



2025:DHC:9186



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

% Reserved on : 09.10.2025
Pronounced on : 15.10.2025

+ **CRL.A. 513/2016**

JAKIR AHMADAppellant

Through: Ms. Gayatri Nandwani, Adv. and Ms.
Mudita Sharda, Adv.

versus

STATERespondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Being convicted and sentenced for the offence punishable under Sections 394/34 IPC read with Section 397 IPC and Sections 25/27 of the Arms Act, the appellant has preferred the present appeal seeking setting aside of the judgment dated 18.04.2016 passed by Ld. Sessions Judge (FTC), North West District, Delhi.
2. Vide Order on sentence dated 19.04.2016, the appellant has been sentenced in the following manner :-

Penal Section	Sentence	Imprisonment in default of fine
Sections 394/34 r/w Section 397 IPC	7 years RI with fine of Rs.5,000/-	One month SI
Section 25 of Arms Act	1 year RI with fine of Rs.5,000/-	One month SI
Section 27 of the	3 years RI with fine	One month SI



Arms Act	of Rs.5,000/-	
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3. Facts as per case of the prosecution are that on 08.02.2015, the complainant *Deepak* while returning home was caught hold of by two persons near *Murga* Market. While one of them robbed him of Rs.1,500/- kept in the pocket of his pant, the other hit him with a knife on his left hand. On alarm being raised by *Deepak*, one *Lakhan Lal* came to his rescue. When he attempted to catch the robbers, one of them who was armed with knife, also gave knife blows to *Lakhan Lal*. While *Deepak* and *Lakhan Lal* together were able to overpower the person who had inflicted knife injuries, the other accomplice however, managed to flee. The accused apprehended at the spot was identified as *Jakir Ahmad* i.e., the present appellant. Both the injured were taken to hospital by one *Jaipreet Singh* who happened to be friend of *Deepak*. The knife used in the incident was recovered. The co-accused *Umesh @ Ganja* remained absconding and was never apprehended. The charges under Sections 392/394/397/307/34 IPC and also under Sections 25/27 of the Arms Act were framed, to which appellant pleaded not guilty and claimed trial.

4. Prosecution had examined the complainant/*Deepak*, injured/*Lakhan Lal* and *Jaipreet Singh* as PW10, PW2 and PW6 respectively. The doctors who had exhibited the MLC as well as opinion on the same namely Dr. Jatin Bodwal, Dr. Rajiv Kumar and Dr. Mukesh Mandal were examined a PW11, PW12 and PW13 respectively. Investigating Officer of the case ASI Suresh Pal was examined as PW3. The remaining witnesses were examined who proved the steps of investigation.

5. Injured complainant/*Deepak* in his deposition stated that on the day of



the incident, i.e. 08.02.2015, around 8.30 P.M., he was stopped by two accused persons near *Murga* Market, Shalimar village. The appellant had caught hold of him from behind and showed him knife while the other accused had removed Rs.1,500/- from rear pocket of his pant. He further stated that the appellant had also given a knife blow on his left forearm. On his raising alarm, *Lakhan Lal*, who was nearby, came and while he was trying to apprehend the appellant, the appellant inflicted knife injuries on his chest. He further stated that appellant was apprehended at the spot by public persons.

In cross examination, he stated that he told the police that the appellant caught hold of him from behind and he had also taken out one knife. He was confronted with his statement where it was stated that he was caught by two persons and one person had hit him on his left arm. He admitted to be correct that the spot of incident was misty and there was darkness since there was no source of light. He admitted that he did not tell the type of knife either to doctor or the police since he was not asked and that it was a *buttondar* knife. He said that he had seen the appellant in the hospital. Police did seize his wearing clothes. He said he did not remember whether the site plan was prepared or not.

6. *Lakhan Lal* (PW2) in his deposition did not state on the aforesaid lines. He deposed that when he was walking in the park in front of his house, he heard the shouting of public person '*Pakro Pakro*' from one side of the park and saw one person running and being chased by other public persons. He tried to apprehend the accused who inflicted knife blows upon him. Public persons who had collected there also started beating him. He found out that the complainant, who was his friend, had also been given knife



blows and he also arrived there. He was asked by the Court whether complainant had told him who caused injuries to him or did he ask from the complainant how he received injuries, to which he replied in the negative, since he was feeling giddiness. He further deposed that one friend of his, Jaipreet, arrived on the spot on a phone call, but he had no knowledge as to who made the phone call. He took both him and Deepak to BJRM hospital. The appellant was given beatings by public and he was on the adjacent bed. He told police that he was the same person who had given injuries to him.

He was declared hostile and during cross-examination by the Ld. PP stated as per his statement recorded during the investigation. He stated that he had forgotten some facts but could recollect the same after going through his statement. He said he could not identify the knife due to it being dark.

In the cross examination conducted by the counsel for the appellant, he stated that he had not read his statement (Ex. PW2/A) and the same was not read over either to him and he could not tell what all was recorded in the same. He stated that he had not met the police officials subsequently as he had left for his native village. However, later he stated that he met the police on 08.02.2015 and 09.02.2015 when he was admitted at BJRM hospital.

He stated though doctor had asked him how he sustained injuries, he had not told him about the same. He admitted knowing *Deepak* prior to incident. He also admitted not mentioning the name of *Jaipreet* to either hospital authorities or police.

7. Jaipreet Singh was examined as PW6. He deposed that he saw Deepak injured when he was coming back from factory on foot and a number of public persons gathered. He called Deepak's mother on the spot and he took Deepak on a borrowed bike to the hospital. In his cross examination, he



stated that the police recorded his statement once after 1-1 ½ months. He could not say whether *Deepak* was inebriated.

8. ASI Suresh Pal, examined as PW3, deposed that on receipt of DD No.26A, he alongwith Ct. Gulshan reached Murga Market to find that the injured persons were taken to BJRM hospital. The T-shirt and banian of injured *lakhani* was taken into possession by him vide seizure memo Ex. PW3/B. He deposed that the appellant got recovered one *buttondar* knife hidden under garbage at pig house. Sketch Memo was prepared (Ex. PW3/H) and knife was taken into possession vide seizure memo Ex. PW3/J. He deposed that he sent the clothes of injured to FSL and opinion was also sought from FSL as to the presence of any blood spots on it.

Further examination of PW3 was deferred for want of case property sent to FSL. The Court later observed that despite sufficient opportunities, FSL report was not ready. Court tendered PW3 for cross-examination. PW3 admitted that public persons were found collected on the spot, but no statement was recorded or name and addresses noted. He stated that he prepared site plan Ex. PW3/C at the instance of *Deepak*, but had not obtained his signatures on the same. No source of light was indicated in the plan.

9. PW5 Ct Naresh deposed as to collecting the sealed *pullanda* containing T-shirt and *banian* by concerned doctor. PW9 Ct. Karam Singh Malik deposed as to taking the sealed *pullanda* from Malkhana and depositing at FSL.

10. The MLCs of the injured were proved through PW12 Dr. Rajiv Kumar, Specialist, Medicine, BJRM hospital and PW13, Dr. Mukesh Mandal, CMO, BJRM hospital.



11. Dr. Jatin Bodwal, PW11, deposed as to his subsequent opinion regarding weapon of offence related to injuries received by injured. As per his report, exhibited as Ex. PW11/A, though *lakhan's* injuries were possible with the knife, injury to *Deepak* was not possible with a knife.

12. Learned counsel for the appellant has contended that appellant has throughout claimed that he was falsely implicated as he was found in inebriated state whereas the injuries suffered by the witness were on account of fall on the broken glass bottles. It is also contended that the knife shown to be recovered is not connected with the appellant. Also, the injuries on *Deepak* have been opined to be not inflicted by the recovered knife. In this regard, it is noted that both the witnesses have stated that appellant was caught at the spot however, the knife is shown to be recovered on the next day i.e., 09.02.2025 from near the railway track.

13. Ld. APP for the State, on the other hand, has defended the impugned judgment.

14. I have heard the learned counsels for the parties and perused the material on record.

15. The complainant has alleged that he was robbed at knife point of Rs 1500 by two persons. While one took the money, the other gave a knife blow to his right forearm. He states that *Lakhan lal* came on hearing his shouts and apprehended the appellant, who gave him knife blows as well. He had deposed that he had not stated as to the description of the knife to the police because he was not asked but that it was a *buttondar* knife. He was not shown the knife in Court for identification.

On the other hand, *Lakhan lal* has deposed that the appellant was running and being chased by other public persons and when he tried to



apprehend him, knife blows were inflicted. He found out later that Deepak was also injured when he came there. He could not identify the knife either.

PW4, HC Jagmal, who was on PCR duty, had deposed that he had found the appellant on the spot, and he had already been given beatings by public and he took him to BJRM hospital. He has not deposed that any knife was found at the spot.

16. Even if the contradictions in the witnesses' testimonies are ignored, the consistent case of the prosecution is that the appellant was apprehended on the spot by injured as well as public persons shortly after he stabbed the two persons and then he was removed to the hospital by PCR. In such a scenario, this Court fails to understand how the knife was not recovered from the spot and rather shown to be recovered on the next day near the railway line which is at some distance.

17. Interestingly, the knife was shown to the doctor who had opined that the injuries shown to be suffered by *Deepak* were not possible by the recovered knife. Pertinently, it has come in the testimony of Ct. Naresh that he had received sealed *pullanda* containing T-shirt and *baniyan* of the injured/Lakhan Lal received from the doctor at BJRM Hospital which was handed over by him to IO/ASI Suresh Pal. Prosecution had also examined Ct. Karan Singh Malik (PW9) who stated that he had deposited the sealed parcel alongwith exhibits to FSL Rohini however, no FSL was exhibited. It is also the case of the prosecution that appellant's accomplice Umesh @ Ganja was never arrested. Clothes of *Deepak* never even seized. Despite the incident taking place at an admittedly crowded spot, no public witness was examined. While it is true that non- joining of public witnesses by itself is not fatal to the prosecution case, that is only in the cases where 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.

18. It so happens that in the present case, the prosecution evidence is anything but cogent or reliable. No one, except the complainant has deposed as to the factum of robbery having taken place. No recovery has been made from the person of the appellant. The recovery of knife does not appear even a bit convincing. PW11 has opined that the injuries to the complainant could not have been caused by the knife.

19. Keeping in view the aforesaid, this Court is of the considered opinion that the prosecution has failed to conclusively prove its case. Accordingly, appeal is allowed and impugned judgment as well as sentence are set aside and appellant is acquitted.

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

21. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 15, 2025/ga

¹ (2013) 14 SCC 420