



2025:DHC:10126



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

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+ **CRL.A. 764/2023**

CHANDAN

.....Appellant

Through: Mr. Rohan Joachim Alva, Advocate
(DHCLSC) with Mr. Anant Sanghi,
Advocates.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Rakesh Gilla PS New Friends
Colony, New Delhi.

CRL.A. 468/2022

JASWINDER SINGH

.....Appellant

Through: Mr. Harshit Jain, Advocate
(DHCLSC)

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Rakesh Gilla PS New Friends
Colony, New Delhi.

CRL.A. 484/2022

NEERAJ

.....Appellant

Through: Ms. Gayatri Nandwani, Advocate
(DHCLSC) with Ms. Mudita Sharma
and Mr. Adrian Abbi, Advocates.

versus



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STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Rakesh Gilla PS New Friends
Colony, New Delhi.

CORAM:**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT**

1. Convicted in FIR No. 349/2015 registered under Sections 392/397/411 IPC at P.S. New Friends Colony, Delhi, the appellants have preferred above-noted appeals challenging their conviction vide judgment dated 21.04.2022 whereby appellant/*Jaswinder Singh @ Jassi* was convicted under Sections 392/34/411 IPC (the error of convicting him under Section 397 was corrected on 27.07.2022 as there was no charge framed against him under Section 397 IPC), appellant/*Neeraj* was convicted under Sections 397/411/34 IPC and Sections 25/54/59 of the Arms Act and appellant-*Chandan* was convicted under Sections 397/34 and Sections 25/54/59 of Arms Act. Vide order on sentence dated 27.07.2022, the appellants have been sentenced as follows:-

- i) The appellant/*Jaswinder Singh @ Jassi* was sentenced to undergo RI for 5 years for the offence under Section 392 IPC and further sentence to undergo SI for 3 years for the offence under Section 411 IPC;
- ii) Appellant/*Neeraj* was sentenced to undergo RI for 7 years for the offence punishable under Section 397 IPC, sentenced to undergo SI for 3 years for the offence under Section 411 IPC and further sentenced to undergo SI for 2 years for the offence under Sections 25/54/59 of the Arms Act.



iii) Appellant/*Chandan* was sentenced to undergo RI for 7 years for the offence punishable under Section 397 IPC and sentenced to undergo SI for 5 years for the offence under Sections 25/54/59 of the Arms Act.

All the sentenced were directed to run concurrently. Appellants were also sentenced to pay fine of Rs.10,000/- each, failing which they would further undergo SI for 3 months.

The sentence of the appellant/*Jaswinder* and *Neeraj* was suspended by this Court vide order dated 24.02.2023 and 05.07.2023 respectively.

2. The trial was held in the context of an incident dated 25.07.2015 resulting into DD No. 2A registered at 12.30 am in which caller informed that while he boarded an Innova car of dark brown colour at Ashram Chowk to go to Faridabad, he was robbed of Rs.50,000/-, one gold ring, one gold chain and one mobile phone by the occupants of the car which was driven by a Sikh person. The front glass of the car had 'Omkar' written on it.

3. The said DD was assigned to SI *Lokender* who alongwith Const. *Mahender* met complainant-*Marut Sharma* and another victim, *Ankur Sharma*. Their statements were recorded in which they stated that there were four accused persons in the car, including the driver. On the point of a gun and knife, the complainant-*Marut Sharma* was robbed of his mobile phone, gold ring, gold chain along with one purse containing Rs.400/- and two ATM cards of Axis Bank and Corporation Bank. The ATM Cards were then used by forcing the complainant to disclose the PIN numbers and Rs.30,000/- + Rs.10,000/- were withdrawn from Axis Bank ATM, and a sum of Rs.10,000/- was withdrawn from Corporation Bank ATM.

The other victim-*Ankur Sharma* was robbed of his mobile phone and Rs.1800 in cash.



4. During investigation, on receipt of a secret information, the said Innova car bearing No. DL3CAM1274 was intercepted on 05.08.2015 and its two occupants namely appellants/*Jaswinder* and *Neeraj* were apprehended. These accused confessed their involvements in the present crime. At the instance of appellant/*Neeraj*, the knife stated to be used in the commission of robbery was recovered from the back seat of the car alongwith two wrist watches and a mobile phone. Further, Rs.3,850/- was recovered from the possession of appellant/*Neeraj*. On their further disclosure, the appellant/*Chandan* was arrested and at his instance, a country-made pistol stated to be used in the robbery was recovered from his house. The fourth accused namely *Mannu* could not be traced.

On 07.08.2015 further recoveries were made; while *Jaswinder* led to recovery of one gold chain, from the house of *Neeraj* - the mobile phone of Asus Company in a damaged condition was recovered. Chandan got recovered clothes that he was wearing at the time of the incident from his house. The accused persons also pointed out places where they used the ATM Cards during the commission of offence.

5. The accused however refused to participate in the TIP proceedings on the ground that their photographs had already been shown. TIP proceedings of gold chain was conducted in which the complainant/*Marut Sharma* identified the said gold chain. During the further investigation, the CDR of mobile phone of the complainant and statement of Corporation Bank were also collected.

6. After conclusion of the investigation, charge-sheet was filed and charge under Sections 392/34 IPC were framed against all the accused persons. While the Appellants/*Neeraj* and *Jaswinder* were additionally



charged for the offence under Section 411 IPC, the Appellants - *Neeraj* and *Chandan* were also charged under Sections 397 IPC and 25/54/59 of the Arms Act.

7. In the trial, total of 13 witnesses were examined by the prosecution, the primary being the complainant/*Marut Sharma* and *Ankur Sharma* who were examined as PW2 and PW3 respectively. Puneet Puri, Asst. Director (Ballistics), FSL Rohini, Delhi who proved the ballistic report on the seized country made pistol was examined as PW8. DCP Rajiv Ranjan (Traffic) who proved the sanction order Ex. PW10/A was examined as PW10. Bank Statement of *Marut Sharma* from Axis Bank was proved through Kapil Kumar, Dy. Manager, Axis Bank, Sector 62, Noida, who was examined as PW11. Mr. Chandrashekhar, Nodal Officer, Bhartiya Airtel Ltd. who proved the CAF, CDR location chart of call details records of mobile No. 8826605617, was examined as PW12.

8. Mr. Alva, Ld. counsel for appellant/*Chandan* contended that there is no recovery of any robbed articles from the appellant, inasmuch as, the country made pistol recovered from him was not proved as the recovery witness-HC *Ombir* was not examined. *Marut Sharma* alleged that at the time of incident - a gun like object was shown to him which was covered in a handkerchief and as such ingredients of Section 397 IPC are not made out. He further submits that complainant has claimed that a cartridge was shown which by itself is not a deadly weapon. It is next submitted that even testimony of *Ankur Sharma* is not reliable as he had earlier stated that a pistol was shown to *Marut Sharma* and a knife was shown to him however, later during his cross-examination while claiming that the pistol was put at his stomach and the knife on his neck, he materially improved to state that



the pistol used in the incident was old and rusted and was of black colour. This description was lacking in earlier statement. The prosecution case is also unbelievable as IO had failed to examine the guard deputed at the Bank ATMs from where the money was allegedly withdrawn. Lastly, it is contended that identification of the appellant in Court is also doubtful as *Ankur Sharma* had claimed that after 10 days of the incident, he was called in the police station to identify the appellant.

9. Mr. Harshit Jain, Ld. Counsel appearing for *Jaswinder* contended that while in the disclosure, it was claimed that gold chain and articles were sold and his share of money received, the gold chain was still shown to be recovered from an almirah in the appellant's house. Besides, two watches were shown to be recovered but they do not pertain to present incident. Though as per the case of the prosecution, the appellant/*Jaswinder* was driving the car, the complainant admitted that being seated in the middle seat of the car he did not see the face of the driver and could only see the person wearing the turban.

10. Ms. Nandwani, Ld. Counsel appearing for Neeraj also doubted the appellant's identification as the complainant/*Marut Sharma* in his statement recorded under Section 161 Cr.P.C. on 10.08.2015 (PW2/DA) claimed that he had identified the appellant/*Neeraj* alongwith *Chandan* while being called to Saket Court however, at the time of his cross-examination he denied making any such statement. Prosecution witness Ct. *Dharamveer* (PW6) in his deposition did not state about recovery of any article at the instance of *Neeraj*. At the time of deposition he wrongly identified *Chandan* as *Neeraj*. It is next contended that though the witness claimed the car to be of golden colour, the car seized by the prosecution is of light grey



colour.

11. *Per contra*, learned APP for the State, while disputing the contentions raised on behalf of the appellants, contended that testimony of complainant and *Ankur Sharma* are reliable as both have identified the appellants. He further submits that appellants had refused to participate in TIP proceedings and were later identified while they were coming out from the court. Further, the testimony of both the complainant and *Ankur Sharma* are reliable as they have not only identified the appellants in Court but also attributed specific role to each of the accused. It is stated that while *Chandan* has led to recovery of country made pistol from his house, *Jaswinder* has led to gold chain from almirah of his house and *Neeraj* has led to recovery of knife and Rs.3,800/-. Prosecution has proved the ownership of mobile phone used by *Ankur Sharma* from the CAF which is in the name of his father *Vijay Pal*.

Evaluation of Testimonies of Prosecution Witnesses

12. A perusal of the records would reveal that on the date of the incident i.e. 24.07.2015 both *Marut Sharma* and *Ankur Sharma* claimed that they were standing at Ankur Chowk where they boarded Innova car at Ashram Chowk. At that time, there were already four passengers in the car. They had claimed the car to be of golden colour. The appellant/*Jaswinder* was statedly driving the car, another co-accused (not arrested) was sitting next to him in the front who used the appellant's ATM cards to withdraw money. The complainant *Marut* was sitting in the centre of the seat in the middle, with *Ankur* to his left and appellant/*Chandan* on his right. The appellant/*Neeraj* was sitting in the last row. *Marut* deposed that one of the occupants of the car put a gun like object on his stomach while another



occupant who was on the backseat put a knife on the throat of *Ankur*, who was also beaten. His Nokia phone, some hundreds in cash, and two ATM cards, of Axis Bank and Corporation Bank, were taken. The car kept roaming around, and it stopped at ATMs on 3 occasions, where one of the accused (not arrested) used the ATM cards of *Marut* to withdraw cash after making him reveal the PIN. They also snatched his gold chain and the accused who had the country made weapon also took his gold ring. He identified appellant/*Chandan* as the person who put the country made *katta* on his stomach and appellant/*Neeraj* as the one who put knife to the neck of *Ankur*. Thereafter the accused dropped him and *Ankur* near a street, whereafter they approached the police. Though he did not identify the *katta* and knife stating that it was dark, he categorically stated that he was shown a cartridge of the *katta* during the incident. His chain was recovered by the police which he duly identified. The same was produced in Court as well. In his cross examination, he stated that initially the gun was covered with a handkerchief when it was put on his stomach. However, later he saw the gun as well as two cartridges. He stated that the knife used on *Ankur* was 30/40 cm in length and was foldable. He explained that he was under threat from accused persons and that is why he had not raised any alarm. He also deposed that he had not seen accused persons at any place other than place of incident and in the court. He was confronted with his previous two statements, Ex.PW2/DA and Ex.PW2/DB, which he denied.

13. *Ankur* deposed as PW-3. He deposed on similar lines as *Marut*. He pointed *Neeraj* as the person who had put the knife on him and *Chandan* as the one who put pistol on *Marut*. His mobile phone which was snatched by them was recovered and released to him on *superdari*, which he produced in



Court. He pointed out appellant/*Jaswinder* as the one who was driving the car. He stated that he was able to see the face of the driver from his sitting position. He denied identifying the appellants at the instance of the police. He described the pistol as old, rusted and black in colour. He described the knife as huge.

14. SI *Lokender*, the initial IO, was examined as PW5. He deposed that he had made inquiry from the ATM guard of ATM booth of HDFC located at 500 meters from the spot of incident but the guard did not inform him about anything. He did not find any public witnesses on the spot. The second IO, SI *Janak Singh*, was examined as PW9. He proved the interception of the Innova car on 05.08.2015, apprehension of *Jaswinder* and *Neeraj*, and subsequently *Chandan*, the recovery made therefrom, as discussed earlier. The appellants refused judicial TIP. The TIP of the recovered gold chain was conducted on 20.08.2015 wherein the complainant identified the chain.

15. PW11- Kapil Kumar, Deputy Manager, Axis Bank, placed on record bank statement of victim *Marut Sharma* as Ex.PW11/A as per which Rs. 40,000/- were recovered from ATM booth, located in New Friends Colony, Delhi on 24.07.2015, coinciding with the incident.

16. As per the Sketch Memo of the knife (Ex. PW9/G), the length of the blade was 25 cm, its width was 4.5 cm, and the length of the handle was 13 cm. PW7 Ramesh, Assistant Clerk from Deputy Secretary, Home (General) Delhi Administration, had placed on record notification (Ex.PW7/A), as per which no person in Union Territory of Delhi shall possess or sell spring actuated knives or *buttondar* knives or other knives having sharp edged blade of 7.62cm or more in length and 1.72cm or more in breadth without license. Hence, the knife recovered did not meet the dimensions of what was



allowed to be possessed.

17. Puneet Puri, Assistant Director, Ballistics, FSL Rohini, examined as PW8, deposed that the country made pistol Ex.F-1 was a firearm as defined in Arms Act, 1959. As per him, from the said pistol test fire was conducted successfully and therefore, that pistol was in proper working condition.

Analysis

18. In so far as non-examination of public witnesses is concerned, their non-joining is not fatal to the prosecution case, if the other evidence put forth by the prosecution is cogent, credible and reliable. A reference may be made to the decision of Supreme Court in Gian Chand v. State of Haryana,¹ wherein it was held as under:-

35. The principle of law laid down hereinabove is fully applicable to the facts of the present case. Therefore, mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellants.

19. To properly assess all the evidence on record concerning the 3 appellants, a reference may be made to the following chart:-

Appellant	Role Attributed	Identification	Recoveries, if any
Chandan	Putting a country made katta on the stomach of <i>Marut</i> .	Identified by both <i>Marut</i> and <i>Ankur</i>	<u>At the time of his apprehension on 05.08.2015.</u> Country made Katta was recovered from the <i>taand</i> of his house on 5/6.08.2015

¹ (2013) 14 SCC 420



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			<u>Subsequent Recovery On 07.08.2015,</u> Clothes worn at the time of incident – pyjama, shirt and cap
Neeraj	Putting a knife to the throat of <i>Ankur</i>	Identified by both <i>Marut</i> and <i>Ankur</i>	<u>At the time of his apprehension on 05.08.2015.</u> • knife from the backseat of the car. • two wrist watches, one mobile phone in the car • Rs 3,850/- from his person <u>Subsequent Recovery On 07.08.2015,</u> • Asus mobile phone in damaged condition from his house, belonging to <i>Ankur</i>
Jaswinder	Driving the car around at the time of commission of robbery	Identified by <i>Ankur</i>	<u>At the time of his apprehension on 05.08.2015.</u> • two wrist watches, one mobile phone in the car <u>Subsequent Recovery On 07.08.2015,</u> • one gold chain belonging to <i>Marut</i>

Findings qua Appellant/Chandan

20. In the present case, the role attributed to appellant/*Chandan* is of putting a gun to the stomach of *Marut*. Both *Marut* and *Ankur*, identified him in Court and *inter se* corroborated each other. Though *Marut* initially stated the gun to be covered with a handkerchief, he clarified that he later saw the gun as well as the cartridges. Though the cartridge in itself is not a deadly weapon, it being shown along with the country made pistol does



fulfil the ingredients of Section 397 IPC by being a deadly weapon. Recovery of the Katta from his house was proved by PW9. There is no reason to doubt the same, merely because HC *Ombir* was not examined. Nothing has been shown which would suggest false implication. Though *Ankur*'s statement has varied with *Marut* at a few places, the variations are trivial in nature and he has clearly stated the material particulars that appellant/*Chandan* put a *katta* on *Marut* and this Court finds no reason to disbelieve his testimony. Non-examination of the bank ATM guards also does not weaken the prosecution case as PW5 had deposed that they didn't tell him anything. The Trial Court has rightly convicted him for the offense under Section 397 IPC read with Section 25/54/59 Arms Act and the same is upheld.

Findings qua Appellant/Neeraj

21. Appellant/*Neeraj* has been described the role of sitting in the backside of the car and putting a knife to the throat of *Ankur* by both the eyewitnesses. Nothing has come out in their cross examination which would raise doubts on their deposition. The phone belonging to *Ankur* was seized from him and was identified by him in Court and proof of ownership was also given. Though Ct. *Dharamveer* (PW6) could not properly identify him due to lapse of time, the same does not raise any serious doubts about the prosecution case, in view of his clear identification by both the eyewitnesses. His conviction under Section 397/411 IPC and Section 25/54/59 Arms Act is consequently upheld.

Findings qua Appellant/Jaswinder

22. Lastly, coming to appellant/*Jaswinder*, his role is of driving the car around while the robbery was taking place. Though *Marut* stated in his cross



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examination that he could not see the face of the driver, Ankur has categorically stated that *Jaswinder* was driving the car and he was able to see his face from where he was sitting. One gold chain recovered from his house was identified by *Marut* in judicial TIP. Considering all the evidence on record, nothing has been pointed out which disturbs his conviction under Section 392 and 411 IPC, and the same is maintained.

Conclusion

23. In view of the above, the appeals fail and the impugned judgment on conviction is upheld. The appellants/*Jaswinder* and *Neeraj* are directed to be taken in custody to serve the remaining part of their sentence. Their bail bonds are cancelled and sureties discharged.

24. A copy of this judgment be communicated to the Trial Court as well as the Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 17, 2025

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