Supreme Court of India
Phool Kumar vs Delhi Administration on 13 March, 1975
Equivalent citations: 1975 AIR 905, 1975 SCR (3) 917
Author: N Untwalia
Bench: Untwalia, N.L.

PETITIONER:
PHOOL KUMAR

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT13/03/1975

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
ALAGIRISWAMI, A.

CITATION:
1975 AIR 905 1975 SCR (3) 917
1975 SCC (1) 797

ACT:
Penal Code--Ss. 397 and 398--Scope of--Meaning of the words 'uses' in s. 397 and 'is armed with any deadly weapon' in s. 398.

HEADNOTE:
The appellant, alongwith two others, was alleged to have raided a petrol pump sometime after midnight and decamped with the cash. At the time of the raid he was armed with a knife to frighten and terrorise the attendants. One of his associates fired three shots. His associates were acquitted but the appellant was convicted of an offence under ss. 397 read with 342 I.P.C. and sentenced to undergo imprisonment for seven years. which was the minimum sentence. The High Court dismissed his appeal.
On further appeal it was contended that the appellant ought to have 'been convicted under s. 392 simpliciter in which case he would have been awarded a lesser sentence.
Dismissing the appeal,
HELD : (1) When an offence of robbery is committed by an offender, being armed with a deadly weapon, which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used the deadly weapon in the commission of the robbery. Any

other overt act, such as. brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offence within the ambit of s. 397. On the other hand if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not nut to any fruitful use because it would have been, of use when the offender succeeded in committing the robbery. [920 F-G; C]

(2) The term 'offender' in s. 397 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 s. 397 for the imposition 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 one of the accused or somebody else could not be and has not been the basis of sentencing the appellant with the aid of s. 397. [920 A]

(3) It appears unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of seven years under s. 398 if he is merely armed with any deadly weapon, while an offender so armed will not incur the liability of the minimum punishment under s. 397 if he succeeds in committing the robbery. But the anomaly created by the use of word 'uses' in s. 397 and 'is armed' in s. 398 will disappear if the two terms are given identical meaning. [920 E]

Govind Dipali More v. State A.I.R. 1956 Bombay, 353, approved. Chanda Nath v. Emperor A.I.R. 1932 Oudh, 103; Nagar Singh v. Emperor A.I.R. 1933 Lahore, 35 and Inder Singh v. Emperor A.I.R. 1934 Lahore 522, referred to.

The view taken in State v. Chand Singh and another I.L.R. [19701 2 Punjab & Haryana, 108, is incorrect.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Crl. Appeal No. 62 of 1971.

Appeal by special leave from the judgment and order dated the 23rd October, 1969 of the Delhi High Court in Criminal Appeal No. 87 of 1969.

R. Bana, for the appellant.

V. C. Mahajan and M. N. Shroff, for the respondent. The Judgment of the Court was delivered by UNTWALIA, J.-In the night between the 8th and 9th September, 1966, to be precise, at about 1.45 A.M. on the 9th September, a daring robbery was committed at a petrol pump of the Gasolene Service Station on the Mall, Delhi. The robbers who are said to be four in number broke into the office of the Service Station and decamped with Rs. 585/- in cash after locking in the two attendants.

After investi- gation three persons were put on trial in the Sessions Court. One of the culprits, named Sube Singh, absconded. The names of the three are (1) Phool Kumar, (2) Ram Kumar and (3) Dharampal. The latter two were acquitted by the learned Assistant Sessions Judge, Delhi for want of sufficient evidence against them. The only person convicted at the said trial was appellant Phool Kumar. He has been convicted under s. 397 of the Penal Code and sentenced to undergo rigorous imprisonment for 7 years. A concurrent sentence of 6 months was also imposed for his conviction under section 342 of the Penal Code. The Delhi High Court maintained his convictions and sentences and dismissed his appeal. He has approached this Court by special leave. Mr. R. Bana, learned counsel for the appellant took- pains to submit as many as 8 points in support of this appeal. The first seven points were concerned with the assailing of concurrent findings of fact recorded by the two Courts below and do not merit any specific mention or detailed discussion. The eighth point was a question of law. After briefly referring to the facts found against the appellant to justify his conviction for robbery the point of law will be discussed hereinafter in this judgment. The two eye witnesses to the occurrence are P.W. 13 Sham Lal and P.W. 16 Ram Sewan. At the time of the occurrence both were discharging their respective duties as the employees of the Service Station. P.W. 16 was working as a Salesman and P.W. 13 was employed as a helper. The prosecution story as broadly told by them is that while they were sitting outside the office of the petrol pump two persons who were identified as appellant Phool Kumar and Ram Kumar (since acquitted) came there. Phool Kumar was armed with a knife while Ram Kumar had a small gun in his hand. The former asked P.W. 13 to hand over the keys. On being told that the keys were with P.W. 16 the appellant asked him to hand over the keys. To terrorize P.Ws. 13 and 16 Ram Kumar fired three shots in the air one of which struck the window panes of the office while the other two hit the ground. The appellant and his associates thereafter opened the door of the office, ransacked the drawers of the table and decamped with the money lying in the cash box, after pushing P.Ws. 13 and 16 in the office and bolting its door from outside. It is not necessary' for us to mention the details of the information given to the police and the facts leading to the apprehending of the three culprits after getting the clue from the absconding accused Sube Singh. Suffice it to say that the evidence of identification in court against the culprits given by P.W's. 13 and 16 was not found to be of a kind which could by itself form the basis of the conviction of the accused put on trial. One of the two eye witnesses had not identified the appellant at all at any of the identification parades and one of them indentified him tit the 4th or the 5th round. The clinching evidence against the appellant was his thumb impression on the kunda of the cash box. It was conclusively proved to be his on the opinion of the expert. The report of the expert was used as evidence by the prosecution without examining him in court. Neither the court thought it fit nor the prosecution or the accused filed any application to summon and examine the expert as to the subject matter of his report. The court was bound to summon the expert if the accused would have filed any such application for his examination. That not having been done the grievance of the appellant apropos the report of the expert being used without his examination in court made in the High Court and repeated in this Court had no substance. The evidence of P.Ws 13 and 16 against the appellant in Court found ample and clinching corroboration from the fact of his thumb impression occurring on the kunda of the cash box. Soon after the occurrence during the course of the investigation photographs of the impressions on the kunda had been taken long before the appellant was apprehended for the participation in the crime. There was absolutely no scope, for any kind of manipulation in the matter as was argued on behalf of the appellant in desperation. We are, therefore, clearly of the opinion that the participation of the

appellant in the commission of the robbery at the petrol pump was proved beyond any reasonable doubt; so also the charge under section 342 of the Penal Code. The last submission on behalf of the appellant was that sentencing him to undergo rigorous imprisonment for 7 years under section 397 of tit-- Penal Code was illegal and he ought to have been convicted under section 392 simpliciter which would have enabled the court on the facts of this case to pass a lesser sentence of imprisonment. Reliance was placed upon the majority opinion of the full Bench of the High Court of Punjab & Haryana in the case of State v. Chand Singh another(1). The argument was attractive at the first sight but did not stand our careful scrutiny.

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 com-

mitted on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years-91"

The Sentence of imprisonment to be awarded under section 392 cannot be less than 7 years if at the time of committing robbery the offender uses any deadly weapon or causes grievous hurt to any per-

(1) I.L.R. [1970] 2 Punjab & Haryana, 108.

son or attempts to cause death or grievous hurt to any person : vide section 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 some body 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. To be more precise from the evidence of P.W. 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. Section 398 uses the expression "armed with any deadly weapon" and the minimum punishment provided therein is also 7 years if at the time of attempting to commit robbery the offender is armed with any deadly weapon. This has created an anomaly. It is unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of 7 years under section 398 if he is merely armed with any deadly weapon, while an offender so armed will not incur the liability of the minimum punishment under section 397 if he succeeded in committing the robbery. But then, what was the purport behind the use of the different words by the Legislature in the two sections, viz., "uses" in section 397 and "is armed" in section 398. In our judgment the anomaly is resolved if the two terms are given the

identical meaning There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so, as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand, if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not put to any fruitful use because it would have been of use only when the offender succeeded in committing the robbery. If the deadly weapon is actually used by the offender in the commission of the robbery such as in causing grievous hurt, death or the like then it is clearly used. In the cases of Chandra Nath v. Emperor(1); Nagar Singh v. Emperor(2) and Inder Singh v.

(1) A.I.R. 1932, Oudh, 103.

(2) A.I.R. 1933, Lahore. 35.

Emperor(1) some overt act such as brandishing the weapon against another person in order to over-awe him or displaying the deadly weapon to frighten his victim have been held to attract the provisions of section 397 of the Penal Code. J. C. Shah and Vyas, JJ. of the Bombay High Court have said in the case of Govind Dipaji More v. State(2) 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". In that case also the evidence against the appellant was that he carried a knife in his hand when he went to the shop of the victim. In our opinion this is the correct view of the law and the restricted meaning given to the word 'uses' in the case of Chand Singh(3) is not correct. For the reasons stated above we see no justification to interfere with the convictions of and the sentences imposed upon the appellant under any of the counts. The appeal accordingly fails and is dismissed.

P.B.R. Appeal dismissed.

(1) A.I.R. 1934, Lahore, 522.

(2) A.I.R. 1956, Bombay, 353.

(3) I. L. R. (1970) 2 Punjab & Haryana 108.