FULL BENCH

Before Harbans Singh, Jindra Lal and A. D. Koshal, JJ.

STATE,—*Appellant*

versus

CHAND SINGH AND ANOTHER,—*Respondents*...

Criminal Appeal No. 943 of 1966

March 19, 1970

Indian Penal Code (Act XLV of 1860)—Section 397—Phrase "uses any deadly weapon"—Meaning of—Mere wearing or carrying a weapon—Whether amounts to "use".

Held per majority (Koshal and Harbans Singh, JJ., Jindra Lal, J., Contra), that the pharase "uses any deadly weapon" occurring in section 397 of the Indian Penal Code means : performs in relation to the deadly weapon an overt act involving something more than merely wearing or carrying it, even though such wearing or carrying may be for the purpose of overawing others. The word "uses" should be given the widest possible meaning subject to the limitation that it is not equated with the word "armed". If an offender levels, points or brandishes the weapon at his victim or does any other overt act in relation to it which act involves something more than mere wearing or carrying of the weapon, he would be deemed to have "used" the weapon within the meaning of section 397 of the Code.

(Paras 13 and 27)

Held (per Jindra Lal, J. Contra.), that word "uses" is of very wide connotation and cannot be legitimately restricted to its narrow meaning, i.e., the making actual physical use of it. This word in section 397, Indian Penal Code, is not intended to mean that the deadly weapon must be actually used for injuring a victim. If it is used for the purpose of producing such an impression upon the mind of the victim that he will be compelled to part with his property, that will amount to using the weapon within the meaning of section 397 of the Code. (Para 34)

Case referred by the Hon'ble Mr. Justice Jindra Lal and the Hon'ble Mr. Justice A. D. Koshal, on 30th January, 1969 to a Full Bench for decision of important questions of law involved in the case...The Full Bench consisting of the Hon'ble Mr. Justice Harbans Singh, the Hon'ble Mr. Justice Jindra Lal and the Hon'ble Mr. Justice A. D. Koshal, after deciding on 19th March, 1970, the questions of law referred to returned the case to the Division Bench for decision.

Appeal from the order of the Court of Shri Banwari Lal Singal, Additional Sessions Judge, Bhatinda, dated the 17th June, 1966 convicting the respondents.

D. D. JAIN, ADVOCATE FOR ADVOCATE-GENERAL (PB.), for the Appellant.

AMAR DUTT, ADVOCATE as *Amicus Curiae.*

JUDGEMENT OF FULL BENCH.

KOSHAL, J.—Section 397 of the Indian Penal Code reads :

"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."

(1) The question referred to the Full Bench involves the interpretation of the word "uses" occurring in the section and has arisen thus. Chand Singh, Nazir Singh and Gurdev Singh were jointly tried by Shri Banwari Lal Singal, Additional Sessions Judge, Bhatinda, for an offence under section 397 of the Indian Penal Code. The case for the prosecution was that on the 22nd of February, 1965, they waylaid certain residents of village Kalian Sukha in Police Station Nathana while armed with a pistol, a gandasa and a gandhali respectively and, after Chand Singh accused had given a threat to the victims that he would shoot them if they made any noise, the victims were robbed. No allegation was, however, made that any of the accused levelled or brandished his weapoon at the victims or otherwise handled it, apart from having it on his person during the course of the robbery. The learned Additional Sessions Judge found the case against Gurdev Singh to be doubtful and acquitted him. In respect of the two other accused he held :

"In this case there is no evidence that Modan Singh, Gurdial Kaur or Hamir Kaur were given any injuries by the accused. There is no evidence either that the accused used the deadly weapon at the time of the occurrence nor there is evidence that they attempted to cause death or grievous hurt to the aforesaid witnesses. In this case the accused put the witnesses, Modan Singh, Gurdial Kaur and Hamir Kaur in fear of causing injuries to them when they removed their ornaments. The accused committed extortion by putting the aforesaid persons in fear of death and hurt and wrongfully restrained Modan Singh. In these circumstances I am of the view that both the accused Chand Singh and Nazir Singh are proved guilty under section 392, Indian Penal Code. I consequently convict both the accused under this section."

(3) Being dissatisfied with the acquittal of Chand Singh and Nazar Singr under section 397 of the Indian Penal Code the State preferred to this Court Criminal Appeal No. 943 of 1966 which came up for hearing before a Divison Bench consisting of my learned brother Jindra Lal J. and myself. On the authority of *Nagar Singh* v. *Emperor* (1) *Chandra Nath* v. *Emperor* (2), *Inder Singh* v. *Emperor* (3) *In re Thotabalija Puchala Somanna and another* (4) and Govind *Dipaji More* v. *State* (5) it was contended before the Division Bench that the words "uses any deadly weapon" occurring in section 397 of the Code should be construed in a wide sense so as to include not merely acts of cutting, stabbing and shooting, etc. as the case may be, but also of carrying a deadly weapon for the purpose of overawing the person robbed so that if the offender merely armed himself with a deadly weapon during the course of a robbery and did not perform any further act in respect of it, his case would be covered by the provisions of section 397. All the cases above mentioned with the exception of *Nagar Singh* v. *Emperor* (1) as well as *Nazar Shah* v. *Emperor* (6), were, however, distinguished by me as a member of another Division Bench consisting of Sodhi J. and myself in *State* v. *Puran Singh and another* (7) with the following observations : —

> "We are afraid, however, that none of these authorities supports the case of the State inasmuch as in every one of them the weapon in question was actually handled by the culprit concerned in such a manner as to cause an apprehension in the mind of the victim that he would be subjected to its actual operation if he did not submit to the demand of the offender. In the Sind authority an actual blow with the handle of the weapon was inflicted on the victim. In each of the Bombay & Madras cases, the victim was relieved of property 'at the point of knife'. In the cases from Lahore a gun was the weapon in question and was fired in the air, obviously to scare the victim and to make the threat given by the offender fully effective. In the Oudh case the victim was robbed at the point of a revolver. The facts of the instant case are materially

(1) A.I.R. 1933 Lah. 35.
(2) A.I.R. 1932 Oudh. 103.
(3) A.I.R. 1934 Lah. 522=35 P.L.R. 555.
(4) A.I.R. 1941 Mad. 708.
(5) A.I.R. 1956 Bom. 353.
(6) A.I.R. 1926 Sind. 150.
(7) Cr. A. 1087 of 1966 decided on 3rd June, 1968.

different in so far as there is no allegation that the gun and the *gandasa*, with which Puran Singh and Ajmer Singh were respectively armed, were so much as moved from the position which they occupied with respect to the bodies of their holders. If either of these weapons had been pointed or brandished at any of the victims, such act of the offender may have been construed as a user of the weapon but we have not been shown any authority laying down that mere possession of a weapon during robbery amounts to its user within the meaning of section 397 of the Indian Penal Code. Nor can we otherwise agree with the contention put forward on behalf of the State as, in the absence of a special definition, the word 'uses' occurring in section 397 of the Indian Penal Code must be given its ordinary dictionary meaning which, admittedly, would not embrace mere possession."

It was further observed by me then :—

"This view gains support also from the language of section 398 of the Indian Penal Code in which the word 'possession' has been employed in relation to an attempt to commit robbery. That section states :—

"If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years."

"It is obvious that the Legislature intended to differentiate between mere possession and actual user of a weapon during the course of a robbery. Had it been otherwise, as is contended by the learned counsel for the State, the word 'possession' would have occurred in section 397 as it occurs in the next succeeding section. We have no hesitation, therefore, in repelling the contention raised on behalf of the State."

(4) It may be pointed out here that in these observations the mention at two places of the word "possession" is obviously due to a slip, a reference having really been intended at both the places to the word "armed".

(5) The State appeal in State v. Puran Singh and another (7) was, therefore, dismissed.

(6) Although *State* v. *Puran Singh and another* (7) was the only Division Bench authority of this Court brought to our notice at the hearing of Criminal Appeal No. 943 of 1966, we were of the opinion that in view of the importance of the question it should be finally decided by a larger Bench and that is how it was referred to a Full Bench.

(7) Arguments have been addressed to us at length by Shri D. D. Jain, on behalf of the State and Shri Amar Datt appearing ***amicus curiae*** for the respondents. After giving my most anxious consideration to the same, I have come to the conclusion that the view expressed by me in State v. Puran Singh and another (supra) (7) is correct.

3. (8) For a proper discussion of the subject, the provisions of sections 392, 393, 394, and 398 may also be set out here *in extenso*.

> "392. 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."
>
> "393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."
>
> "394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."
>
> "398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years."

(9) It would be seen that section 392 prescribes the punishment for simple robbery and section 393 for a simple attempt to commit robbery. Section 394 deals with slightly aggravated forms of the

offences mentioned in sections 392 and 393 while section 397 and 398 cover cases of still more aggravated forms of robbery and an attempt to commit it respectively and prescribe a minimum punishment of rigorous imprisonment for seven years. On behalf of the State, it is pointed out that if the word 'uses' as occurring in section 397 is not given a very wide meaning so as to include the act of being armed for the purpose of overawing, the anomaly would follow that while in the case of a mere attempt to commit a robbery, the fact that the offender is armed with a deadly weapon would attract the minimum punishment provided for in section 398, the case of a completed offence of robbery by the same offender would fall only within the ambit of the general section 392 which deals with simple robbery, and not under section 397. The anomaly would no doubt be there but it appears to me that on a proper construction of section 397, the wider meaning cannot be given to the word "uses".

(10) *In State* v. *Puran Singh and another* (supra) (7) I had occasion to point out that in the absence of a special definition, the word "uses" occurring in section 397 must be given its ordinary dictionary meaning which, admittedly, would not embrace mere possession. However, a display of an arm calculated to overawe others would be something more than mere possession and may well be covered by the ordinary dictionary meaning of the word "use". Webster's Third New International Dictionary gives, *inter alia*, the following meanings of the verb "use" :

> " * * * * * * *
> to put into action or service: have recourse to or enjoyment of : EMPLOY * * * * * *
> to carry out a purpoes or action by means of; make instrumental to an end or process : apply to advantage : turn to account : UTILIZE * * * * *".

According to Corpus Juris Secundum (Volume XCI-pp. 518-519) the verb "to use" is variously defined as :

> "to employ; to employ for any purpose; to employ for the attainment of some purpose or end; to avail one's self of; to convert to one's service; to put to one's use or benefit; to employ for the accomplishment of a purpose; to derive service from; to use so as to derive service therefrom; to put into service or make use of; to put to a purpose; to turn to account."

It cannot thus be said that when an offender wears arms so as to overawe others, he does not, in a wide sense of the word, "use" them. The word has, however, to be construed in reference to the context in which it appears so that the language employed in the succeeding section 398 becomes important. That section employs the term "armed" which again must be given its dictionary meaning in the absence of a special definition. According to Webster's Third New International Dictionary. "armed" means, *inter alia* furnished with weapons of offence or defence. If this meaning is adopted for the interpretation of section 398, an offender, who has on his person, whether displayed or concealed, a deadly weapon, at the time of attempting to commit robbery or dacoity would be liable to punishment under the section. It may be debatable whether the section at all applies to a case of concealed arms but there can be no doubt that a display of an arm by an offender attempting to commit robbery would fall within the ambit of the section. And if the interpretation put on the word "uses" occurring in section 397 is to be as wide as has been contended on behalf of the State, then the question would arise as to why the Legislature adopted two different words in two sections occurring in the same Chapter of the Code and following one another, to signify the same thing. The fact that the Legislature employed the word "uses" in section 397 and the word "armed" in section 398 indicates unmistakably that the intention was to differentiate between the case of a person who merely carries a weapon and of one who makes a further use of it. Had it been otherwise, the word "armed" would have been employed in section 397 as it was in section 398.

(11) For the construction that I have put on the word "uses", support is available in *Chandra Nath* v. *Emperor* (2) cited by Shri Jain himself and I may quote at length therefrom :

> "This construction no doubt leads to this anomaly that whereas the legislature has prescribed a minimum punishment of seven years in cases of an attempt to commit robbery by an offender who is armed with a deadly weapon, yet there is no such minimum punishment prescribed when the offence has been completed by the same offender. In the latter case where the offender is armed with a deadly weapon but has not used it, he can be dealt with only under section 392 and it is possible for

him to get off with a smaller punishment than if he had stopped short of an attempt to commit the offence. I can only make note of this anomaly. It is for the legislature to remove it. But the fact that such an anomaly arises cannot justify my interpreting section 398 against the clear language of the section so as to make it applicable to a case in which an offence of robbery or dacoity is an accomplished fact. However, I am of the opinion that as in cases where the offender is armed with a deadly weapon, the legislature has prescribed the minimum sentence of seven years for an offence of an attempt to commit robbery, it would not be proper to inflict a lesser punishment if the offender is found guilty of robbery. Section 392 provides that in cases of simple robbery the punishment may be for a term which may extend to ten years. It no doubt allows the Court discretion as regards the minimum punishment to be awarded but when the offence is attended with circumstances which would make the attempt to commit it punishable with the minimum sentence of seven years, it would not be a proper exercise of discretion to award a lesser sentence when the offence has been accomplished."

(12) A similar view was taken in *Kartar Singh and others* v. *State of Vindhya Pradesh* (8) :

"The mere fact of carrying a fire-arm or other deadly weapon will not attract section 397, I.P.C. That section does not say 'carries or is armedwith' but says 'uses any deadly weapon, or causes grievous hurt or attempts to cause death or grievous hurt to any person'. The distinction between 'using' and to be 'armed' is a material distinction and has been observed in the wording of Ss. 397 and 398, I.P.C. The latter section covers attempts only to commit dacoity or robbery when 'being armed' is by itself sufficient. But if it is a case of committing robbery or dacoity the weapon has to be used or it should be an overt act, which amounts to attempting to cause death, or a grievous hurt, or of actually causing grievous hurt."

(13) I may make it clear here that I do not at all suggest that the weapon with which an offender is armed during a robbery or

(8) A.I.R. 1952 Vindhya Pradesh 42.

dacoity must be used for actually cutting, stabbling or shooting before he can be said to have "used" it. On the other hand, I am of the opinion that the word "uses" should be given the widest possible meaning subject to the limitation that it is not equated with the word "armed". In this connection I pointed out in *State* v. *Puran Singh and another* (supra) (7) :

> "If either of these weapons had been pointed or brandished at any of the victims, such act of the offender may have been construed as a user of the weapon * * * *".

I would repeat this opinion here and say that if the offender levels, points or brandishes the weapon at his victim or does any other overt act in relation to it which act involves something more than mere wearing or carrying of the weapon, he would be deemed to have "used" the weapon within the meaning of section 397.

(14) I may now deal with the authorities relied upon for the *State In Nga I* v. *Emperor* (9) the appellant took a *gaung baung* from the complainant by overawing him with a dagger with which, however, no stabbing was done and which was merely raised threateningly so as to compel the complainant to part with his property. Thus, although the act of the appellant involved something more than mere carrying of the weapon for the purpose of overawing the person robbed, it was held that such a carrying would be covered by the term "uses" occurring in section 397. At the time of admitting the appeal, Twomey, J. observed thus :

> "It may be argued that to 'use' a stabbing weapon is to stab some person with it, to 'use' a cutting weapon is to cut some person with it, and to 'use' a gun is to shoot at some person with it. According to this narrow interpretation, brandishing a dagger or levelling a gun at a man might be regarded as merely threatening to use or preparing to use it, not as actually using it. But it is not clear that the word 'uses' in section 397 should be interpreted with such strictness. The very next section 398 imposes a minimum punishment of seven years' imprisonment on persons convicted of merely carrying a deadly weapon when attempting to rob. It seems probable

(9) (1912) 13 Cr. L.J. 267.

that the Legislature intended to impose the same minimum where the robbery is actually completed. I am inclined to thing, therefore, that the word 'uses' in section 397 should be construed in a wide sense so as to include not merely cutting, stabbing, shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed.

"It is no doubt at first sight remarkable that wider language is employed in section 397 ('uses any deadly weapon') than in section 398 ('is armed with any deadly weapon'). The explanation is apparently that in attempted robberies, it is often difficult to prove any 'use' of the deadly weapon except the mere fact that the accused carried it, whereas in a case of completed robbery it generally happens that the accused not only carries the deadly weapon but also overawes the person robbed or even stabs, cuts or shoots at him. The wider view of section 397 is supported by a passage in Maxwell's Interpretation of Statutes, 4th Edition, page, 319 :—'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.' English and American authorities are given for this interpretation."

(15) The case was later decided by the learned Judge as follows :

"If the accused had merely attempted to take the complainant's property by overawing him with a dagger but (owing to infirmity of purpose on his own part or resistance on the part of the complainant) had not carried out his design, he would undoubtedly be liable to the minimum punishment provided in section 398. The Legislature cannot have intended that if the criminal goes a step farther and actually accomplishes his purpose, he should thereby establish a claim to more lenient treatment. It cannot have been intended that a criminal should be urged to complete his criminal purpose by the reflection that if he stops short at an attempt, he must get seven years, while if he completes the offence he may get of with imprisonment for two or three years."

(16) I have already conceded that the interpretation adopted by me leads to an anomaly but then I cannot agree with the view that the meaning of the word "use" can be so stretched as to cover a case of mere carrying of arms nor do I think that Twomey, J. meant to place any such interpretation on the word. In view of the facts before him, I think he merely meant to say that the case with which he was dealing would be covered by section 397 even though the dagger had not been employed for actual cutting or stabbing. I may further state with all respect to him that I do not see eye to eye with him in the explanation given by him for the employment of different language in the two sections, 397 and 398. Even if it be accepted that in cases of attempted robbery it is often difficult to prove any use of the deadly weapon except the mere fact that the accused carried it while in cases of completed robbery it generally happens that the deadly weapon is not only carried but is employed to overawe the person robbed, it would be no reason for the employment by the Legislature of different words in the two sections, if the meaning conveyed is the same. I may also point out that the language employed in section 397 ("uses any deadly weapon") is not wider as was assumed by Twomey J. but narrower than the one employed in section 398 ("is armed with any deadly weapon").

(17) The citation from Maxwell on Interpretation of Statutes (which is relied upon before us independently of *Nga I* v. *Emperor* (9) and is repeated at page 270 of the 11th edition of the treatise) also does not appear to advance the cause of the State as the case mentioned therein was not one under section 397 of the Indian Penal Code which has to be interpreted in a special sense in view of the language employed in the succeeding section. Had the word "armed" not been employed in section 398, I would have had no difficulty in falling in line with Twomey, J.

(18) Another reason why I do not find myself in agreement with Twomey, J. is that even if the widest possible meaning is given to the word "uses", the anomaly does not disappear; for, if a person attempts robbery while concealing a deadly weapon on his person, he would be liable to the minimum punishment prescribed in section 398 even though if he completed the robbery, his case would stand covered not by section 398 but by section 392 unless the word "armed" is construed in a narrow sense as meaning "armed ostentatiously".

(19) *Nga I* v. *Emperor* (9) appears to be the basic authority in support of the contention of Shri Jain and *Nazar Shah* v. *Emperor* (6) merely follows it. It may be stated, however, as was pointed out by me in *State* v. *Puran Singh and another* (7) that in the Sind case there was an actual blow with the handle of the axe given by the offender to the victim of the robbery and it was in that view of the matter that the case was held to fall under section 397.

(20) *Chandra Nath* v. *Emperor* (2) takes the same view of the matter as mine, although it does lay down that it would be putting much too narrow an interpretation upon the words "uses any deadly weapon" occurring in section 397 to say that a person does not use a revolver unless he fires it and that the words are wide enough to include a case in which the person levels his revolver against another person in order to overawe him. The case is no authority for the proposition that merely because the offender is armed at the time of committing a robbery, he would be guilty of an offence under section 397.

(21) The same remarks apply to *Public Prosecutor* v. *Nagappan Serve* (10) in which the weapon in question was a knife with which hurt was caused to the victim, to *Govind Dipaji More* v. *State* (11) wherein the victim was deprived of cash at the point of a knife and to *Inder Singh* v. *Emperor* (3) in which the gun in question was fired in the air to scare the victim. Incidentally I may mention that the authority last cited appears to support the view taken by me although it holds that section 397 covers the case of a person who "displays a deadly weapon to frighten his victims or their neighbours or who makes use of any deadly weapon for other similar purposes". One of the offenders in that case was armed with a *kirpan*. About him Jai Lal, J. who decided the case observed :

> "The case of Nazir Singh, however, does not appear to be covered by section 397, Indian Penal Code, as it has not been established that he made any use of the *kirpan*."

(22) Obviously by using the expression "displays a deadly weapon to frighten his victims", the learned Judge meant that the

(10) A.I.R. 1941 Mad. 718.
(11) A.I.R. 1956 Bom. 353.

offender should perform some overt act in relation to the weapon carried by him, apart from the act of being merely armed with it.

(23) In *Nagar Singh* v. *Emperor* (1) Agha Haidar, J. relying on *Nagar Shah* v. *Emperor* (supra) (6) held that a robber who was armed only with a chhavi at the time of the robbery would undoubtedly inspire his victim with fear and paralyse the latter's power of resistence and that his case would fall within the ambit of section 397. The judgment is a short one and I would respectfully differ from it for the reasons already stated.

(24) In *In re-Thevar Servai and others* (12) the appellants were armed with *aruvals* and in holding their case to fall within the provisions of section 397 Horwill, J. held :

> "* * * * *It is true that no injuries were caused by the *aruvals*; but it does not seem that the accused were armed with these *aruvals*. If robbers so held them in such a manner that P.W. 2, who was compelled to give up the jewels, was fully aware that the accused were armed with these *aruvals*. If robbers so exhibit dangerous weapons as to intend that by their exhibition of them, the persons robbed or sought to be robbed are likely to be further intimidated and that the commission of robbery might be facilitated the robbers can be punished under section 397, although they did not actually inflict blows with these weapons. The application of section 397 by the learned Assistant Sessions Judge was therefore correct."

(25) It would appear, though it is not clear from the judgment, that the accused were not merely ostensibly armed with *aruvals* but made some further use of them in order to frighten their victims. If, however, that was not the case, I would respectfully differ from the view taken by Horwill, J. for the reasons given above.

(26) The only other authority relied upon by Shri Jain is *Shiv Narain* v. *State* (13) wherein Dua J. observed as follows :—

> "My attention has in this connection been drawn to the language used in section 398, Indian Penal Code, where the

(12) A.I.R. 1938 Mad. 477.
(13) 1964 P.L.R. 173.

expression used is 'armed with any deadly weapon' as against the expression used is 'armed with any deadly weapon' as used in section 397. *Prima Facie* the argument appears to be attractive. There are, however, decided cases where it has been held that the expression 'uses a deadly weapon' includes the carrying of a weapon for the purpose of overawing the person robbed. The argument urged on behalf of the appellants even otherwise is unsubstantial on the present record, as, in the case in hand, the guns have been used and this evidence has not been criticised before me."

It is clear that no definite opinion on the interpretation of section 397 was expressed by Dua J. whose observations, even otherwise, are obiter.

(27) In view of what I have said, I would answer the question referred to the Full Bench thus :

The phrase "uses any deadly weapon" occurring in section 397 of the Indian Penal Code means : performs in relation to the deadly weapon an overt act involving something more than merely wearing or carrying it, even though such wearing or carrying may be for the purpose of overawing others.

(28) Before parting with this judgment I must express my appreciation of the assistance given to us by Shri Amar Datt, learned counsel for the respondents. He not only argued the point involved from various angles but did so ably and with lucidity.

Harbans Singh, J.—I agree.

Jindra Lal J. I have had the benefit of persuing the answer proposed to be given in this reference by my learned brother, Koshal J., with whom my learned brother Harbans Singh J., has agreed. I regret my inability to agree to that answer and give my reasons for the same.

(30)) The question referred to the Full Bench involves the interpretation of the words "the offender uses any deadly weapon"

occurring in section 397, Indian Penal Code, which is in the following terms :—

> "If, at the time of committing robbery as 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."

(31) I have no difficulty in coming to the conclusion that in the present case the accused had used their deadly weapons for the commission of the crime. My learned brother, Koshal J., has set out in his answer the meaning given to the word 'use' in Webster's Third New International Dictionary as under :—

> " * * * * * * *
> to put into action or services: have recourse to or enjoyment of : EMPLOY * * * * *
> to carry out a purpose or action by means of : make instrumental to an end or process : apply to advantage : turn to account : UTILIZE * * * * * * * *".

Koshal J. has also noticed the definition of the words "to use" in Corpus Juris Secundum (Volume XCI-pp. 518-19) as under :—

> "to employ; to employ for any purpose; to employ for the attainment of some purpose or end; to avail one's self of; to convert to one's service; to put to one's use or benefit; to employ for the accomplishment of a purpose; to derive service from; to use so as to derive service therefrom; to put into service or make use of; to put to a purpose; to turn to account.

In my view, therefore, the word "uses" in the context must mean making use of for the commission of an offence under section 39), Indian Penal Code. I would follow with respect the meaning given to the word "uses" in section 397, Indian Penal Code, by a Division Bench of the Bombay High Court in *Govind Dipaji More* v. *State* (11). A perusal of that judgment shows that the accused entered a shop with an open knife in his hand and at the point of the knife he demanded a sum of Rs. 40 from one Umedmal. Umedmal denied that he had any money but the accused showed the knife to Umedmal with one hand and with the other hand picked up a currency note of Rs. 5 from the Galla and went away after giving a threat to

Umedmal and his companion Mangilal. On these facts it was held that an offence under section 397, Indian Penal Code, had been made out. Their Lordships observed as under :—

> "The word 'uses' in section 397 is not intended to mean that the knife must be actually used for stabbing any person. If it is used for the purpose of producing such an impression upon the mind of a person that he will be compelled to part with his property, that will amount to using the weapon within the meaning of section 397."

It is obvious that any other meaning given to the word "uses" in section 397, Indian Penal Code, would lead to an anomaly specially with respect to what is contained in section 398. To my mind, if a person is induced with the help of a deadly weapon to part with the property, the accused certainly ought to be punished under section 397, Indian Penal Code. One can think of a large number of cases where the weapon is not moved from its original position and not even handled but the requisite fear it induced in the mind of a victim with the result that he parts with his property. Supposing an open knife is kept on a nearby table or a loaded pistol is kept nearby and the accused makes it quite plain to his victim that if necessary he will make 'use' of the weapon, then certainly the accused has used the weapon as contemplated in section 397, Indian Penal Code. I am aware of the authorities which are against this view and which have been set out in the answer proposed to be given by my learned brothers. There are, however, observations to the contrary in some authorities in addition to the one cited by me above. In *NGAI* v. *Emperor* (9) it was held as under :—

> "The words 'uses a deadly weapon' in section 397, Indian Penal Code, include the carrying of a weapon for the purpose of overawing the person robbed.
>
> Section 398 provides a minimum punishment for those who attempt to commit robbery 'armed with a deadly weapon' and the Legislature cannot have intended that a criminal should be urged to complete his purpose by the reflection that if he stops short at an attempt, the minimum imprisonment that can be inflicted on him under section 398 is seven years, while if he completes the offence, he will not come within the provisions of section 397, but may be sentenced to two or three years' imprisonment under section 392."

In that case of course the weapon was raised threateningly to compel the complainant to part with his property. But the conclusion that I have come to is that there need be no movement of the deadly weapon, because movement of a weapon only indicates to the victim the intention of the accused. This can be achieved without moving the weapon at all and can even be done by a gesture. I can well imagine a person who has a pistol in a holster on his shoulder looking at the holster in a meaningful manner and asking the victim for his gold watch. If the victim parts with the gold watch in such circumstances I do not see any reason why it cannot be said that the accused has 'used' a deadly weapon for the achievement of his purpose. The legislature has deliberately used different words in sections 397 and 398, Indian Penal Code, and Courts must try to harmonise the intent of the legislature and to reconcile the two sections. This can only be done if a wider meaning is given to the word "uses" than the one contended for by the learned counsel for the respondents. The canon of statutory interpretation certainly is that ordinarily the Courts must give the dictionary meaning to the words used in a statute unless by necessary implication that meaning cannot be given. In the present case, the dictionary meaning supports, in my view, the intent of the legislature which must have intended the word "uses" in section 397, Indian Penal Code, to have a much wider scope than the word "armed" in section 398. It appears to me that to fall with in the ambit of section 398, Indian Penal Code, an accused must be armed himself. He cannot be held guilty if his companion is armed or because an arm is lying nearly. The word 'uses' in section 397, Indian Penal Code, has a wider import—the accused need not be armed himself and it is enough that he has made use of a deadly weapon. This is the only way in which sections 397 and 398, Indian Penal Code, can be reconciled and harmonised. Maxwell on The Interpretation of Statutes, Eleventh Edition, at page 193 says—

> "Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, "unless the intention had been manifested in express words."

Again at page 221, it is stated—

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction

> of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning."

(32) It may be noted that the effort of the Courts should be to reconcile and harmonise the different provisions of the statute rather than to read it in such a way as to lead to absurdity.

(33) Giving a restricted meaning to the word "uses" in section 397, Indian Penal Code, does lead to an absurdity which cannot in this case, be imputed to the legislature.

(34) The anomaly would disappear if the word "uses" is given its proper meaning as indicated by me, i.e., that the necessary fear has been induced in the mind of the victim. Supposing an attempt is made at robbery while a person has kept a pistol near him, it may possibly be contended that he was not armed with the pistol but that could not detract from what I have stated above. All the authorities relevant to the point have been set out and discussed by my learned brother, Koshal J, and I need not refer to them again. The question is of first impression and as to what the legislature intended by the use of the word "use" in the section under consideration. In my view, the proper dictionary meaning should be given to the word and given such meaning the word "uses" is of very wide connotation and cannot be legitimately restricted to its narrow meaning, i.e., the making actual physical use of it. I would, therefore answer the question by saying that the word "uses" in section 397, Indian Penal Code, is not inntended to mean that the deadly weapon must be actually used for injuring a victim. If it is used for the purpose of producing such an impression upon the mind of the victim that he will be compelled to part with his property, that will amount to using the weapon within the meaning of section 397, Indian Penal Code.

ORDER OF THE FULL BENCH

(35) The reply of the Full Bench will be as proposed by Mr. Justice Koshal in paragraph 9 of his judgment. The case will now go back to the D. B. for further action.

K.S.K.

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