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

+ CRL.A. 353/2024, CRL. M(B) 605/2024

ARYAN @ ARYA BHALA AND ANRAppellants

Through: Mr. Kuldeep Naagar, Advocate for
appellant no.1.

Mr. Devendra Dedha, Advocate for
appellant no.2.

versus

STATE OF NCT DELHIRespondent

Through: Ms. Shubhi Gupta, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **25.08.2025**

1. The present appeal under Section 374 Cr.P.C. has been preferred on behalf of the appellants against judgment dated 22.01.2024 and order on sentence dated 14.03.2024 passed by the learned Principal District & Sessions Judge, South District, Saket Courts, New Delhi, in proceedings arising out of FIR No. 156/2021 under Sections 392/34 IPC registered at P.S. Malviya Nagar.

Vide the impugned order on sentence, appellant/*Arun Kumar* was sentenced to undergo RI for a period of 7 years each for the offences under Sections 392/34 and 397/34 IPC alongwith fine of Rs.5,000/- for each offence (in total Rs.10,000/-). In default of payment of fine, he was directed to undergo SI for 1 month. Both sentences were ordered to run concurrently.

Similarly, appellant/*Aryan @ Arya Bhalla* was sentenced to undergo RI for a period of 7 years each for the offences under Sections 392/34 and



397/34 IPC alongwith fine of Rs.5,000/- for each offence (in total Rs.10,000/-). In default of payment of fine, he too was directed to undergo SI for 1 month. Both sentences were ordered to run concurrently.

Benefit under Section 428 Cr.P.C. was extended to both the appellants.

2. The prosecution's case in a nutshell as noted by the Trial Court is as under:-

“...complainant Rai Sen is working in “Friends Chemist Shop”, Shop no. 2, Plot No. 796, Main Bazar, Chirag Delhi, New Delhi and the license of the said Chemist shop was in the name of his brother Dheeraj. On 24.02.2021 at about 02.50 PM, two boys aged about 23-24 years wearing cap and mask came to his shop and demanded sleeping pills ‘Alprax’, which he refused to give without the prescription of the Doctor and those boys left the shop. After 10 minutes, both of the said boys again came to his shop and again demanded same ‘Alprax’ medicine and complainant again refused to give the same without prescription and they left the shop. Again after 10-12 minutes, those boys came to the shop for the third time and demanded the same ‘Alprax’ medicine and on refusal of the complainant to give said medicine, both the boys took out knives and pointed the same towards the complainant and threatened him that if he would raise alarm, they would stab him with the knives. In the meanwhile, one robber entered inside the counter of his shop and took out cash of around Rs. 3500/- from the cash box of the counter, threatening him that in case he raised alarm, they would stab him with knives. Out of fear, complainant did not raise alarm as he was terrorized....”

3. While appellant/Arun Kumar was arrested on 25.02.2021 on the basis of secret information and two knives were recovered at his instance, appellant/Aryan @ Arya Bhalla was arrested on 02.03.2021, though no recovery was effected at his instance. Indisputably, no recovery of any amounts was made at the instance of either of the appellants. During investigation, the I.O. also seized the CCTV footage of the concerned shop,



pertaining to the day on which the offence was stated to have been committed.

4. Upon conclusion of investigation, the charge-sheet was filed and charges were framed under Sections 392/397/34 IPC.

5. The prosecution examined its star witness, i.e., the complainant/Mr. *Rai Sen* as PW-3. He deposed that he was working in a chemist shop situated in Chirag Delhi. The license of the shop belonged to his brother. On 24.02.2021, when he was present at the shop, at about 02:50 PM, the appellants came and demanded “Alprax” tablet, which the complainant refused to provide to them, as they did not have the requisite medical prescription. The witness stated that the boys left the shop at that point, but returned 10 minutes later and again demanded the same medicine. The complainant again refused to give them the said medicine. However, on this occasion, the appellants were carrying knives; one of them entered inside the counter gate while the other, continuing to hold the knife, threatened to stab the complainant in case he raised any alarm. The boy who had entered the counter side took out cash from the cash box, while both of them further threatened the complainant that if he raised any alarm, then they would stab him. The witness identified the appellant/*Aryan* as the person who had removed cash from the cash box, and the appellant/*Arun* as the one who had pointed the knife at him. He affirmed the certificate regarding the genuineness of the CCTV footage, is exhibited as Ex.PW-3/C.

6. In his cross-examination, he stated that the cash counted by him was merely Rs.3,500/-, in the denominations of Rs.50/-, Rs.100/-, Rs.200/-, and Rs.500/-, and the police was called about one hour after the incident.

7. The prosecution examined ASI *Hans Raj* as PW-1 to exhibit the FIR.



The Investigating Officer/SI *Sandeep Kumar* was examined as PW-5. He stated that on 24.02.2021, upon receipt of information vide DD Entry No. 70/A, he reached the place of the incident and recorded the statement of the complainant. The CCTV footage from the nearby location was checked, and on the following day, upon receipt of the said CCTV footage, appellant/*Arun* was arrested. At his instance, two knives were recovered, One orange colour jacket and one pair of shoes were also recovered, which were seized vide memo Ex. PW-4/D. The jacket and the shoes appeared to be similar to the ones worn by appellant/*Aryan*. The witness further stated that on 02.03.2021, he arrested appellant/*Aryan*, however nothing was recovered at his instance. The knives recovered from appellant/*Arun* are exhibited as P1 and P2. The witness also identified the concerned jacket and pair of shoes as Ex. P3 and P4. In his cross-examination, a suggestion was put to him that no jacket or shoes were actually recovered, and he denied the said suggestion.

8. The rest were formal witnesses who deposed as to various aspects of the investigation, and their testimonies are cumulative to the testimony of PW-5/SI *Sandeep Kumar*.

9. The primary plank of the appellants' challenge to the impugned judgment and order on sentence is the vague identification of the appellants. Concededly, no TIP was conducted either in respect of the appellants or the case property, during investigation. The same assumes significance as the CCTV footage shows that at the time when both the appellants entered the shop, they were wearing masks and caps, and as such their faces were not visible. While the I.O. stated that appellant/*Arun* was arrested on the basis of secret information, the basis for arresting the other appellant/*Aryan*, has not been disclosed. In view of the fact that the appellants were not known to the



complainant, the identification of the appellants by the complainant in Court is of little significance. The only evidence that remains are the clothes recovered at the instance of appellant/*Arun*, i.e., the orange jacket and the sports shoes, no suggestions regarding which were even put to the complainant. Only the I.O. has stated that the recovered clothes are similar to the ones worn by appellant/*Arun* in the CCTV footage. By no stretch of the imagination, that can be considered positive and conclusive identification. Notably, no suggestions regarding the recovered knives were put to the complainant.

10. Further, the Supreme Court has held as under in Jafar Vs. State of Kerala, reported as **2024 SCC OnLine SC 310:-**

“7. In the absence of a proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt.”

11. Learned counsels for the appellants state that the appellants are not involved in any other cases.

12. Keeping in view all of the aforesaid facts and circumstances, the present appeal is allowed and the impugned judgment and order on sentence are set aside. The appellants are acquitted and they are directed to be released forthwith, unless required in any other case.

13. The present appeal stands disposed of in the above terms along with the pending application.

14. A copy of this decision be communicated to the Trial Court and the concerned Jail Superintendent, for information and necessary compliance.

MANOJ KUMAR OHRI, J

AUGUST 25, 2025/*rd*