other person jointly concerned or attempting to commit robbery shall be punished with imprisonment for life or rigorous imprisonment which may extend to ten years and shall also be liable to fine.

(7) In this case from the evidence on record, it has been established that both the appellants committed robbery while depriving the complainant of Rs. 25.00 and wrist watch and that in that process the complainant also received injury on his right thigh. From the evidence on record, the prosecution has established that there was a robbery and hurt was caused to the victim. This finding has not been challenged by the appellant at the time of arguments. Even otherwise there is no reason to disbelieve the complainant who is an independent witness being a school teacher in the Modern School in Vasant Vihar having no enmity with the appellants. He did not know them earlier.

(8) The only question which requires consideration in this case is whether the punishment should be awarded under Section 394/34 read with Section 397 Indian Penal Code or only under Section 394/34 IPC? Section 397 Indian Penal Code does not create substantive offence but merely prescribes a minimum sentence for the offence of robbery and dacoity under aggravated circumstances mentioned in the Section. This Section relates to offender. The essential ingredients of the offence are (i) the offence of dacoity or robbery must have been committed, (ii) offender should have taken part in the offence, (iii) the offender should have used deadly weapon or caused grievous hurt or death at the time of committing offence Section 397 Ipc employs the word 'used any deadly weapon'. If a deadly weapon

was used for the purpose of producing such an impression upon the mind of a person that he was compelled to part with his property, that would amount to use of weapon within the meaning of Section 397. When the offence of robbery is committed by an offender being armed with a deadly weapon, and it is within the vision of the victim, the offender must be deemed to have used the deadly weapon for the commission of the robbery.

(9) Keeping in view this proposition of law in the present circumstances of the case, it is to be seen whether both the appellants or any one of them are liable to be sentenced for the offence of robbery under the aggravated circumstances mentioned under this Section.

(10) On scrutinising the statement of the complainant minutely, it becomes apparent that the provision of Section 397 Indian Penal Code are not at all attracted against the appellants. He could not tell which of the appellants used the knife and caused injury to him. From his statement the recovery of the knife from Ravinder Kumar has also become doubtful as discussed above. It has also not come in his state ment that he was put under fear by the appellants by showing the knife to him and that he was compelled to part with his money or the wrist watch at the point of knife. The learned App has not been able to substantiate that the sentence awarded under Section 397 Indian Penal Code is sustainable. It is settled law that to bring the case within the purview of Section 397 Indian Penal Code the accused must be proved to have used a deadly weapon. There is no evidence as to which one of the two accused carried the weapon and made use of the same. The injury received by th. complainant is a simple hurt and on that account also the provisions of Section 397 are not attracted. Where the accused caused injury only when he was at bay, he cannot be convicted under Section 397 IPC.

(11) The complainant has not stated that the injury was caused to him by the appellants or any one of them before and at the time of committing robbery. He has deposed that on 5.2.86, after committing robbery and before running away, one of the appellants had stabbed him in his right thigh but he could not say which of the appellants stabbed' him. In view of this statement of the complainant on this

point it is very difficult to attract the provisions Of Section 397 Indian Penal Code against either of the appellants. The alleged recovery of knife from the possession of Ravinder Kumar is also doubtful as the complainant has made contradictory statement in this regard and his statement is not believable on this point. The recovery memo was not prepared on the spot in the presence of any public witness though so many persons had come there when he was apprehended.

(12) In view of my findings above, I accept the appeals and modify the judgment and order of the learned trial Court only on the point of conviction of the appellants under Section 397 IPC. Their sentence under Section 397 Ipc is set aside. The conviction and sentence of the appellant Ravinder under Section 27 of the Arms Act is also set aside. Their conviction under Section 394/34 Ipc is confirmed. On the point of sentence, as the appellants have been in judicial custody since long and robbery is only petty amount of Rs. 25.00 ends of justice would be met if the period of sentence of both the appellants is reduced to already undergone. With these finding , partly accept both these appeals. A copy of the judgment be sent to Supdt. Jail with the direction that both the appellants be released from jail forthwith if not required in any other case. Ordered accordingly.

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