



2025:DHC:6670



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 28.07.2025
Pronounced on : 08.08.2025

+ **CRL.A. 926/2024**

AZAMAppellant
Through: Mr. Gautam Khazanchi, Ms. Pooja
Deepak, (DHCLSC), Advocates

versus

STATE (NCT OF DELHI)Respondent
Through: Mr. Pradeep Gahalot, APP for State
with S.I. Lovkesh Kumar, P.S. Narela

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 20.05.2024 vide which he has been convicted for offences punishable under Sections 392/397/411/34 IPC and order on sentence dated 06.07.2024 vide which he has been directed to undergo rigorous imprisonment for a period of 3 years for the offence punishable under Sections 392/34 IPC alongwith payment of fine of Rs.5,000/- in default whereof, he was directed to further undergo simple imprisonment for a period of 60 days; rigorous imprisonment for a period of 7 years for the offence punishable under Sections 397 IPC and rigorous imprisonment for a period of 1 year for the offence punishable under Sections 411 IPC alongwith payment of fine of Rs.5,000/- in default whereof, he was directed to further undergo simple imprisonment for a period of 60 days. The benefit



of Section 428 Cr.P.C. has also been provided to the appellant and all the sentences were directed to run concurrently.

2. The present FIR came to be registered on the complaint of one *Naveen* (PW4) alleging that on 29.04.2019 at about 7:45 P.M., when he was returning home on his motorcycle, while he stopped to receive a call, two boys came on a Pulsar motorcycle and the pillion rider snatched his mobile phone of make 'POCO F-1', from his right hand and at that point, the pillion rider further tried to take out his purse from the right-side pocket of his pant. Simultaneously, the driver took out a sharp-edged weapon i.e. knife and asked him to handover whatever he was carrying failing which, he would kill him. Frightened, the complainant took out his purse from his pant, and the pillion rider forcibly took out sum of Rs.35,000/- from the said purse and also took out another mobile phone, of make 'JIO Keypad'. Thereafter, both the said accused fled from the spot and the complainant tried to chase, however, could not trace the robbers. He informed his uncle *Pawan Kumar* (PW3), and reported the matter. Initially, the FIR was registered under Sections 392/34 IPC. The present appellant, being the driver of the motorcycle and the pillion rider (a CCL) were arrested in another FIR No.62/2019 (Ex.PW13/A) registered under Sections 392 IPC at PS Narela Industrial Area, where they disclosed their involvement in the subject FIR. From the possession of the appellant, the robbed mobile phone make POCO F-1 (Ex.PW8/A) was recovered. While the second phone make JIO Keypad (Ex.PW8/B) was recovered from the CCL. During the investigation, Section 411 IPC was added. Subsequently, during the charge, noting the contents, Section 397 was also added.

3. During trial, besides the complainant (PW-4), the prosecution also



examined the uncle *Pawan* (PW-3), the aunt *Dimple* (PW-5) and one *Sajid Khan* (PW-11), the person who had purchased the mobile phone of make POCO F-1 and thereafter, sold it to the complainant as well as one *Ravi Chand Singh*, (PW-12) Unit Head of the factory where the complainant was employed. The complainant, in his testimony before the court, reiterated his version of the incident as stated earlier during the investigation. He also not only proved the seizure memo of the recovered mobile phone make POCO F-1 (Ex.PW4/B), but also exhibited his invoice as Ex. PW4/C. He also identified the appellant as the person who was driving the motorcycle and had pointed the knife at him. The testimonies of his uncle (PW-3) and aunt (PW-5) namely, *Pawan Kumar* and *Dimple* are to the extent that a sum of Rs.35,000/- was borrowed from them. In his testimony, *Sajid Khan* (PW-11) stated that he had purchased mobile phone make POCO F-1 on 13.11.2018 for a sum of Rs.21,000/-. The bill for the said phone was in his name. He deposed that after keeping the mobile phone for about 15 days, he sold the same to the complainant, however, admitted that no separate sale document was executed. He identified the mobile phone as well as the invoice. *Ravi Chand Singh* (PW-12) deposed that on 29.04.2019, he was working as Unit Head at Diwan Mundhra Brothers Pvt. Ltd. and on that day, the complainant left the factory at about 7:40 pm. He proved the duty records of the complainant in the factory on that day as Ex.PW12/A and Ex.PW12/B.

4. Learned counsel for the appellant has primarily contended that in the absence of recovery of the alleged knife, the prosecution was bound to prove that the weapon used in the offence was a dangerous weapon. In this regard, reference is invited to the portions of cross-examination where the complainant had stated that he could not definitely state whether the sharp-



edged weapon was a knife or not. In this regard, learned counsel has relied on the decision dated 12.03.1983 passed by the Co-ordinate Bench of this Court in Balak Ram v. The State, **Crl. Appeal No.136/1981**, Samiuddin @ Chotu v. The State of NCT of Delhi reported as **ILR (2011) I Delhi 399** and Asif v. State (NCT of Delhi) reported as **2022 SCC OnLine Del 270**. While raising doubts with respect to the recovery of the mobile phone from the appellant, it was next contended that was raised that no judicial TIP of the mobile phone was conducted.

5. Learned APP for the State, on the other hand, submitted that the testimony of the complainant is credible and reliable. The complainant has not only stuck to his version on the role of the present appellant, but has also duly identified the appellant and recovered mobile phone in the trial. The appellant was produced before the learned MM for TIP which he refused on the ground that his photographs were taken in the police station. Further, the testimonies of Sajid Khan, Naveen Kumar and Dimple strengthen the fact that the appellant was found in possession of mobile phone and Rs.35,000/-, which was robbed.

6. Having gone through the testimonies of the complainant and the other aforementioned witnesses, the factum of complainant being robbed of his two mobiles and Rs.35,000/- on the day of the incident is not in doubt. During the cross-examination, the suggestion was given on the aspect that the invoice is not in the name of present complainant, however, considering the testimony of *Sajid Khan*, the contentions are meritless. The recovery of mobile phone of make POCO F-1 from the appellant stands duly proved. Mere suggestion that IMEI of the phone was not mentioned on the bill invoice (Ex.PW4/C) is also not of much help as the invoice refers to the



details of make of mobile phone as well as its model number. The only contention raised before this Court is whether Section 397 IPC in these facts is made out or not.

7. Section 397 IPC states that if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

8. Thus, to attract this Section, the offender has to use any deadly weapon at the time of commission of robbery. The question which arises for consideration is whether a knife or knife-like sharp object is a deadly weapon. A careful reading of the prevailing case law on this subjects reveals that there are two schools of thought on this subject. One line of decisions treat the question as to whether a knife is deadly weapon as a factual one, which would take into account its size, design or method of use. For example, in Balak Ram (Supra), it was held by a Co-ordinate Bench of this Court as under:-

“5...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.”

Relying on the decision in Balak Ram (Supra), another Co-ordinate Bench of this Court in Saimuddin @ Chotu (Supra) held that non-recovery of the weapon would bring the case out of the ambit of Section 397 IPC.

9. However, these decisions fail to take into account the Supreme Court



decision in Phool Kumar v Delhi Administration¹ wherein held that a knife is a deadly weapon. It held as follows:

“5.....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 PW16 “Phool Kumar had a knife in his hand. He was therefore carrying deadly weapon open to the view of the victim sufficient to frighten or terrorize them.”

10. A Co-ordinate Bench of this Court in Salim v. State (Delhi Admn.)², relying on the decision in Phool Kumar (Supra), adopted a different line of reasoning than Balak Ram (Supra) and held that the words ‘deadly weapon’ are of common use and do not require any interpretation. It further held that a knife maybe of different types and it was not appropriate to consider only a particular type or size of knife as a deadly weapon. The relevant extract is reproduced hereunder:-

“Under Section 397 I.P.C. an offender is guilty if he uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person. The words ‘deadly weapon’ are of common use and do not need any definition or interpretation. The words ‘deadly weapon’ have also been used in Section 148 Penal Code, 1860. Section 324 I.P.C. uses the words ‘dangerous weapons’ in its heading. It says whoever voluntarily causes hurt by any instrument for shooting, stabbing or cutting, or any instrument which used as a weapon of offence is likely to cause death, etc., is liable to punishment. In Lakshmiammal v. Samiappa (AIR 1968 Madras 310), the accused were armed with weapons like knife, hammer, crowbar and spades. It was held that these were undoubtedly deadly weapons. The Concise Oxford Dictionary defines the word ‘weapon’ as ‘material thing designed or used or usable as an instrument for inflicting bodily harm, e.g. gun, bomb, rifle, sword, spear, stick hammer, poker, horn, claw’. The word ‘deadly’, according to this Dictionary, means ‘causing fatal injury’. Also, according to this Dictionary, ‘knife’ means ‘blade with sharpened longitudinal edge fixed in handle either rigidlyor with hinge used as cutting instrument or as weapon’. As per Webster’s Third New International Dictionary a ‘knife’ is ‘a simple instrument used for cutting consisting of a sharp-edged usually steel blade provided with a handle’. Longman Dictionary of

¹ (1975) 1 SCC 797

² (1988) 14 DRJ 85



Contemporary English defines 'knife' as 'a blade fixed in a handle used for cutting as a tool or weapon'. These definitions in various dictionaries can be multiplied. We all understand what a knife means and to categorise it or to fix its size for it to be a deadly weapon may not be appropriate. A knife has also been described as a pocket knife, pen knife, table knife, kitchen knife, etc. It cannot be denied that a knife can be used as a weapon of offence. It can cut, it can pierce, it can be deadly. To say that a knife to be a deadly weapon should be of a particular size would perhaps be not a correct statement. In the present case, the evidence shows that the injury was caused to Singh Ram witness by a sharp-edged weapon and there is a statement that the accused Salim was carrying a knife and it was with that knife that the injury was caused to the witness. It would not be necessary for the witness to further state as to what was the size of the knife to attract the provisions of Section 397 I.P.C, as was contended by Mrs. Ahlawat. This contention that case under Section 397 I.P.C. is not made out fails. (emphasis supplied)"

11. In Ashfaq v State,³ where the accused persons were armed with country made pistol and knives. The conviction of the accused persons was upheld by the Supreme Court for the offence punishable under Section 397 IPC despite the fact that the knives were not recovered. It was held that:

"7. So far as the contention urged as to the applicability of Section 397 IPC and the alleged lack of proof of the necessary ingredients therefor is concerned, it proceeds, in our view, upon a misconception that unless the deadly weapon has been actually used to inflict any injury in the commission of the offence as such, the essential ingredient to attract the said provision could not be held to have been proved and substantiated. We are of the view that the said claim on behalf of the appellants proceeds upon too narrow a construction of the provision and meaning of the word "uses" found in Section 397 IPC...

8. Thus, what is essential to satisfy the word "uses" for the purposes of Section 397 IPC is the robbery being committed by an offender who was armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in the mind of the victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be."

³ (2004) 3 SCC 116



12. Similarly, in Seetal v. State (NCT of Delhi)⁴, a coordinate bench of this Court held as under:

“19. The resultant position that emerges is that Section 397 would be attracted even if the accused, who possessed a knife during the robbery, does not actually use it to threaten the victim. A victim who has noticed the knife in the hand of the accused would undoubtedly feel threatened. It is possible that the victim may not have noticed what type of knife it is and whether it is capable of causing actually harm. In other words, the actual size or length of the knife would not matter. In Phool Kumar, the Supreme Court noticed the observations of the Bombay High Court in Govind Dipaji More v. State AIR 1956 Bom 353 that if the knife "was used for the purpose of producing such an impression upon the mind of a person that he would be compelled to part with his property, that would amount to using the weapon within the meaning of Section 397.” Therefore, the fact that the knife was not recovered at all, or that the recovered weapon was not shown during the course of trial to the victim, would not matter as long as the eye witnesses to the crime are able to convincingly and consistently recount the fact that they were threatened by the sight of the accused wielding the knife into parting with their belongings.”

13. While taking note of divergent views, another Co-ordinate Bench of this Court in Sonu v. State (NCT of Delhi),⁵ relied on the decisions of the Supreme Court in Phool Kumar (supra) and Ashfaq (Supra) and held that a knife was a deadly weapon irrespective of its dimensions and it was not correct to categorize the knife as a certain type or size before considering it as a deadly weapon. The relevant portion is extracted hereunder :-

“27. It is apparent from the above that the issue with respect to the divergent views in regard to whether a knife ought to be categorized as a “deadly weapon” depending on its dimensions or other features, stands

⁴ (2014) 215 DLT 60

⁵ 2019 SCC OnLine Del 11183



resolved. The decisions rendered by this Court holding that the question whether a knife is a deadly weapon would depend on the facts of the case, are not good law as none of the decisions had referred to the observations made by the Supreme Court in Phool Kumar v. Delhi Administration (supra) and Ashfaq v. State (Govt. of NCT of Delhi) (supra). The said decisions had also not noticed the earlier decision of this Court in Salim v. State (Delhi Admn.) (supra).

28. In view of the observations made by the Supreme Court in Phool Kumar v. Delhi Administration (supra); and Ashfaq v. State (Govt. of NCT of Delhi) (supra) and decisions of this Court in Salim v. State (Delhi Admn.) (supra), Ikram Ansari v. State (supra) and Sanjay Kumar v. State (supra), it is not essential to categorize the knife in order to determine whether it is a deadly weapon. Thus, irrespective of whether a knife is a kitchen knife, or a butcher knife, it would qualify as a deadly weapon for the purposes of Section 397 of the IPC.”

14. Adopting a similar approach, this Court in Shehzad v State⁶, while dealing with a case of non-recovery of the knife, held that a knife is a sharp weapon and is inherently dangerous. it held as under: -

“34. The controversy stands narrowed down to determine the effect of non-recovery of the knife to sustain conviction under Section 397 IPC.

35. The complainant in his very first statement stated that the injuries were caused by a knife. The complainant was a policeman and cannot be mistaken as to what a knife is. A knife is an article that is typically and characteristically dangerous, the display of which instills fear in an ordinary person.”

15. In the present case, although there has not been any recovery of the weapon, which is immaterial Ashfaq (Supra) however the testimony of the complainant has been consistent as to the appellant, who was riding the bike, taking out a sharp-edged weapon i.e. Knife, from his pocket and pointing the same at the complainant and asking him to handover whatever he was carrying and threatening to kill him in case he didn't comply. The complainant also deposed that he got nervous and put his hand in his pocket but the pillion rider snatched the purse and took out Rs. 35,000/- cash from it. The sharp-edged weapon i.e. Knife, was not used to actually hurt the



complainant but that has never been a prerequisite for establishing the offence under Section 397 of IPC. Simple exhibition, brandishing or even holding it openly to generate fear or apprehension in the victim's mind is sufficient to secure a conviction under Section 397 IPC. Reference in this regard may be made to the decision of the 3-Judge Bench of the Supreme Court in Ram Ratan v. State of M.P.,⁷ wherein it was held as under:-

“17. From the position of law as enunciated by this Court and noted above, firstly, it is clear that the use of the weapon to constitute the offence under Section 397 IPC does not require that the ‘offender’ should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient. The other aspect is that if the charge of committing the offence is alleged against all the accused and only one among the ‘offenders’ had used the firearm or deadly weapon, only such of the ‘offender’ who has used the firearm or deadly weapon alone would be liable to be charged under Section 397 IPC.”

16. In the present case, the act of the appellant in brandishing a sharp-edged weapon, i.e. knife, accompanied by a threat of causing harm if the complainant did not part with his valuables, has generated nervousness in the mind of the complainant.

17. In view of the above, the appeal is dismissed. The conviction of the appellant under Section 397/392/411/34 IPC is upheld.

18. Let a copy of this judgment be communicated to the concerned Jail Superintendent as well as the learned Trial Court.

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 08, 2025/na

⁶ CrI.A. 1206/2015 decided on 11.12.2019

⁷ 2021 SCC OnLine SC 1279