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

% ***Date of decision: 23rd July, 2025***

+ **CRL.L.P. 621/2019**

THE STATE

Govt. of NCT of Delhi

Delhi

(Through its Standing Counsel (Crl.)

.....Petitioner

Through: Mr. Utkarsh, APP for the State with
SI Sumet, PS Vivek Vihar.

versus

SURENDER SINGH @ PAPPU

S/o Sh. Niranjana Singh,

R/o House No. 28/102,

Kasturba Nagar,

Shahdara, Delhi.

.....Respondent

Through: Mr. Rajender Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.L.P. 621/2019

1. Criminal Leave Petition under Section 378(1) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Petitioner for grant of Leave to Appeal against the Judgment dated 04.07.2019 of the learned ASJ-05, Karkardooma Courts, Delhi ***acquitting the respondent Surender Singh @ Pappu*** in SC No. 834/2016 in Case FIR No. 1040/2015 under Section 394/397 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) Police Station Vivek Vihar.
2. On advance Notice, learned counsel for the Respondent has appeared



and accepts the Notice.

3. For the reasons stated in the Leave Petition and the submissions made, the same is allowed.

CRL.M.A. 40842/2019 (condonation of delay)

4. Application under Section 482 Cr.P.C. read with Section 5 of the Limitation Act, has been filed on behalf of the Appellant/State for condonation of delay of 15 days in filing the accompanying Appeal.

5. On advance Notice, learned counsel for the Respondent has appeared.

6. For the reasons stated and in the interest of justice, the delay of 15 days in filing the accompanying Appeal, is condoned and the same is allowed.

7. The Application is disposed of accordingly.

CRL.A...../2025 (to be numbered)

8. Appeal under Section 378(3) Cr.P.C. has been filed on behalf of the Appellant/State against the Judgment dated 04.07.2019 of the learned ASJ-05, Karkardooma Courts, Delhi acquitting the respondent Surender Singh @ Pappu under Section 394/397/34 IPC.

9. ***Briefly stated***, the Complainant/Vikas Malik gave a Complaint on 23.10.2015 wherein he stated that on 22.10.2015 at about 09:45 p.m., he along with his children, were present on the Main Road, near Kasturba Nagar red light after seeing the Ravan Dahan, when one person came brandishing a sword in his hand. He rebuked and assaulted the passerby and also slapped a rickshaw puller in which children of the Complainant, were sitting. When the Complainant objected, the Respondent hit him on his right hand with a sword. The Complainant slapped the Respondent to save



himself. 3-4 associates of Respondent came and started giving him fist blows and caused injuries on his right cheek with a blade. They snatched his purse containing Rs.5,000/-, ATM Card of PNB (Bank), PAN Card, Driving Licensee and Voter I Card. He got himself treated at Dr. Hedgewar Hospital from where information was conveyed to the Police Station about the incident.

10. The **FIR No. 1040/2015** under *Section 394/397 IPC* was registered at Police Station Vivek Vihar, on his complaint.

11. On concluding the investigations, **Charge-Sheet** was filed in the Court. The Charges for the offences punishable under Section 394/397/411/34 IPC, were framed on 07.04.2016, to which the Respondent pleaded not guilty.

12. The Prosecution in support of its case, examined **10 witnesses**.

13. **PW-1 was the Complainant/Vikas Malik**, who proved his Complaint, Ex.PW-1/A. The Arrest Memo of the Respondent is Ex.PW-1/B and his Personal Search Memo is Ex.PW-1/C. The Voter I Card, ATM Card, driving license and PAN Card etc. were recovered pursuant to the disclosure statement of the Respondent, which were seized by Memo PW-1/E. The Site Plan is Ex.PW-1/F.

14. **PW-2, Smt. Renu Malik**, wife of the Complainant, has corroborated the incident as deposed by PW-1.

15. **PW-5, Dr. Shani Kumar** proved the MLC of the Complainant as Ex.PW-5/A.

16. **PW-10, SI Kulbir Rana, IO** along with the **PW-4, Ct. Rahul Kumar** had conducted the investigations and made the recovery at the



instance of the Respondent.

17. **PW-3, HC Rajpal** made entry in Register No. 19 at Serial No.1040 Ex.PW-3/A regarding the articles (one black coloured purse containing Voter ID card, one PNB ATM Card, one DL, one PAN card and some other documents) deposited by SI Kulbir Rana in the malkhana.

18. **PW-6, ASI Jai Ram** was posted at PS Vivek Vihar and proved copy of FIR, Ex.PW-6/A and the Rukka, Ex.PW-6/B. **PW-7, Ct. Surender** proved the copy of the DD No.59B, Ex.PW-7/A. **PW-8, ASI Bhagawat Singh** was the duty constable at Dr. Hedgewar Hospital and **PW-9, ASI Kavinder Singh** was the Head Constable at PS Vivek Vihar.

19. The Statement of the Respondent under Section 313 Cr.P.C. was recorded wherein he denied all the incriminating evidence put to him and pleaded his innocence.

20. He, in his defense, examined **DW-1, Sh. Balbir Singh**, who deposed that on 22.10.2015 at about 09:45 p.m., he had got information that some persons were beating the Respondent while claiming themselves to be the police officials. He had found the Respondent lying unconscious on the road and had taken him to his house. On the next day, when he went to his house, he was informed that he was still unconscious. He further deposed that he has been getting his treatment from IHBAS.

21. ***Learned ASJ noted the material contradictions in the testimony*** of the Complainant and the alleged recovery of stolen articles. It was also noted that though there were injuries on the person of the Complainant but no allegations of robbery could be proved. *Hence, the Respondent was acquitted for the Charges under Section 394/397 IPC but was convicted for*



voluntarily causing hurt by dangerous weapons under Section 324 IPC and sentenced to a fine of Rs.5,000/-.

22. *Aggrieved by the acquittal of the Respondent under Section 394/397 IPC, the present Appeal has been preferred by the State.*

23. The ***grounds of challenge in the Appeal*** are that the Judgment is based on conjectures and surmises and not on the facts.

24. Sh. Vikas Malik, the Complainant/PW-1 and PW-2/Smt. Renu Malik, who were the eye witnesses to the incident, had correctly deposed about the case of the Prosecution. They both also identified the Respondent in the Court. Furthermore, the injuries on the person of the Complainant were duly proved by PW-5, Dr. Shani Kumar. Without appreciating these facts, the Respondent has been wrongly acquitted under Section 394/397 IPC.

25. It has not been rightly appreciated that there was no contradiction whatsoever in the testimony of the two eye witnesses, which is fully corroborated by the medical evidence. It has also been overlooked that the Respondent pursuant to his disclosure statement, had led to the recovery of one black colour purse containing Driving License, PAN Card, Voter I Card and some other documents, which were identified by the Complainant as belonging to him.

26. It is further submitted that the recovery of the weapon of offence i.e. the sword, is not imperative to bring whom the offence under Section 394/397 IPC.

27. Reliance has been placed on *Mohinder vs. State*, 2010 VII A D (Delhi) 645 wherein it was held that where the injury has been proved through ocular evidence, non-recovery of weapon of offence cannot be held



fatal. Similar observations have been made in the case of Chunni Lal vs. State of Delhi, Criminal Appeal No. 262/2003 dated 08.08.2013.

28. It is further contended that it has not been considered that DW-1/Sh. Balbir Singh examined by the Respondent was not a reliable witness. Though DW-1 deposed that the Respondent was lying unconscious, but no such Report was made to the Police. No documentary evidence has also been produced that the Respondent was taking treatment from IBHAS.

29. The evidence of the Prosecution witnesses has not been appreciated in the right perspective and has been disbelieved on the trivial grounds. It has been wrongly held that the Prosecution story was not believable.

30. *It is, therefore, submitted that the impugned Judgment be set-aside and the Respondent be convicted under Section 394/397 IPC.*

Submissions heard and the record perused.

31. The *star witness* of the Prosecution is **PW-1/Sh. Vikas Malik, the Complainant**, who deposed that on 22.10.2015, he along with his family members had gone to see *Ravan Dahan* on the occasion of *Ram Leela* at Main Road, near Kasturba Nagar red light. He arranged for a peddle rickshaw for his wife (PW-2) and children for going home, while he was to follow them on his motorcycle.

32. At about 09:45 p.m., as his wife and children got seated in the rickshaw. The Respondent who was having his sword in his hand, was rebuking the passersby and also assaulting them with a sword. Respondent slapped the rickshaw puller, in whose rickshaw his wife and children were sitting. When he objected, the Respondent assaulted him and inflicted injury with the sword on his right hand. When he tried to save himself, 3-4



associates of the Respondent, reached the spot and someone from amongst them, inflicted injury on the right cheek with the blade. The said persons snatched his purse from his pocket, which contained Rs.5,000/- cash, ATM Card of PNB (Bank), PAN Card, Driving License and Voter ID Card and left the spot.

33. He, along with his wife and children, came back home. He, then went to Dr. Hedgewar Hospital where he was given medical treatment. The Police came and recorded his Statement, Ex.PW-1/A.

34. The testimony of the Complainant is fully corroborated by his **wife, PW-2, Smt. Renu Malik**, who has deposed that on similar lines.

35. **The first aspect for consideration herein is how the Respondent was identified and apprehended.**

36. PW-1/Sh. Vikas Malik, the Complainant deposed that on the next day i.e. 23.10.2015 while he was going to Jhilmil Colony at about 08:00 p.m., he saw the accused/Respondent standing near *Raju Meat Wala shop*, whom he identified. He then made an enquiry from him and came to know his name as *Surender Singh @ Pappu r/o 28/102, Kasturba Nagar* and was an auto driver.

37. The Complainant then went to the Police Station and told the Investigating Officer about the identity of the Respondent and his residential address. Thereafter, Investigating Officer, along with him and one Police Constable, reached the house of the Respondent, from where he was apprehended and interrogated. His Arrest Memo is Ex.PW-1/B and his Personal Search was conducted *vide* Memo Ex.PW-1/C. The Respondent made a Disclosure Statement, Ex.PW-1/D.



38. The manner in which the Respondent was identified and apprehended on the next day, is highly unnatural. Admittedly, the Complainant had no prior acquaintance with the Respondent. The incident had occurred at about 09:45 p.m. in chaotic circumstances. It is difficult to believe that had the Complainant, merely by chance, happened to spot the Respondent the very next day at 08:00 p.m. near a meat shop and not only recognized him but also managed to ascertain his full name and address.

39. Further, PW-10 SI Kulbir Rana, the Investigating Officer and PW-4, Constable Rahul Kumar, who had accompanied him, had deposed that the Complainant had accompanied them to the house of the Respondent from where he was apprehended on the identification by the Complainant. They further deposed that after the Respondent was apprehended, he was brought to the Police Station where he made his Disclosure Statement, Ex.PW-1/D.

40. Pertinently, while in his examination-in-chief, PW-1/Complainant had said that he had accompanied the Investigating Officer to the residence of the Respondent from where he was apprehended and was subsequently arrested *vide* Memo Ex.PW-1/B, but pertinently, in his cross-examination, he deposed that the Respondent was not arrested in his presence.

41. *The learned ASJ had thus, concluded that this story of the manner of arrest of the Respondent, was not believable.*

Whether Offences under Section 394/397 IPC were committed by the Respondent:

42. Another aspect, which emerges from the testimony of PW-1 and PW-2, is that while the Respondent was recklessly brandishing his sword at people around and had slapped the rickshaw-puller (who had been hired by



the Complainant), he hit the Complainant on his hand with the sword. ***Thereafter, 3-4 associates of the Respondent came and they all started hitting him and snatched his purse.***

43. Pertinently, the Complainant has not specifically assigned the snatching of the purse by the Respondent; rather he had deposed that as he tried to save himself from the assault of the Respondent, his 3-4 associates came and someone from amongst them caused injuries on his right cheek with a blade. The said person also snatched his purse containing the cash and his documents.

44. From his testimony itself, it is evident that some associates of the Respondent *in fact* had snatched the wallet, thus raising a serious doubt of snatching of the wallet by the Respondent. *Also, the testimony fails to establish the offence under Section 394/397 IPC against the Respondent.*

Recoveries made pursuant to the Disclosure Statement of the Respondent:

45. The **third aspect is regarding the alleged recoveries made pursuant to the Disclosure Statement of the Respondent.**

46. PW-1/Sh. Vikas Malik, the Complainant deposed that after the Respondent was apprehended, he gave a Disclosure Statement, Ex.PW-1/D. He then led them near *Shamshan Ghat* at a *Kooraghar* from where they got recovered one purse which on checking was found to contain his Voter ID Card, PAN Card, PNB ATM Card, Driving License along with some other documents, which were all identified by him and were seized by the Investigating Officer *vide* Memo Ex.PW-1/E. ***However, as already mentioned, the Complainant denied accompanying the Police to either apprehend the Respondent or for recovery of the articles.***



47. Further, PW-10/SI Kulbir Rana, the Investigating Officer and PW-4/Ct. Rahul Kumar deposed that the Respondent on apprehension, led them, including the Complainant, to near *Shamshan Ghat, Jwala Nagar* and got recovered the black coloured purse along with its contents. The purse was identified by the Complainant and was seized *vide* Memo, Ex.PW-1/E.

48. PW-1/the Complainant had denied that the arrest of Respondent was made in his presence. It is then quite evident that the Disclosure Statement was also not recorded in his presence or that he had accompanied the Police for recovery. It emerges from the testimony of the Complainant that he did not accompany the Investigating Officer and PW-4, Ct. Rahul Kumar, to the house of the Complainant, and that the recovery of the purse and its contents were not made in his presence. The contrary testimony of the Complainant, thus, creates a doubt about the alleged recovery being made in his presence, especially when in his testimony he had deposed that the purse was snatched by 3-4 associates of the Respondent. Even if it is accepted that the recovery of purse was affected from the *Koodagarh*, it cannot be held that it was made at the behest of the respondent.

49. *It is, thus, doubtful that the recovery of his purse along with his contents was made in his presence at the instance of the Respondent, from the Kooraghar near Shamshan Ghat.*

50. **Another important aspect**, which is emerged, is that PW-1/the Complainant in his cross-examination deposed that on the next day i.e. 23.10.2025, he along with his brother, had gone to *Jhilmil Colony*, to withdraw money from the ATM.

51. Pertinently, if the ATM Card had got robbed, where was the question



that of his having gone to take out the money from the ATM. This is particularly relevant given that there is no evidence on record suggesting that the Complainant possessed more than one ATM card.

52. The learned ASJ has rightly observed that had the ATM card genuinely been stolen, any prudent individual would have immediately taken steps to block the card to prevent misuse. However, no such action or evidence has been brought on record. No such evidence has come on record, which creates a doubt of his ATM Card as contained in the wallet, having been stolen. The manner in which the alleged recovery has been made at the instance of the Respondent, thus comes under the cloud, as has been rightly noted by the learned ASJ.

53. It has been rightly observed by the learned ASJ that there is serious doubt of any robbery actually having taken place and there was every likelihood of the recovery being planted by the Investigating Officer.

Conclusion:

54. The learned ASJ has thus, rightly held that no offence under Section 394/397 IPC was made out. However, the injuries on the hand, were *in fact* inflicted with his sword by the Respondent for which he has been rightly convicted under Section 324 IPC.

55. There is no merit in the present Appeal, which is hereby dismissed.

56. The Appeal is disposed of along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 23, 2025/RS