

(2010) 09 DEL CK 0264**Delhi High Court****Case No:** Criminal A. No. 210 of 2001

Ramesh Kumar @ Sonu

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision: Sept. 9, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 374(2), 428
- Penal Code, 1860 (IPC) - Section 392, 394, 397

Hon'ble Judges: S.L. Bhayana, J**Bench:** Single Bench**Advocate:** Sumit Verma, for the Appellant; Navin Sharma, Counsel, for the Respondent**Final Decision:** Dismissed**Judgement**

S.L. Bhayana, J.

This appeal has been filed by the appellant Ramesh Kumar @ Sonu u/s 374(2) of Cr.P.C against the judgment of the Trial Court dated 08.7.2000 and the order of sentence dated 12.7.2000 whereby the appellant had been convicted and sentenced to undergo 7 years RI u/s 392 of IPC with a fine of Rs. 3000/- and in default, to undergo further RI of one year. The appellant was further awarded RI of 7 years u/s 394 of IPC and fine of Rs. 3000/-, in default to further undergo RI of one year. The appellant was further awarded RI of 7 years u/s 397 of IPC. All the sentences were ordered to run concurrently and the convict was entitled for the benefit of Section 428 Cr.P.C.

2. I have heard the Learned Counsel for the appellant. It is submitted by Learned Counsel for the appellant that the knife, which was used at the time of commission of the offence is not recovered and, therefore, Section 397 IPC is not attracted. The appellant is, therefore, liable to be convicted u/s 392/394 IPC only. Learned Counsel for the appellant further submits that the appellant has already undergone the sentence for 4 years in jail and that he may be released for the sentence already

undergone by him in jail. It is further submitted that the appellant is a patient of HIV positive and, thus, a lenient view may be taken for him in this case.

3. Learned Counsel for the appellant, in support of his case, has relied upon the judgment of this Court titled [Fateh Singh Vs. State,](#)

4. On the other hand, Learned Counsel for the State has submitted that PW-6, Pramod Kumar Sharma in his statement has categorically stated that the accused Ramesh by showing a knife threatened the complainant/PW-6 to hand over to him whatever belongings he had, and when the complainant refused to do so, he gave a knife blow on the left thigh of the complainant and both the accused persons removed cash of Rs. 2100/- and a HMT Watch by force from him. Learned Counsel for the State further submits that the victim/complainant was stabbed with a knife and, therefore, Section 397 IPC is attracted. He has relied upon a judgment of this Court titled Vinod Kumar and Ors. v. State reported at 2007(2) JCC 1011.

5. Arguments heard.

6. I have gone through the statement of the complainant/PW-6, Pramod Kumar Sharma wherein he has deposed that at about 8.30 p.m he boarded in a TSR from the bus stop Kashmere Gate. In the TSR besides him, 3-4 persons were already in the TSR. When the TSR went towards Usmanpur, accused Ramesh having a knife in his hand told the driver to stop the TSR and also told the complainant by showing a knife that whatever he had, should be handed over to him and if he failed to give the same, he would stab him with a knife. On that, the complainant told that he would not give him anything as he had brought his salary on that day and he did not give them the money. Thereafter, co-accused Anil told the accused Ramesh to give a knife blow to the complainant. On that, the accused Ramesh gave a knife blow on the left thigh of the complainant and both the accused removed cash of Rs. 2100/- and also a HMT wrist watch.

7. I have gone through the impugned judgment dated 08.7.2000 and the order of sentence dated 12.7.2000 passed by the learned Trial Court. I have also gone through the testimony of the witnesses. All the PWs have supported the case of the prosecution.

8. I do not agree with the contention of Learned Counsel for the appellant that Section 397 IPC is not attracted in the present case as the knife, which was used at the time of commission of the offence has not yet been recovered. PW-6, Pramod Kumar Sharma has stated that he was robbed at the point of knife and when he refused to part with his belongings, he was stabbed by the accused. It is established that knife was used in commission of crime. It does not matter whether the knife was recovered or not from the accused. This view finds support from the law laid down by this Court in the case of Vinod Kumar and Ors. (supra).

9. Keeping in view the aforesaid legal position and the fact that the complainant was robbed at the point of knife and stabbed, no leniency can be shown to the appellant.

10. I do not find any merit in the appeal and the same is, therefore, liable to be dismissed.

11. Dismissed.

12. The appellant is directed to surrender before the Jail authorities immediately. A copy of this judgment be sent to trial Court and Jail authorities for compliance.