

BOMBAY HIGH COURT

Govind Dipaji

Vs.

State. (Bombay)

Criminal Appeal No. 1149 of 1955

(Shah and Vyas, JJ.)

15.12.1955

JUDGMENT

Vyas, J.

1. The appellant Govind Dipaji More has been convicted by the learned Additional Sessions Judge, Greater Bombay, of an offence under Section 392 read with Section 397 of the Penal Code and he has been sentenced to suffer seven years' rigorous imprisonment. He has appealed against this order of conviction and sentence.

2. The prosecution story is very brief indeed. Umedmal, who is a prosecution witness in this case, is a servant in the shop known by the name of Lakhmichand Dhanrupji and Company. Witness Mangilal is a partner, in this Shop. The shop carries on business in utensils and gold and silver ornaments. It is situated at Chunabhatti, Swadeshi Mill Road, Kurla. The incident, which is the subject-matter of the prosecution, occurred in the morning of 22-5-1955, at about 8 O'clock Umedmal and Mangilal were present in the shop. They were counting small cash. The cash box was lying nearby. At that time the appellant entered the shop. He had an open knife in his hand. At the point of the knife he demanded a sum of Rs. 40/- from Umedmal. Umedmal said that he did not possess that much amount. Thereupon the appellant with one hand of his, showed the knife to Umedmal and with his other hand he picked up a currency note of Rs. 5/- from the Galla. He administered a threat to Umedmal and Mangilal that if they dared complain about the incident to anybody they would be done away with. As a result of this threat Umedmal and Mangilal became nervous and they closed the door of the shop after the appellant left. Shortly thereafter they noticed that Sub-Inspector Sane of the Kurla Police Station was going along the road. Upon seeing the Sub-Inspector the courage of Umedmal, which had temporarily deserted Umedmal returned to Umedmal. He opened the door of the shop and complained to the Sub-Inspector. Thereupon the Sub-Inspector took Umedmal to the room of the appellant. It may be noted that the appellant was previously known to Umedmal. There was, therefore, no difficulty in

the Police Sub-Inspector taking Umedmal directly to the room of the appellant. The door of the appellant's room was closed. But it was locked from outside. The Sub-Inspector called the mother of the appellant and got the room opened. The appellant was found lying absolutely drunk inside the room.

The Sub-Inspector made a panchnama and took the appellant to the Sion Hospital. These are the facts of the prosecution case upon which the appellant was prosecuted under Section 392 read with Section 397 of the Penal Code for committing an offence of robbery and using a deadly weapon at the time of committing it.

3. The defence of the appellant is that he did not commit any offence. He admits that he had gone to the shop of Lakhmichand Dhanrupji and Co. in the morning of 22-5-1955, but he says he had gone there for redeeming two pots which he had previously pledged with the shop. According to the appellant's contention Umedmal refused to return the pots to him and thereupon he left the shop.

He denies having gone to the shop with a knife and he denied having shown a knife to Umedmal and having taken away a currency note of Rs. 5/- from the Galla of the shop.

4. As the conviction of the appellant rests upon the acceptance by the learned Additional Sessions Judge of the majority verdict of the Jury holding the appellant guilty under Section 392 read with Section 397 of the Penal Code, it would not be open to us to go through the evidence ourselves and determine the guilt or otherwise of the appellant, unless the appellant's learned Advocate is able to satisfy us that the learned Judge's charge to the Jury suffers from misdirections or non-directions amounting to misdirection.

In this connection the learned Advocate Mr. Sukhtankar appearing for the appellant has frankly conceded before us that he is unable to find any observations in the learned Judge's charge to the Jury which he can characterise as amounting to misdirection's or non-directions constituting misdirections. That being so, it would not be open to us to examine the evidence for ourselves for the purpose of appreciating it.

5. Mr. Sukhtankar, however, has contended before us that all that the evidence of the witnesses Umedmal and Mangilal would show was that the appellant had carried a knife in his hand when he went to the shop of Lakhmichand Dhanrupji and Co. in the morning of 22-5-1955. Mr. Sukhtankar says that merely carrying a knife and merely showing it to Umedmal would not amount to a 'use' of the knife within the meaning of Section 397 of the Penal Code. Mr. Sukhtankar has invited our attention to the language of Section 398 of the Penal Code in which we find the words "armed with deadly weapon" and to the language of Section 397 of the Penal Code in which the words "uses any deadly weapon" are found, and he has argued upon this comparison of the language of the two sections that the word 'uses' in Section 397 would mean, the actual use of the weapon and not merely the possession of the weapon and the show thereof to other persons. We have considered this contention of Mr. Sukhtankar but are unable to see force in it. It is difficult for us to hold that if the appellant carried a knife with himself and

touched any person with that knife for committing robbery he would be using that knife within the meaning of Section 337. but he would not, be using it if he merely carried the knife and showed it to another for threatening him and committing robbery. In our view, when the Legislature used the word 'uses' in the section they did not intend that the knife must be actually used for stabbing any person. If it 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 this connection it may be pertinent to refer to a passage in Maxwell's Interpretation of Statutes and the passage runs thus : "If a man walks with a gun with intent to kill game, he 'uses' the gun for that purpose without firing, within the statute which makes using a gun with that intent penal". On the analogy of these observations it would be correct in our view to hold that if a person carries a knife with himself with intent to threaten another for the purpose of committing robbery, he uses the knife within the meaning of Section 397 of the Penal Code. In the circumstances we regret we are unable to accept Mr. Sukhtankar's contention that mere possession of a knife by a person and mere show of it to another person with intent to commit robbery would not amount to a use of the weapon within the meaning of Section 307 of the Penal Code.

6. However, looking to the fact that in this case the knife was not actually used by the appellant upon the person neither of Mangilal or of Umedmal and looking to the further fact that the amount taken away from the shop by the appellant was only a currency note of the value of Rs. 5/-, we are of the opinion that this is a case in which we should recommend a reduction in the sentence. Therefore, while dismissing the appeal of the appellant and while confirming his conviction under Section 392 read with Section 397 of the Penal Code, we recommend that the Government may reduce the sentence imposed upon the appellant from a sentence of seven years' rigorous imprisonment to one of three years' rigorous imprisonment. With this modification the appeal is dismissed.

Appeal dismissed. .