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

CNR No. DLHC010089702026

+ **CRL.A. 248/2026, CRL.M.(BAIL) 516/2026**

RAHUL @ BUNTY

.....Appellant

Through: Mr. Samarth Krishan Luthra
(DHCLSC), Mr. Manoviraj Singh,
Mr. Yash Sharma and Ms. Tishya
Sekhar, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Yudhvair Singh Chauhan, APP for
State with Mr. Narendra Kumar,
Advocate.
SI Chetan, PS-Paschim Vihar West.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

12.10.2026

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1. The Appellant, Rahul @ Bunty, challenges the judgment dated 26th December, 2025 and order on sentence dated 12th January, 2026 passed by the Additional Sessions Judge, West District, Tis Hazari Courts, Delhi, in SC No. 735/2019, arising from FIR No. 343/2019, PS Paschim Vihar West. By the impugned judgment, the Appellant and co-accused Rohit Kumar were convicted under Sections 392/34 and 397 of the Indian Penal Code, 1860¹. The Appellant was sentenced to four years' rigorous imprisonment with a fine of ₹5,000/- under Section 392/34 IPC and seven years' rigorous

¹ "IPC"



imprisonment with a further fine of ₹5,000/- under Section 397 IPC. Both sentences were directed to run concurrently.

2. The prosecution case arose from an incident of robbery near the Mianwali Nagar traffic signal on Main Rohtak Road, Delhi. According to the Complainant, Mohan Aggarwal, three boys travelling on a scooty intercepted him while he was returning on his own scooty. Two of them got down holding knives and robbed him of his bag, ₹400/- and the scooty. He moved aside, whereupon the assailants took away his vehicle. Information about the robbery was received by the police and recorded *vide* DD No. 7A, which specifically referred to the scooty and purse having been snatched at knifepoint. The complainant subsequently furnished his statement, on the basis of which the FIR was registered. During investigation, the Appellant and Rohit Kumar were apprehended in connection with another case, and the stolen scooty was allegedly recovered from their possession. Both were identified by the Complainant in a judicial Test Identification Parade and subsequently before the Trial Court.

3. The prosecution examined thirteen witnesses. The Trial Court principally relied on the testimony of the Complainant, examined as PW-2, together with the evidence relating to the recovery of the scooty and the identification proceedings. It accepted PW-2's account that two assailants were carrying knives and concluded that their display had caused the complainant to move away from his vehicle out of fear. On that basis, the Trial Court held that the ingredients of both Sections 392/34 and 397 IPC stood established.

4. At the hearing of the present appeal, Mr. Samarth Krishan Luthra, assisted by Mr. Manoviraj Singh, counsel for the Appellant, on instructions,



states that the Appellant does not contest his conviction under Section 392/34 IPC. The challenge is confined to the application of Section 397 IPC. Mr. Luthra submits that the prosecution has not established that the knives allegedly carried by the assailants were deadly weapons within the meaning of that provision. Neither knife was recovered, and PW-2 furnished no description of the weapons, their size, dimensions or other characteristics. No injury was caused to the complainant. According to him, the Trial Court has proceeded from the allegation that knives were held during the robbery to the conclusion that deadly weapons were used, without examining whether that additional requirement had been proved. He also questions the reliance placed on *State of Rajasthan v. Arjun Singh*², pointing out that the decision concerned the non-recovery of a firearm in a case supported by direct evidence of its use. The same reasoning, he submits, cannot automatically establish the deadly character of an unidentified knife.

5. Mr. Yudhvir Singh Chauhan, APP for the State, supports the impugned judgment. He submits that PW-2 has given a clear account of the robbery and identified both accused, first during the judicial TIP and thereafter before the Trial Court. His testimony is further supported by the recovery of the stolen scooty. On the question of the knives, he relies on DD No. 7A, recorded soon after the incident, which expressly refers to a robbery at knifepoint. The omission of this detail from PW-2's subsequent statement, Ex. PW-1/A, therefore does not amount to a material improvement. He submits that the Trial Court, upon considering PW-2's testimony and the contemporaneous record, rightly concluded that the complainant moved aside on seeing the assailants armed with knives. Such display of a deadly

² (2011) 9 SCC 115



weapon, in circumstances capable of creating fear in the victim, constitutes its use for the purposes of Section 397 IPC. Neither recovery of the weapon nor the infliction of an injury is necessary to attract the provision.

6. In view of the limited challenge, the Court need not reopen the findings concerning the robbery, the Appellant's identification or the recovery of the scooter. The conviction under Section 392/34 IPC is not in issue. The question is whether the evidence also establishes the aggravating circumstance contemplated by Section 397 IPC.

7. Section 397 IPC prescribes a minimum sentence of seven years where, at the time of committing robbery or dacoity, the offender uses a deadly weapon, causes grievous hurt or attempts to cause death or grievous hurt. In *Phool Kumar v. Delhi Administration*³, the Supreme Court explained that a deadly weapon need not actually be employed to inflict an injury. Where the offender carries such a weapon openly, within the victim's view, in circumstances capable of creating terror, its "use" for the purposes of Section 397 may be established. The same principle was reiterated in *Ashfaq v. State (Govt. of NCT of Delhi)*⁴, and *Ram Ratan v. State of Madhya Pradesh*⁵. Section 397 IPC fastens liability on the offender who uses the deadly weapon, and such use cannot be attributed to a co-accused merely on the basis of common intention.

8. These principles answer two aspects of Mr. Luthra's submission. The absence of injury does not exclude Section 397 IPC. Nor is recovery of the weapon indispensable where reliable evidence otherwise establishes its use. There remains, however, the requirement that the weapon in question must

³ (1975) 1 SCC 797

⁴ (2004) 3 SCC 116



be a deadly weapon. In *K. Balaji v. State*⁶, the Supreme Court examined a conviction under Sections 392 read with 397 IPC involving a knife of approximately 6 cm. It accepted the challenge to the application of Section 397, holding that the knife in question could not be treated as a deadly weapon on the evidence before it. The conviction for robbery was maintained, but the minimum sentence flowing from Section 397 was not applied.

9. We are conscious that this Court has, in decisions such as *Sonu @ Shahnawaz v. State (NCT Govt. of Delhi)*⁷, and *Azam v. State (NCT of Delhi)*⁸, taken the view that a knife is capable of constituting a deadly weapon irrespective of its particular dimensions, and that its threatening display is sufficient without actual injury. In *Sonu*, the knife had been recovered, and the evidence established that it was placed against the complainant's back during the robbery. In *Azam*, although the weapon was not recovered, the complainant specifically described the assailant pointing a sharp-edged knife towards him and threatening to kill him unless he surrendered his belongings. The evidence of the weapon and the manner in which it was employed was thus more definite. The decision of the Supreme Court in *K. Balaji* also makes it necessary to examine whether the evidence establishes the deadly character of the particular weapon, rather than treating every reference to a knife as conclusive.

10. A closely comparable question arose in *Asif v. State (NCT of Delhi)*⁹. This Court specifically held that whether a weapon is deadly is a question of

⁵ 2021 SCC OnLine SC 1279

⁶ Criminal Appeal No. 1157/2018, decided on 30th January, 2025

⁷ CRL.A. 1141/2017, decided on 19th November, 2019.

⁸ 2025:DHC:6670



fact, depending on its nature. In the case of a knife or blade, its length, sharpness and pointed edge are relevant considerations. The Court clarified that although recovery of the weapon is not essential, the prosecution must still establish its nature through the evidence led. Since the witnesses in that case had not furnished sufficient particulars of the blade allegedly used, the Court held that the requirements of Section 397 IPC were not established. The Court modified the conviction under Section 397 IPC to one under Section 392 IPC. The decision reinforces the distinction between proving that a knife was used during a robbery and establishing that it was a deadly weapon.

11. Turning to the evidence in the present case, PW-2 stated that three boys arrived on a scooty, two of whom got down with knives in their hands. He then stated that they robbed him of his belongings and that, on seeing the accused persons, he moved to one side. His testimony contains no description of either knife. He did not refer to its size, blade, shape or any other feature from which its nature could be assessed. Neither weapon was recovered. The evidence, therefore, establishes the allegation that knives were held by two of the assailants, but provides no further particulars of the weapons themselves.

12. The Trial Court has placed considerable reliance on DD No. 7A, Ex. PW-4/A, which records the robbery as having occurred at knifepoint. That entry has evidentiary significance. It was recorded shortly after the occurrence and lends support to PW-2's testimony that knives were involved. We also agree that his failure to mention knives in Ex. PW-1/A does not, in the circumstances, justify rejecting his account, particularly

⁹ 2022:DHC:331



when the earliest police information referred to a robbery at knifepoint. The Trial Court has further noticed that the omission was not put to PW-2 in cross-examination. These are legitimate considerations when assessing whether knives were present during the incident. They do not, however, establish the nature of the weapon.

13. The Trial Court relied on *State of Rajasthan v. Arjun Singh* to reject the objection concerning non-recovery of the knives. There is no dispute that non-recovery of a weapon is not, by itself, fatal to the prosecution case. *Arjun Singh*, however, concerned firearms, whose use was supported by direct evidence, including gunshot injuries. The evidence here stands on a different footing. Neither knife was recovered, and PW-2 gave no description of its size, blade or other characteristics. The difficulty, therefore, is not merely the absence of recovery, but the lack of any evidence from which the deadly character of the weapons could be assessed. The prosecution has thus failed to establish that the Appellant used a deadly weapon. The Trial Court, however, appears to equated the carrying of knives during the robbery with the use of deadly weapons, without addressing the absence of evidence concerning the nature of those knives.

14. The Appellant, as noted above, does not assail his conviction under Section 392/34 IPC, and there is no occasion to revisit the findings concerning the robbery or his identification. The question is whether the evidence also establishes the use of a deadly weapon so as to attract Section 397 IPC. Here, the evidence goes no further than proving that two assailants held knives during the robbery. Neither knife was recovered, nor is there any description of its nature or characteristics. In the absence of such evidence, the Trial Court could not have presumed that the knives were necessarily



deadly weapons. The prosecution has thus failed to establish the additional requirement of Section 397 IPC beyond reasonable doubt. The Appellant is entitled to the benefit of that doubt, without disturbing his conviction under Section 392/34 IPC.

15. The appeal is accordingly partly allowed. The judgment dated 26th December, 2025 is modified to the extent that the finding attracting Section 397 IPC against the Appellant is set aside. Consequently, the separate sentence of seven years' rigorous imprisonment and fine of ₹5,000/-, together with the default sentence imposed under Section 397 IPC by the order dated 12th January, 2026, are set aside.

16. The Appellant's conviction under Section 392/34 IPC is maintained. The sentence of four years' rigorous imprisonment with a fine of ₹5,000/-, and simple imprisonment for two months in default of payment of that fine, shall remain undisturbed. The direction for payment of the fine amount to the complainant as compensation shall continue to apply to the fine retained under Section 392/34 IPC.

17. The concerned Jail Superintendent shall calculate the sentence remaining to be served by the Appellant, after giving him the benefit of set-off under Section 428 Cr.P.C. and remission, if any, admissible under the applicable prison rules. If the sentence stands completed and no imprisonment remains to be undergone in default of payment of fine, the Appellant shall be released forthwith, unless required in custody in any other case.

18. The present judgment concerns the Appellant alone and does not affect the conviction or sentence of co-convict Rohit Kumar. The appeal stands disposed of in the above terms. A copy of this judgment be



communicated to the Trial Court and the concerned Jail Superintendent for necessary compliance.

SANJEEV NARULA, J

OCTOBER 12, 2026

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