Ram Ratan vs State Of M.P. on 17 December, 2021

Author: A.S. Bopanna

Bench: Hima Kohli, A.S. Bopanna, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1333 OF 2018

Ram Ratan .…Appellant(s)

Versus

State of Madhya Pradesh ….Respondent(s)

JUDGMENT

A.S. Bopanna,J.

1. The appellant is before this Court in this appeal assailing the judgment dated 23.02.2017 passed by the High Court of Madhya Pradesh in Criminal Appeal No.691/2013 titled Ram Ratan vs. State of Madhya Reason:

> Pradesh. Though the said appeal was disposed of by the High Court along with the companion appeal, the consideration herein is limited to the case against the appellant herein i.e. Ram Ratan who was arrayed as the first accused before the trial court.

2. The appeal before the High Court was filed by the appellant, being aggrieved by the judgment dated 31.07.2013 passed by the Special Judge (MPDVPK Act) 1981, Sheopur in Special Case No.13/2013 (old case No.26/2012). Through the said judgment, the trial court has convicted the appellant along with the other two accused namely, Chotu and Raju alias Rajendra under Section 392 and 397 of Indian Penal Code ("IPC" for short) read with Section 11/13 of Madhya Pradesh Dakaiti Aur Vyapharan Pravbhavit Kshetra Adhiniyam 1981 Act ("MPDVPK Act, 1981" for short)

and sentenced the appellant and other accused to rigorous imprisonment of 7 years with fine of Rs.1000/-, in default of the same, to undergo imprisonment for a further period of 4 months. The co-accused Raju alias Rajendra was further convicted and sentenced under Section 25 (1-B) (a) of Arms Act to one-year rigorous imprisonment with fine of Rs.500/-, in default of the same, to further undergo 2 months rigorous imprisonment. Though all the three accused had filed the respective appeals before the High Court against the said conviction and sentence, the co-accused Chotu died during the pendency of his appeal, due to which the said appeal abated. As noted above, though the appeal of Raju alias Rajendra was also considered by the High Court through the common judgment, the present appeal is filed by the appellant alone and as such the conviction and sentence of the appellant based on the contentions put-forth on his behalf only are adverted to in this judgment.

3. The brief facts are that one, Rajesh Meena lodged a complaint on 27.06.2012, alleging that on the intervening night of 26-27/6/2012, while he was sleeping in the hut constructed in the field to guard the crops, at about 02:30 a.m, the appellant along with Raju alias Rajendra and Chotu came to him and woke him up. The said Raju alias Rajendra was having a gun with him and on pointing the same towards the chest of the complainant, demanded to part with the money. The complainant informed that he did not have any money, due to which the key of his motorcycle was snatched and the said Raju alias Rajendra also took out the mobile phone from the pocket of his shirt. Thereafter, all the three accused persons forced the complainant to sit on the motorcycle along with them. When they reached the village Nanawat, the motorcycle got punctured and therefore all the persons compelled the complainant to get down from the motorcycle and the motorcycle was taken away. By the said time since it was dawn, his uncle named Tulsiram was passing by to milk the buffaloes. The complainant narrated the incident, following which, steps were taken to lodge the complaint. The police having taken action, recovered the motorcycle as also the mobile phone and apprehended the accused. The police on completing the investigation filed the chargesheet against the appellant for the offences under Sections 392/397 of IPC and under Sections 11/13 of MPDVPK Act, 1981.

4. The trial court framed charges through the order dated 26.02.2013 under Sections 392/397 of IPC and Sections 11/13 of MPDVPK Act, 1981 against the appellant and Chotu, while an additional charge under Section 25 (1-B) (a)/27 of the Arms Act was framed against the other co-accused namely, Raju alias Rajendra. The appellant and his co-accused having pleaded not guilty, stood trial in the matter.

5. The trial court having noted the evidence tendered through PW1 to PW12, the documents which were marked and the material objects identified, arrived at its ultimate conclusion. While doing so, the trial court has referred in detail to the evidence tendered by the complainant Rajesh (PW1) who narrated the entire incident from the time he was woken up in the midnight and stated about having identified the accused as there was a light burning in the hut. Tulsiram (PW2), uncle of the complainant and Mukesh (PW3), brother of the complainant corroborated the version stated by the complainant. Dhanpal (PW5), father of the complainant had also stated with regard to the sequence in which he had come to know about the incident in the same sequence as had been stated by PW3. Mahavir (PW4), Ramjilal (PW6) and Dhanjeet (PW7) are the witnesses to the seizure of motorcycle and the gun respectively. However, PW6 and PW7 had turned hostile. Chandrabhan Singh (PW8) is

the witness who examined the 12 bore gun. A.L. Azad (PW11) is the police officer who arrested the accused and the other witnesses are the procedural official witnesses.

6. The trial court on analysing the said evidence returned the finding that the appellant and his co accused had indulged in the incident complained of and therefore held the charge to be proved. The conviction and the sentence were accordingly handed down. The appellant and his co accused while assailing the judgment of the trial court, apart from contending that the case has been falsely alleged against them, had also contended that the charge under Section 397 of IPC cannot be sustained. It was their case that the firearm even if was proved to be carried, had not been used and as such the charge under Section 397 IPC would not lie. The High Court having adverted to the matter in detail has reappreciated the evidence with regard to the incident and accordingly upheld the judgment passed by the trial court convicting the appellant and sentencing him in the manner as has been done. The appellant therefore claiming to be aggrieved by the judgment passed by the trial court and upheld by the High Court, is assailing the same in this appeal.

7. Heard Mr. Shishir Kumar Saxena, learned counsel for the appellant, Mr. Sunny Choudhary, learned counsel for the respondent and perused the appeal papers.

8. The learned counsel for the appellant while assailing the judgments would at the outset contend that the complaint lodged by PW1 and the evidence tendered by him are not sufficient to indicate that the appellant is guilty of the charge alleged against him. It is contended that the appellant has been implicated due to political rivalry, though no such incident as alleged had taken place. In addition to the judgments cited before the High Court and the contentions put forth therein, learned counsel has also relied on the decision of this Court dated 29.10.2021 in Crl. Appeal No.903 of 2021 titled Ganesan vs. State Rep. by Station House Officer and connected appeal i.e Crl. Appeal No.904 of 2021. With reference to the said judgment, it is contended that firstly, the charge under Section 397 of the IPC would not be sustainable since the gun has not been used and the conviction can be sustained only if the 'offender' uses any deadly weapon while committing robbery. It is contended that even otherwise, the charge under Section 397 IPC would not be sustainable against the appellant herein since there is no serious allegation or proof of the appellant having used any weapon much less deadly weapon even if the incident of robbery which occurred is held to be proved against the appellant. In that view, it is contended that the appellant is liable to be acquitted or in the alternative, even if it is held that the charge under Section 392 IPC is proved, the appellant has undergone sentence of nearly 4 years which is sufficient punishment, which aspect be considered by this Court.

9. The learned counsel for the State would refer to the evidence tendered before the trial court in detail and has pointed out that the trial court as also the High Court has taken note of the said evidence. The charge having been proved, both the Courts have arrived at the conclusion that the contention as put forth by the appellant or his co accused was not acceptable. It is contended that the motorcycle and the mobile phone which had been stolen by the accused had been recovered and the gun which was used was also seized and examined by the expert. In that circumstance, it is contended that when the expert has opined that the gun was in working condition, the actual use of the firearm by firing from it is not required but the exposure of the weapon so as to create fear in the

mind of the victim is sufficient to prove the charge under Section 397 IPC. It is, therefore, contended that the judgment passed by the trial court and confirmed by the High Court does not call for interference.

10. From the evidence as noted by the trial court and the High Court, it is seen at the outset that the complainant Rajesh (PW-1) has spoken in detail with regard to the incident which occurred on the intervening night of 26-27/6/2012. The manner in which he was woken up by the accused and the demand for money that was made by brandishing the firearm has been narrated in detail. The identification of the persons which was possible due to the light which was on, is also stated. Though lengthy cross-examination has been made, in so far as the incident relating to which PW1 had given the detailed account, has remained intact and has not been discredited. Insofar as the contention put-forth by the learned counsel for the appellant that he has been implicated due to political reasons, there is no material on record. It is no doubt true that as pointed out from the cross-examination contained in paras 27, 28 and 29 of the cross-examination, PW1 has stated that his cousin Ramcharan is a political leader. Further, in the same paragraph, though he has stated that all the members of his family advised him that he should file a report against the accused persons and that he had filed the report after getting the said suggestion, it does not indicate that there was any incident of political rivalry due to which the story was created and the complaint was filed. It is only an attempt by the learned counsel to try and connect the unconnected matters. The cousin being a political leader may be a fact but with regard to the complaint, all that PW1 has mentioned is the manner in which the complaint was lodged relating to the incident which had taken place after the suggestion given by the family members that the law should be set in motion. The same does not take away the gravity of the situation or alter the truth of the matter.

11. Having taken note of the manner in which the trial court has referred to the evidence and the same has been reappreciated by the High Court, we do not deem it necessary to once again go into the evidence of the other witnesses, having noted the detailed account given by PW1 which would be of substance in this proceeding to answer the relevant contention. Therefore, the evidence is sufficient and convincing to arrive at the conclusion that the incident as narrated by PW1 had occurred and the appellant and his co-accused had committed robbery.

12. Though, this remains the position, the question which needs consideration is with regard to the contention that the firearm had not been put to use and therefore the charge under Section 397 IPC is not sustainable and also the further contention that the charge under Section 397 even otherwise would not be sustainable against the appellant since there is no material or evidence to indicate that the appellant had used the firearm, even if it is held that the incident had occurred as alleged.

13. For better understanding, it would be appropriate to take note of the provisions contained in Sections 392 and 397 of IPC which read as hereunder:

> “392. Punishment for robbery.—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

> 397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—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." (Emphasis supplied)

14. On the said aspect, it would be appropriate to take note of the decision in the case of Shri Phool Kumar vs. Delhi Administration (1975) 1 SCC 797 wherein it is observed as hereunder: —"5. Section 392 of the Penal Code provides:

> Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. The sentence of imprisonment to be awarded under Section 392 cannot be less than seven years if at the time of committing robbery the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person: vide Section
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> 397. A difficulty arose in several High Courts as to the meaning of the word "uses" in Section 397. The term 'offender' in that section, as rightly held by several High Courts, is confined to the offender who uses any deadly weapon. The use of a deadly weapon by one offender at the time of committing robbery cannot attract Section 397 for the imposition of the minimum punishment on another offender who had not used any deadly weapon. In that view of the matter use of the gun by one of the culprits whether he was accused Ram Kumar or somebody else, (surely one was there who had fired three shots) could not be and has not been the basis of sentencing the appellant with the aid of Section 397. So far as he is concerned, he is said to be armed with a knife which is also a deadly weapon.
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> 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. Any other overt act, such as, brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offender within the ambit of Section 397 of the Penal Code." (Emphasis supplied)

15. Further, in Dilawar Singh vs. State of Delhi (2007) 12 SCC 641, it is held as hereunder: —"19. The essential ingredients of Section 397 IPC are as follows:

> 1. the accused committed robbery.
>
> 2. while committing robbery or dacoity (i) the accused used deadly weapon
>
> (ii) to cause grievous hurt to any person (iii) attempted to cause death or grievous hurt to any person.

> 3. “Offender” refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 IPC is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But the other accused are not vicariously liable under that section for acts of the co□accused.

21. In the instant case admittedly no injury has been inflicted. The use of weapon by offender for creating terror in mind of victim is sufficient. It need not be further shown to have been actually used for cutting, stabbing or shooting, as the case may be.” (Emphasis supplied)

16. In the decision of Ganesan (supra) referred to by the learned counsel for the appellant, the above noted decisions of this Court has been referred and this Court has held as hereunder: □“12.7. Thus, as per the law laid down by this Court in the aforesaid two decisions the term ‘offender’ under Section 397 IPC is confined to the ‘offender’ who uses any deadly weapon and use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who has not used any deadly weapon. Even there is distinction and difference between Section 397 and Section 398 IPC. The word used in Section 397 IPC is ‘uses’ any deadly weapon and the word used in Section 398 IPC is ‘offender is armed with any deadly weapon’. Therefore, for the purpose of attracting Section 397 IPC the ‘offender’ who ‘uses’ any deadly weapon Section 397 IPC shall be attracted.

In light of the above observations and the law laid down by this Court in the aforesaid two decisions the case on behalf of the accused in the present appeals is required to be considered. Even as per the case of the prosecution and even considering the evidence on record it can be seen that the present accused A1 and A3 are not alleged to have used any weapon. The allegation of use of any weapon was against Benny and Prabhakaran. Therefore, in absence of any allegations of use of any deadly weapon by Section 397 IPC shall not be attracted and to that extent the Learned Counsel appearing on behalf of the appellants□accused are right in submitting that they ought not to have been convicted for the offence punishable under Section 397 IPC.”

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.

18. Though the above would be the effect and scope of Section 397 IPC as a standalone provision, the application of the same will arise in the totality of the allegation and the consequent charge that will be framed and the accused would be tried for such charge. In such circumstance, in the teeth of the offence under Section 397 IPC being applicable to the offender alone, the vicariability of the

same will also have to be noted if the charge against the accused under Sections 34, 149 IPC and such other provisions of law, which may become relevant, is also invoked along with Section 397 IPC. In such event, it will have to be looked at differently in the totality of the facts, evidence and circumstances involved in that case and the provisions invoked in that particular case to frame a charge against the accused. In the instant case, the charge under Section 34 IPC was not framed against the appellant nor was such an allegation raised and proved against the appellant. Hence, benefit of the interpretation raised on the scope of Section 397 IPC to hold the aggressor alone as being guilty, will be available to the appellant if there is no specific allegation against him.

19. Keeping this aspect in view, it is necessary to examine the manner in which PW1 has alleged against the appellant so as to consider whether the appellant is also an 'offender' who used the firearm so as to be charged under both, Section 392 and 397 IPC even if he is complicit to the incident, more particularly when Section 34 IPC has not been invoked in the instant case.

20. Apart from the narration of the incident contained in the FIR, the evidence tendered by the victim Rajesh (PW1) about the incident is as hereunder: □"02. On the same night, at the aforesaid time of 2:30 AM, all these three accused persons who are present before me in this Court by names Raju, Chotu and Gujar approached me at which time I was sitting on a temporary watch tower put by me near to the tube well for guarding my cultivation field and a bulb was glowing there. In the illumination of said bulb, I could see and identify them. At that relevant time, I was sleeping there. Among them Raju Gujar woke up me from my sleep and pointed the nozzle of the country rifle on my chest and demanded with me to handover whatever money I had in my possession at that relevant moment. I informed Raju Gujar that I do not have any money with me. Still, he continued to keep the said weapon on my chest itself and again asked me to hand over the keys of my motor cycle. At that relevant time, I was having my Splendour Honda Motor Cycle. On being scared by the fear of said Raju as well as apprehending danger from his arm, I politely handed over the key of the Motorcycle to said Raju Gujar by putting those keys in his hand.

03. At that time in my pocket, my mobile was kept. It was a Spice□42 Model branded company phone. By again putting the firearm □Rifle on my chest he took my mobile by himself by inserting his hands in my pocket and taking out the mobile set from the pocket out." (Emphasis supplied)

21. From the extracted portion and more particularly the emphasized portion of the evidence tendered by PW1, his account is specific to the fact that it was Raju Gujar alias Rajendra who had pointed out the firearm to his chest and indulged in the act of robbing him of his possession namely, the mobile. It is no doubt true that in the further portion of the evidence tendered by PW1 he had referred to all the three accused having forced him to sit on the motorcycle and had taken him away. It is further stated that after they reached Nanawat village and the tyre of the motorcycle got punctured, he was made to get down from the motorcycle. At this point, it has been stated that the appellant pointed his 'gun rifle' at him and made him to step down from the motorcycle and by threatening him, had taken him in the direction of Amalada village. Though, he has deposed to that extent, the fact of the appellant having used another country made rifle other than the one which was being used by Raju alias Rajendra has not been established. It is no doubt true, that the appellant had participated in the offence of committing robbery since ultimately the motorcycle was

hidden at a place which was known to the appellant and the property seizure memo indicates that the motorcycle was recovered at the instance of the appellant that certainly constitutes an offender under Section 392 IPC.

22. Further, the relevant contents in the FIR reads as hereunder: □"At about 2:30 in the morning the accused Raju, Co□accused Chotu and Ramratan came to him. The Raju was having a gun with him and forced him to wake up and demanded money when the complainant inform that he does not have any money, therefore the Raju pointed out his gun towards the chest of the complainant and the complainant in its turn handed over the key of the motorcycle the Raju has also took out the mobile from the pocket of the shirt of the complainant, thereafter all three accused person who is the complainant to sit on the motorcycle along with them, when they reached near the village Nanawat the motorcycle got punctured and therefore all the three person compelled to complainant to get down from the motorcycle and thereafter they took his motorcycle and went away toward Aamlda and Morkhudana, then I reached at Aamlda, and all happening narrated to his maternal uncle Tulsiram, and then his father also came there, thereafter I searched the motorcycle but it is not searched out therefore came to local police station for lodging the report, and he wants to take necessary action." (Emphasis supplied)

23. Therefore, if the contents of the FIR and the evidence tendered by PW1 are taken note of, it would stand established that though all the three accused had taken part in the offence of committing robbery, only one of the accused namely Raju alias Rajendra had used the firearm. The said firearm was seized from the possession of Raju alias Rajendra and from the evidence of A.L. Azad (PW11) it is clear that the accused Raju alias Rajendra had disclosed that the firearm was kept in his house and it was recovered in the presence of the witnesses. In addition, Pritam Singh (PW9) has stated that permission had been sought for prosecuting Raju alias Rajendra with regard to seizure of the 12□bore gun and permission had been granted. Chandrabhan Singh (PW8) in his evidence had stated that he had examined the gun and the same was capable of being fired. His evidence would disclose that only one gun had been seized and examined by him. Further, based on the said evidence it is Raju alias Rajendra alone who has been convicted under the provisions of the Arms Act.

24. If that be the position, it would stand established and proved beyond doubt that only one of the accused namely Raju alias Rajendra had used the firearm and there was neither any allegation apart from a stray sentence nor was such charge of having used firearm proved against the appellant. In that light, if the position of law enunciated by this Court as noticed above is kept in view, the charge under Section 397 IPC can be fastened on the 'offender' who actually uses the firearm. In the instant case, since the facts and the evidence does not indicate that the appellant could be construed as an 'offender' who used the firearm, the charge alleged against him and held to be proved by the trial Court as also the High Court under Section 397 IPC and Section 11/13 of MPDVPK Act, 1981 cannot be sustained. However, the appellant having participated in the offence of committing robbery which stands established with sufficient evidence, the conviction handed down by the trial court and upheld by the High Court under Section 392 IPC is sustainable to that extent.

25. In view of the above conclusion, the sentence imposed on the appellant needs consideration. Since, we have arrived at the conclusion that the charge under Section 397 and Section 11/13 of MPDVPK, Act, 1981 are not proved against the appellant, the sentence of 7 years rigorous imprisonment imposed by the trial Court and upheld by the High Court is liable to be set aside, which is accordingly done. Insofar as, the offence proved under Section 392 IPC, the same provides for the punishment of rigorous imprisonment for a term which may extend to 10 years and also to fine. As noted, the motorcycle and the mobile which was stolen have been recovered. However, the appellant having indulged in the offence of robbery, in our opinion, imprisonment of around 3 years would be sufficient punishment. In instant case, it is noticed that the appellant has undergone imprisonment for a period of 3 years 5 months and 1 day as on 10.11.2021, as per the statement filed before this Court. Hence, if the sentence undergone by the appellant is treated as the punishment, it would meet the ends of justice.

26. In the result, we pass the following order: □

i) The judgment dated 19.10.2012 passed by the Special Judge, (MPDVPK Act) in Special Case No.13/2013 (Old Case No.26/2012) insofar it has convicted the appellant under Section 397 IPC read with Sections 11/13 of MPDVPK Act, 1981 and upheld by the High Court of Madhya Pradesh in Criminal Appeal No.691/2013 are set aside to that extent.

ii) The conviction of the appellant under Section 392 IPC by the trial court and upheld by the High Court, is sustained.

iii) The sentence imposed on the appellant is modified to that of the period of imprisonment undergone by the him till this day. The fine imposed and default sentence thereof is retained.

(iv) The appellant is ordered to be set at liberty forthwith if the fine is paid and he is not required to be detained in any other case.

(v) The appeal is allowed in part to the extent indicated above.

(vi) All pending applications, if any, shall stand disposed of.

.....CJI.

(N.V. RAMANA) .....J. (A.S. BOPANNA) .....J. (HIMA KOHLI) New Delhi, December 17, 2021