



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 08.08.2025
Pronounced on : 01.09.2025

+ **CRL.A. 970/2024**

DHEERAJ

.....Appellant

Through: Mr. Rakshit Singh and Mr. Gaurav
Choudhary, Advocates

Versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 07.06.2024 whereby the appellant was convicted under Sections 397/394/34 IPC and order on sentence dated 16.07.2024 passed by learned Additional Sessions Judge, Shahdara District, Karkardooma Courts, Delhi, in SC No.541/2018 arising out of FIR No.98/2018 registered under Section 392/397/411/34 IPC and Section 27 Arms Act at P.S. Vivek Vihar, Delhi.

Vide the order on sentence, the appellant was directed to undergo rigorous imprisonment for 7 years for the offence punishable under Sections 397 IPC read with 392/34 IPC along with payment of fine of Rs.20,000/- and in default of payment of fine he was directed to further undergo simple imprisonment for 03 months. The benefit of Section 428 Cr.P.C. was provided to the appellant.

2. The facts as recorded in the impugned judgment by the Trial Court are



extracted as hereunder:

“Charge Sheet runs to the effect that on 15.03.2018, on receipt of DD No. 36-A, IO/SI Sanjeev Kumar along with Ct. Sachin reached at the spot i.e. Jhilmil Main Road, near ITI Vivek Vihar, Delhi where one Sh. Gurpreet Singh (complainant) was present and HC Shiv Kumar had apprehended two persons namely S and Dheeraj along with one motorcycle (bearing No. DLSSAV 9739 Splendour Black Colour), one robbed mobile phone (make Samsung Galaxy A-8, Golden colour) and one knife which was handed over by HC Shiv Kumar to SI Sanjeev Kumar. SI Sanjeev Kumar recorded the statement of Complainant Gurpreet Singh wherein he stated that on 15.03.2018, at about 7.40 p.m, when he reached at the dumpster near the road of Urban Punjab Hotel while walking, two boys came from behind on motorcycle. They stopped their motorcycle and tried to snatch his mobile and on being protested, the rider of the motorcycle picked out a knife from his pocket and said 'apna phone de de nahi to chaku maar dunga' and another boy snatched his mobile phone. After snatching his mobile, both the perpetrators ran away towards Garam Masala Hotel. The complainant started shouting and on hearing the commotion, one person came there on the motorcycle and the Complainant started chasing the perpetrators on the said motorcycle while shouting. When they reached main Jhilmil Road, near ITI Vivek Vihar, Delhi, on hearing the shouting, the police official on duty stopped the perpetrators by blocking their way using barricade. Both the boys were apprehended by the police officials and the Complainant and the mobile phone of the complainant was recovered from the right side pocket of the pant worn by the pillion rider and one buttondar knife was recovered from the pocket of the rider. On being inquired, one of the boys told his name as 'S' (since JCL from whom snatched mobile phone was recovered) and another boy told his name as Dheeraj (from whom knife was recovered). During the investigation, co-accused 'S' was found to be JCL. After completion of investigation, Charge Sheet was filed in the due course.”

3. Vide order dated 19.02.2019, charges were framed against the appellant for the offences under Section 392/34 r/w 397 IPC and Section 25 Arms Act, to which the appellant pleaded not guilty and claimed trial. During the trial, in total, eight prosecution witnesses were examined. Complainant *Gurpreet Singh* was examined as PW-2, the brother-in-law of the appellant, *Raj Kumar*, was examined as PW-3 and, *Arfin Ansari* was examined as PW-6, to establish the ownership of the motorcycle. HC Shiv



Kumar, who apprehended the appellant from the spot, was examined as PW4. The rest of the witnesses were formal witnesses who deposed about various aspects of the investigation. In defence, the statement of the appellant was recorded under section 313 CrPC, wherein he denied the prosecution's case, and stated that he had been falsely implicated in the present matter.

4. Learned counsel for the appellant submits that the offence under Section 397 IPC is not made out, and has raised threefold argument. *Firstly*, it is submitted that the recovery of the robbed articles is not duly proved by the prosecution. In this regard, it is stated that, as per the prosecution, the robbed mobile phone and knife were recovered at the spot before the registration of the FIR, however, the seizure memos of the said articles, as well as the arrest memo, personal search memo, and sketch of the knife, bear the FIR number at the top, thereby raising doubts regarding the recovery. *Secondly*, it is contended that the ownership of the allegedly robbed mobile phone was not proved during the trial, as the bill of the mobile phone, exhibited as Ex.A-1(Colly), reveals the ownership of the phone in the name of one *Deepak Pal*, while the complainant has claimed that the said mobile phone belonged to him. It is submitted that the connection between *Deepak Pal*, i.e., owner of the mobile phone and the complainant remains unexplained throughout the trial. *Lastly*, it is contended that the apprehension of the accused from the spot is also doubtful in view of the contradictory statements of the Complainant and HC *Shiv Kumar* (PW4), who apprehended the appellant from the spot. In support of the said contention, it is submitted that the complainant has claimed that the appellant was stopped and apprehended by police staff at the barricade.



However, PW4 in his testimony before Trial Court, stated that the accused fell from his bike while taking a U-turn, and they were apprehended thereafter.

5. Learned APP for the State contends that the commission of the offence of robbery and apprehension of the appellant is duly proved by the complainant and is further corroborated by the recovery of the weapon of offence, i.e., knife from the possession of the appellant. After the recovery of knife, its sketch and seizure memo were exhibited as Ex.PW-2/D and Ex.PW-2/E respectively. It is further contended that the version of the complainant remains unrebutted throughout the trial and is further corroborated by the testimony of HC *Shiv Kumar*.

6. A perusal of the complainant's testimony reveals that on 15.03.2018 at about 7.40 pm, while he was walking around the Urban Punjab Road, the appellant and his companion/JCL came on motorcycle, the rider showed him the button-actuated knife, threatening to stab him and the pillion rider snatched his mobile phone. He further deposed that after the said snatching, he promptly took a lift from a stranger on the bike and chased the assailants, and he succeeded in getting them apprehended by PW4/HC *Shiv Kumar*, who was on duty at the time of the incident, by using the barricade. He deposed that it was the appellant who had shown/threatened him with the knife, and the said knife and the robbed mobile phone were duly recovered in his presence. He produced the mobile phone (Ex. P1), which was released to him on *superdari*, in Court and stated that it was the same one which was robbed by the appellant and his companion. He also identified the knife (Ex. P5) as the one recovered from the appellant. He further deposed that the motorcycle of the appellant was also seized in his presence vide seizure



memo Ex.PW2/F. The said motorcycle was also correctly identified by the complainant upon seeing its photographs (Ex. P2-4). Nothing could be elicited from his cross examination which would render his testimony suspect.

7. PW-4, HC *Shiv Kumar*, the police officer on duty was present at the spot and had apprehended the appellant as well as the JCL on their motorcycle. He deposed that on 15.03.2018, at about 7.45-8.00 pm, he saw that two boys were coming on a black colour Splendour motorcycle and they were chased by a Sikh person who was a pillion rider on another motorcycle while shouting "*pakdo pakdo chor chor*". Thereafter, he put a barricade on the road and those two boys attempted to take a turn but fell down. He apprehended both the assailants. He correctly identified the appellant in Court and stated that he was driving the motorcycle and from his right hand side pocket-one button actuated knife was recovered, which was also identified by him when shown in Court. Nothing came out in his cross examination which would render his testimony uncreditworthy.

8. On apprehending the appellant and JCL, PW-4 gave the information thereof in the concerned police station, which was reduced into writing as DD No. 36-A (Ex.PW-1/A) and the same was duly proved vide the testimony of PW1 HC *Sudhir*, who at that time, was performing the duty as Duty Officer. Pertinently, the version narrated in DD No.36A is in complete consonance with the deposition of PW2. Furthermore, the connection of the appellant with the aforesaid motorcycle used in the commission of offence is established vide testimony of PW-3 and PW-6. *Arfin Ansari*, examined as PW-6 deposed that he had mortgaged the bike in question, i.e. black colour Splendor bearing registration No. DL5SAB9739 to *Amit Lubhana* (PW-3),



who is brother-in-law of the appellant. PW-3 deposed that on the date of the incident, the appellant requested him to give the said motorcycle for some time as he had to go for some personal work, however, he never returned the same thereafter. The ownership of the said motorcycle in the name of PW-6 is established vide *Panchnama* i.e., Ex.PW-3/A.

9. Having gone through the testimony of the witnesses and the evidence on record, it is crystallised that the appellant was apprehended from the spot and his role is clearly stated in the testimony of the complainant which remained consistent throughout the trial. The appellant was the person who used a knife to inflict fear in the mind of the complainant and threatened him. Further, the possession of the motorcycle used in the commission of the offence is also established vide testimony of PW-3 and PW-6 as discussed above. Insofar as the contention with respect to the ownership of the robbed mobile phone is concerned, it is noted that the person *Deepak Pal*, in whose name the mobile phone bill issued, the complainant was not even cross-examined with respect to the same. Further, there is no material contradiction between the testimony of complainant and PW4 and other objections of the appellant are of a technical nature and inconsequential. Therefore, the appellant has failed to create reasonable doubt in the case of the prosecution.

10. Pertinently, Section 397 IPC states that 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. Thus, to attract this section, the offender has to use any deadly weapon at the time of commission of robbery. The Supreme



Court in Phool Kumar v Delhi Administration¹ held that a knife is a deadly weapon. It held as follows:

“5.....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 PW16 “Phool Kumar had a knife in his hand. He was therefore carrying deadly weapon open to the view of the victim sufficient to frighten or terrorize them.”

Similarly, this Court in Shehzad v State² held that a knife is a sharp weapon and is inherently dangerous. it held as under: -

34. The controversy stands narrowed down to determine the effect of non-recovery of the knife to sustain conviction under Section 397 IPC.

35. The complainant in his very first statement stated that the injuries were caused by a knife. The complainant was a policeman and cannot be mistaken as to what a knife is. A knife is an article that is typically and characteristically dangerous, the display of which instills fear in an ordinary person.

11. In the present case, the recovery of the weapon of offence, i.e., a knife, from the possession of the appellant is duly proved by the prosecution witnesses and the use of said weapon during the commission of the offence is further proved and remains uncontroverted in the testimony of the complainant. It is irrelevant if the knife was actually used to cause any injury or not. It is settled law that simple exhibition, brandishing or even holding a knife openly to generate fear or apprehension in the victim’s mind is sufficient to secure a conviction under Section 397 IPC. Reference in this regard may be made to the decision of the 3-Judge Bench of the Supreme Court in Ram Ratan v. State of M.P., **2021 SCC OnLine SC 1279**, wherein it was held as under:-

“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

¹ (1975) 1 SCC 797



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.” 16. In the present case, the act of the appellant in brandishing a sharp-edged weapon, i.e. knife, accompanied by a threat of causing harm if the complainant did not part with his valuables, has generated nervousness in the mind of the complainant.”

12. Therefore, the act of the appellant in brandishing a sharp-edged weapon, i.e. knife, accompanied by a threat of causing harm if the complainant did not part with his valuables, has generated nervousness in the mind of the complainant, exploiting which the JCL snatched the mobile phone from the complainant. In light of the consistent and *inter se* corroboratory testimonies of PW2 and PW4, the apprehending of appellant from the spot, the recovery of knife from him are more than sufficient to establish the prosecution case and secure the conviction of the appellant. The conviction of the appellant under Section 397/394//34 IPC as well as the order on sentence, are upheld. In view of the above, the appeal is dismissed

13. Let a copy of this judgment be communicated to the concerned Jail Superintendent as well as the learned Trial Court.

14. Copy of this judgment be also uploaded on the website forthwith.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 01, 2025

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² CrI.A. 1206/2015 decided on 11.12.2019