

Ravinder Kumar Thakur Vs. State

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Court : Delhi

Decided On : Jan-30-2013

Judge : S. P. Garg

Appellant : Ravinder Kumar Thakur

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

30. h January, 2013 + CRL.A.377/2007 RAVINDER KUMAR THAKUR
....Appellant Through: Mr.Bhupesh Narula, Advocate. versus STATE
...Respondent. Through: Mr.M.N.Dudeja, APP for the State. CORAM: MR.
JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. The present appeal has been filed by the appellant-Ravinder Kumar Thakur against the judgment dated 19.12.2006 and order on sentence dated 21.12.2006 of learned Sessions Judge by which he was convicted for committing offence punishable under Section 392/394/34 IPC read with Section 397 IPC and sentenced to undergo rigorous imprisonment for five years each under Section 392/394 IPC and rigorous imprisonment for seven years under Section 397 IPC.

2. Allegations against the appellant were that on 17.09.2004 at about 11:50 P.M. at House No.1-E, Northern Road, Civil Lines, Delhi, he along with co-convict Arjun Mandal committed robbery and caused injuries to Smt.Anita Mukeem and fled

away with robbed jewellery. The prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded false implication. After appreciating the evidence and rival contentions of the parties the appellant and co-convict Arjun Mandal were sentenced as mentioned previously.

3. During the course of arguments, the learned counsel for the appellant, on instructions, stated that the appellant was not challenging the findings of the Trial Court on conviction under Section 392/394 IPC. He, however, argued that no offence under Section 397 IPC was proved against the appellant as he was not armed with any deadly weapon.

4. I have considered the submissions of the learned Additional Public Prosecutor and the counsel for the appellant. Since the appellant has not opted conviction under Section 392/394/34 IPC, the findings of the Trial Court on conviction are affirmed.

5. Regarding conviction under Section 397 IPC, there is force in the plea of the counsel for the appellant. Admittedly, the appellant was not armed with any weapon at the time of occurrence. He did not use any arms to cause injuries to the victim. From the very inception the prosecution case was that knife was used by co-convict-Arjun Mandal and he inflicted injuries to the complainant during the process of committing robbery. Charge under Section 397 IPC was framed only against coconvict-Arjun Mandal. The complainant and other witnesses in the court did not state if the appellant caused injuries with knife. In the statement under Section 313 Cr.P.C. nothing was put to him that the knife was used by him to commit robbery.

6. Since the appellant did not use any deadly weapon his conviction under Section 392/394 read with Section 397 cannot be sustained. Section 397 IPC does not create any substantive offence. It merely prescribes a minimum sentence of seven years if any deadly weapon is used during the commission of robbery or dacoity. Minimum sentence of seven years is to be awarded to the person who uses the deadly weapon. The appellant was sentenced to undergo rigorous imprisonment for five years each for committing offence under Section 392/394 IPC. He was also sentenced under Section 397/34 IPC to undergo RI for seven years. Since the

appellant did not use the deadly weapon, separate conviction/sentence under Section 397/34 IPC to undergo RI for seven years cannot be sustained. Nominal roll dated 10.02.2011 reveals that the appellant has already undergone the sentence awarded to him. The fine has already been deposited and he has since been released on 19.06.2010 on completion of his sentence. The appeal though filed in the year 2007 could not be taken up for disposal earlier.

7. In the light of the above, the conviction and sentence of the appellant under Section 392/394/34 IPC is maintained. However, conviction and sentence under Section 397 IPC is set aside.

8. The appeal is disposed of in the above terms. (S.P.GARG) JUDGE January 30, 2013 sa

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