



2025:DHC:7103



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

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Date of Decision: 07.08.2025

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CRL.A. 638/2024

SHEIKH INTAZ @ SHEIKH IMTYAZ

.....Appellant

Through: Mr. Nitin Saluja, Advocate
(DHCLSC) and Ms. Sanskriti
Bansal, Advocate

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for
State with SI Deepak Kumar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 04.03.2024 whereby the appellant was convicted under Sections 451/392/323/397/342/411 IPC and order on sentence dated 04.05.2024 passed by learned Principal District and Sessions Judge, North District, Rohini Courts, Delhi, in SC No.372/2023 arising out of FIR No.253/2023 registered under Section 451/392 IPC at P.S. Jahangir Puri, Delhi.

Vide the order on sentence, the appellant was directed to undergo rigorous imprisonment for a period of 2 years and 3 years for the offence punishable under Sections 451 & 392 IPC respectively, along with payment of fine of Rs.5000/- in default of payment of fine, he was directed to further



undergo simple imprisonment for 60 days for each offence. The appellant was further directed to undergo rigorous imprisonment for a period of 2 months for an offence punishable under Sections 323 and 342 IPC. The appellant was sentenced to undergo rigorous imprisonment for a period of 7 years for offence punishable under Section 397 IPC and also sentenced to undergo rigorous imprisonment for a period of 6 months for offence punishable under Section 411 IPC. The benefit of Section 428 Cr.P.C. was provided to the appellant, and the sentences were directed to run concurrently.

2. Briefly stated facts of the case are that the present FIR was registered based on the complaint (Ex.PW1/A) of Ms. *Chander Kalan* (PW1) wherein she stated that on 14.02.2023 at about 7.15 am, when she was present outside her house, doing her morning religious rituals, the appellant came to her, on the pretext of getting water to drink from the complainant, followed the complainant to her house and went inside. Thereafter, the appellant pushed her, thereby causing injuries to her elbow. The appellant threatened the complainant and removed her gold earrings, took her mobile phone and purse lying on the cot (*charpaai*). After robbing the aforesaid articles, the appellant fled away from the spot and locked the complainant inside her house. The factum of the use of the kitchen knife during the commission of the aforesaid offence was revealed by the complainant subsequently.

3. During the trial, in total ten prosecution witnesses were examined. Injured/Complainant was examined as PW-1, and the son of the complainant, *Raj Kumar*, was examined as PW-2. 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 arguments. *Firstly*, the factum of the use of a knife during the commission of the offence was revealed by the complainant at a later stage, and she did not state anything with respect to the same during the initial statement recorded under Section 161 CrPC. *Secondly*, it is argued that, although a knife was recovered from the open place, which is corroborated by the site plan of the place of recovery of the knife (Ex.PW-7/A), no public witness was examined to corroborate the same. *Thirdly*, the learned counsel for the appellant contended that, even otherwise, it is the case of the prosecution that the knife was a kitchen knife and, even as per the MLC (Ex.PW 10/A) of the complainant, the injury inflicted upon the complainant was found to be simple in nature.

5. At this stage, learned APP for the State contended that even though the factum of the knife being used during the commission of the offence was not revealed at the first instance, however, the recovery of knife is duly proved vide sketch of the knife (Ex.PW-5/C), seizure memo of the knife (Ex.PW-5/D) and the site plan of recovery of said knife (Ex.PW-7/A). It is further contended that a perusal of testimony of PW-5/HC *Vikram Singh*, reveals that efforts were made by the Investigation Officer to ask public persons to join investigation, however, they refused for the same. It is lastly contended that the recovery of the robbed articles from the possession of the appellant and on his instance is duly proved by the testimony of the formal witnesses.



6. A perusal of the complainant's testimony reveals that she had deposed that on 14.02.2023 at about 7:15 am, when she was present outside her house, for offering water and prayers, the appellant came to her and requested for some drinking water. While the complainant went inside her house, the appellant also followed her and after reaching inside her house, he pushed the complainant with force and injured her using his elbow. Thereafter, the appellant forcefully removed gold ear rings from her ears, and also took her mobile phone & a purse, which were lying on the *chaarpaai* (cot). She further deposed that the appellant threatened her by showing her the vegetable knife, which he had picked up, from her house. Thereafter, the accused fled away from her house, taking away the said articles, and while leaving from there, he had bolted the main gate of her house, from the outside. She raised an alarm, whereafter a neighbour opened the gate. The police were informed about the incident, and thereafter she was taken to *Babu Jagjivan Ram* Hospital. Her son Raj Kumar (PW-2), who had also come to the spot, accompanied her to the hospital, and after getting treatment in the hospital, she returned to her house on the same day. The police came to her residence and recorded her statement Ex.PW-1/A. On the same day, in the evening, she along with her son, had visited the police post, for providing the copy of mobile bill of the phone which was robbed by the accused. At that time she saw the accused, who was sitting there. She identified him to be the same person, who had committed robbery at her residence. She also identified her purse and earrings, which were lying on the table in the police post, being the same, which were robbed by the accused. She further deposed that the IO seized the said articles vide seizure memo Ex.PW1/C, and the accused was arrested in her presence vide arrest



memo Ex.PW1/D. The articles were produced and the complainant correctly identified the robbed articles, the mobile phone and knife being the same knife, used in the commission of offence.

7. PW-2, son of the complainant, deposed that on 14.02.2023, on receipt of a telephonic information from one neighbour of his mother, that someone had robbed his mother, he immediately reached at his mother's house and with the help of PCR officials, took his mother to BJRM Hospital, where she was medically examined, and after requisite medical aid, she was discharged from the hospital on the same day. He further deposed that in the evening hours of the same day, he, along with his mother, had visited the police post, where one boy was sitting, who was identified by his mother to be the same person who had committed robbery. He also identified the appellant as the same person who was identified by his mother at the police post and further identified the robbed articles.

8. HC Vikram Singh and ASI Brij Bhushan, who had apprehended the appellant and recovered the robbed articles from his possession vide seizure memo Ex.PW-1/C were examined as PW-5 and PW-7, respectively. It has come in their testimony that the vegetable knife used in the commission of the offence was also recovered at the instance of the appellant vide seizure memo Ex.PW-5/D, and the robbed mobile phone was seized vide seizure memo (Ex.PW-5/G). PW-7, additionally deposed that he obtained the opinion on the nature of injury on the MLC of the complainant, which was opined to be '*simple*'.

9. Coming to the arguments raised by the appellant, notably, the first statement of the complainant came to be recorded when she had returned back her home after her medical examination. Concededly, at that time, her



son was also present. The police came to her house and recorded her statement on the basis of which, the *Tehrir* (Ex.PW-3/B) was recorded at about 1.50 pm. and the FIR came to be registered under sections 392/411 IPC at 7.20 pm. From above, it is evident that sufficient time had elapsed between the incident and the recording of the statement. Pertinently, even after a lapse of 6 ½ hours, the complainant made no mention of the factum of use of knife during the commission of the offence, thereby raising a strong suspicion with respect to the same and indicating that the same to be an afterthought and amounting to material improvement in the case of prosecution. It is well settled that the appellant is entitled to the benefit of doubt if the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt and that a plausible view, different from the one expressed by the courts below, can be taken.

10. Therefore, considering the aforesaid and the fact pertaining to the use of a deadly weapon at the time of commission of the offence was not disclosed by the Complainant at the first instance, i.e., the material ingredient to establish an offence under Section 397 IPC, the impugned judgment convicting the appellant under section 397 IPC is set aside, and the appellant stands acquitted of the said offence. The conviction of the appellant under Section 323/342/392/411/451 IPC however, in light of recovery and identification, is upheld.

11. At this stage, learned counsel for the appellant, on instructions, states that the appellant, being fully aware of the consequences, does not wish to challenge his conviction under the aforesaid Sections; however he prays that the sentence awarded to him be modified to the period already undergone by him.



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12. Learned APP for the State, while referring to the nominal roll dated 04.08.2025, submits that the appellant is also involved in another case arising out of FIR No. 486/15 under Sections 392/341 IPC at PS. Jahangirpuri. His overall jail conduct is unsatisfactory.

13. The latest nominal roll of the appellant indicates that he has undergone nearly 2 years and nine months in custody as on 04.08.2025, including remission. The nominal roll further indicates that the appellant is working as *Safai Sewadar*. The only other involvement mentioned in which the appellant faces trial pertains to the year 2015 and the appellant has been granted bail in that case. His jail conduct during last one year has been satisfactory. The appellant is stated to be illiterate who used to work as a rag picker and is a sole bread earner for his family which comprises of his parents, wife, two minor children. Considering the aforesaid, the sentence of the appellant is modified to the extent that the appellant is directed to be released on the period already undergone by him in custody, if not required in any other case. The sentence of fine, however, shall remain as it is. In case of non-payment, the appellant shall undergo the default sentence.

14. The appeal is partly allowed and disposed of in the above terms.

15. A copy of this order be communicated to the concerned Jail Superintendent as well as the trial court.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 07, 2025

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(corrected & released on 20.08.2025)