



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

% Date of Decision: 11.09.2025

+ **CRL.A. 272/2016**

HARI DUTT PANTAppellant
Through: Mr. Sumer Kumar Sethi, Adv.
(DHCLSC) with Ms Dolly Sharma,
Adv.
versus

STATERespondent
Through: Mr. Pradeep Gahalot, APP for State.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been instituted under Section 374(2) Cr.P.C. thereby seeking setting aside of the impugned judgment dated 12.02.2016 and order on sentence of even date rendered by Additional Sessions Judge-04 & Spl. Judge (NDPS), South-East, Saket Courts, New Delhi in SC No. 82/2013 arising out of FIR No. 89/2013 registered under Sections 392/34 IPC at P.S. Lodhi Colony.
2. Notably, the nominal roll of the appellant placed on record reflects that the appellant has already completed his entire sentence. The appellant, however, is not traceable. A status report in this regard has already been placed on record. With the aforesaid backdrop, the appeal has been heard on merits.
3. The FIR in the present case was lodged against five accused persons, including the present appellant. The allegation is that on 28.05.2013, at



around 3.00 PM, at Silver Oak Park, all the accused persons, in furtherance of their common intention, committed dacoity with the complainant, and robbed him of a gold chain from around his neck and Rs.5,000/- from his pant pocket by threatening him with an *ustra*. The robbed gold chain was later recovered from the possession of co-accused *Karim @ Jalela*, from his *jhuggi*.

4. The chargesheet was filed against the five accused persons for the offences punishable under Sections 392/395/34 IPC. However, one of the co-accused persons, *PK*, turned out to be a JCL, and another co-accused person, *Raja @ Arif*, had already expired by the time of framing of charges. The Sessions Court thereafter framed charges under Sections 395/34 IPC against the remaining three accused persons. *Karim @ Jalela* was additionally charged for the offence punishable under Section 412 IPC. All three accused persons pleaded not guilty and claimed trial.

5. Vide the impugned judgment, the three accused persons were convicted under Sections 395/34 IPC, while *Karim @ Jalela* was further convicted for the offence punishable under Section 412 IPC. The co-convict/*Sartaj @ Allarakhha* did not challenge the said judgment of conviction, whereas *Karim @ Jalela* challenged the conviction vide CRL.A. No. 425/2016, which was disposed of by a separate order passed by this Court today, i.e., on 11.09.2025, as he did not press his appeal on merits, having already undergone the entire sentence.

6. Learned counsel for the appellant has assailed the impugned judgment by contending that the prosecution failed to establish the identity of the appellant as one of the eyewitnesses, *Kitab Ali/PW-9*, did not identify the appellant in Court. He submits that the appellant refused to participate in



TIP as his photographs had already been taken at the police station. It is next contented that the prosecution case is not established as no recovery was effected at the instance of the present appellant. Further, there is inconsistency as to the amount that was robbed, as initially both the relevant DD entries, i.e., DD Nos. 17 & 21A, recorded that a sum of Rs.35,000/- was robbed; however, neither the documentary evidence on record nor the witnesses have supported the same. Rather, it is the prosecution's case that a sum of Rs.5,000/- was robbed. While referring to the testimony of HC *Kuldeep Singh*/PW-4, it is contended that the entire paperwork was done at the police station, which casts a doubt on the prosecution case.

7. The contentions are refuted by the learned APP for the State, who submits that the appellant came to be arrested on 04.06.2013 in connection to FIR No. 157/2013 registered at P.S. Hazrat Nizamuddin under Sections 302/34 IPC, wherein he made a disclosure of his involvement in the present case. Subsequently, on 21.06.2013, he came to be arrested in the present case, which pertains to a different police station, i.e., P.S. Lodhi Colony.

8. The prosecution examined 10 witnesses in support of its case. The primary witness, i.e., the complainant, who was examined as PW-7, deposed that he used to assist his father in running a scrap shop under Lala Lajpat Rai Marg. On 28.05.2013, at about 1:30 PM, when he was in the shop, at the request of a known person by the name of *Bobby*, he took *Bobby's* motorcycle for filling petrol. At that time, he was accompanied by *Kitab Ali*, who was working at their shop. At about 3:30 PM, when he reached near Silver Oak Park, 4-5 boys came from front side and pushed his bike, due to which the appellant as well as *Kitab Ali* fell down. While one of the boys forcibly pulled the gold chain from around his neck, another boy took out



Rs.5,000/- from the pocket of his pant. When he protested, the boy who had snatched the gold chain attacked him with an *ustra*. Leaving the motorcycle at the spot, the complainant and *Kitab Ali* both ran away. On reaching his shop, he apprised *Bobby* of the situation. At that time, one of the accused persons passed from in front of the complainant's shop and, on his pointing out, *Bobby* identified the said accused as *Allarakhha*, since he used to reside in the *jhuggis* and was already known to *Bobby*. *Bobby* confronted *Allarakhha*, on which he apologized and promised to get the gold chain and money recovered. He was allowed to leave, however, when he did not return, a call at 100 number was made.

9. During the investigation, on 29.05.2013, the police took the complainant to the mortuary at AIIMS, where he identified the dead body shown to him as that of co-accused *Raja*, whom the complainant identified as the person who had used the *ustra* and taken out Rs.5000/- from his pant pocket. The robbed gold chain was recovered and duly identified by the complainant.

In his cross-examination, he stated that at the time of commission of the offence, there was no other person in the park. He denied the suggestion that no such incident had taken place.

Bobby was examined as PW-8. He deposed that on 28.05.2013, he had come to the shop of the complainant. After some time, upon coming out from the shop, he saw the complainant running towards the *nala*. The complainant told him that 4-5 boys had robbed his gold chain and Rs.5000/-. He further deposed that when the complainant pointed towards one of the boys, he identified him to be *Allarakhha*. On that date, *Allarakhha* assured him that he would bring back the robbed gold chain and Rs.5000/-, however,



he did not return the same.

Kitab Ali was examined as PW-9. He deposed that he had accompanied the complainant to the petrol pump for filling petrol in the motorcycle and that, on that date, the complainant was robbed of his gold chain and money. One of the accused took out an *ustra* and attempted to inflict injury on the complainant, whereupon both the witness and the complainant ran away and managed to escape. On being asked to identify, he deposed that since more than one and a half years have elapsed from the incident, he was not sure if the accused present in Court was the same who had committed the offence.

The role assigned to the present appellant is that of having been part of the group which had committed the offence. Even though no specific overt act is attributed to the appellant, his presence stands confirmed in light of identification by the complainant before the Trial Court.

10. The contention that the appellant's conviction is unsustainable on the ground that no recovery was effected at his instance is meritless. Section 391 IPC stipulates that when five or more persons conjointly commit or attempt to commit a robbery, or where the number of such persons, together with those present and aiding, amounts to five or more, every person so committing, attempting, or aiding is said to commit dacoity. Section 395 IPC thereafter prescribes the punishment for such offence. Once the presence and participation of the appellant as part of the group stands established, the absence of recovery at his instance does not absolve him of liability.

11. The contention regarding photographs being taken is also meritless as the appellant was in custody in connection to a separate case altogether,



registered at another police station. The appellant was arrested in the present case on 20.06.2013, and the TIP was conducted on the same day.

12. Insofar as the variance in the amount recorded in the initial DD is concerned, the said information was telephonic. The complainant, in his initial statement, mentioned the amount to be only Rs.5000/-. In view of the fact that the robbed gold chain was recovered and the appellant has been identified as part of the group comprising five persons who committed the offence, the contention does not carry weight.

13. Thus, I find no reason to interfere with the impugned judgment. The present appeal is accordingly dismissed.

14. As noted earlier, the appellant has already completed his substantive as well as default sentence, whereafter he was released from jail on 12.06.2018.

15. The present appeal is disposed of in the above terms.

16. A copy of this judgment be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 11, 2025/pmc