



2026:DHC:30



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

*Reserved on: 09th October, 2025
Pronounced on: 05th January, 2026*

+

**CRL.A. 785/2025, CRL.M.A. 17105/2025 &
CRL.M.(BAIL) 1212/2025**

AKASH

S/o Sh.Mahesh Kumar,
R/o Village Biharipur
PS Baghpat, Distt. Baghpat
Uttar Pradesh

Present Address:

H.No.A-37, Gali No.4
Phase-4, Rathore Dharamshala,
Shiv Vihar, Karawal Nagar, Delhi

.....Appellant

Through: Mr. Utsav Jain, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

Through SHO
Police Station Jyoti Nagar

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Pankaj Kumar, PS: Jyoti Nagar.

+

CRL.A. 487/2025

KULDEEP

S/o Sh.Rajendra Kumar,
R/o Village Biharipur,
PS Baghpat, Distt. Baghpat
Uttar Pradesh

.....Appellant

Through: Mr. Tarun Gautam, Adv. with
Appellant in person.

versus



2026:DHC:30

**THE STATE GOVT NCT OF DELHI**

Through SHO

Police Station Jyoti Nagar

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for
State with SI Pankaj Kumar, PS: Jyoti
Nagar.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.****CRL.M.A. 17105/2025 in CRL.A. 785/2025: Condonation of Delay**

1. Appellant/Akash has filed an application under Section 5 Limitation Act, 1963 read with Section 528 of the BNSS, 2023, seeking condonation of *delay of 78 days* in filing the present Appeal No. 785/2025.
2. It is submitted in the Application that the period of sixty days to file the Appeal expired on 10.03.2025. The delay occurred because the Appellant/Akash's mother had engaged a counsel immediately after the impugned judgment, who gave assurances that the Appeal had been filed and would be listed soon. However, after five months of receiving no substantial updates, the family made inquiries and discovered that no Appeal had been filed by the previous counsel.
3. Subsequently, the present counsel was engaged on 23.05.2025, and the Appeal was filed immediately thereafter.
4. The Appellant has been in judicial custody since the date of the impugned judgment, i.e. 13.12.2024, and the explanation offered regarding the reliance on the previous counsel, appears to be bonafide.



2026:DHC:30



5. In the interest of justice and to ensure that the Appellant is not deprived of his statutory right of Appeal due to procedural delays not directly attributable to him, the delay of 78 days is hereby, condoned.

6. The Application stands **allowed**.

CRL.A. 785/2025 & CRL.A. 487/2025:

7. By way of this common judgment, the two Criminal Appeals, namely *Crl. A. 785/2025* filed by Appellant/Akash and *Crl. A. 487/2025* filed by Appellant/Kuldeep, which arise from the Judgement dated 13.12.2024 and the Order on Sentence dated 09.01.2025 passed by the Ld. Additional Sessions Judge, in SC No. 184/2017 arising out of FIR No. 111/2017 registered at P.S. Jyoti Nagar. The Appellant **Akash** was convicted for the offence punishable under Section 392 read with Section 34 of the Indian Penal Code (IPC) and Section 411/34 IPC. Appellant Akash was further convicted for the offence punishable under Section 397 IPC.

8. Vide the Order on sentence dated 09.01.2025, Appellant/Akash was sentenced to undergo Rigorous Imprisonment (RI) for 7 years with a fine of Rs. 30,000/- for the offence u/s 392/397 IPC, and Simple Imprisonment (SI) for 6 months with a fine of Rs. 1,000/- for the offence u/s 411/34 IPC. Appellant/Kuldeep was sentenced to undergo RI for 3 years with a fine of Rs. 20,000/- for the offence u/s 392/34 IPC and SI for 6 months with a fine of Rs. 1,000/- for the offence u/s 411/34 IPC.

9. Briefly stated, the case of the prosecution is that on 31.03.2017, the Complainant/Uttam Verma/PW-5, an auto driver, was returning to his home in his auto-rickshaw. At about 1:30 AM, near Durgapuri Chowk, two boys namely Akash and Kuldeep, signalled him to stop and hired the Auto for



2026:DHC:30



Loni Roundabout. When the Auto reached near Hanuman Mandir, Loni Road, the appellants asked the complainant to stop. Akash alighted and pointed a country-made pistol (*Katta*) at the Complainant's chest and demanded his belongings. The other boy, *Kuldeep*, remained seated inside the Auto and removed the complainant's wallet containing Rs. 2,500/-, PAN Card, ATM Card, Driving License, Badge, and Aadhaar Card. He also took the Complainant's mobile phone of make Redmi Note 3, Black in colour. The assailants fled towards MIG Flats.

10. The Complainant immediately encountered a police patrolling vehicle (ERV-61) in which PW-3/ASI Om Prakash and PW-6/Ct. Amit Kumar, were present. The complainant narrated the incident and they commenced a search. Around 3:00 AM, the complainant spotted the Appellants on a motorcycle near T.R. Sahni Motors. A chase ensued and the police intercepted the motorcycle at Gali No. 7, Ashok Nagar. Appellant Akash was apprehended at the spot along with the motorcycle No. DL 1SU-2172. The robbed mobile phone was recovered from Akash's possession. *Appellant Kuldeep managed to escape from the spot.*

11. Akash disclosed the name of the co-accused as Kuldeep. Subsequently, Kuldeep surrendered before the Trial Court on 12.04.2017. During police remand, Kuldeep led the police to his house in Village Biharipur, District Baghpat, from where the robbed purse containing the Complainant's documents (PAN Card, ATM Card, Badge, etc.) was recovered. *The weapon of offence was not recovered, as it was allegedly thrown in a drain.*

12. The Appellant/Akash in Crl. A. 785/2025 challenges his conviction on **the grounds** that the Ld. Trial Court closed the opportunity to cross-



2026:DHC:30



examine the star witness, the Complainant/PW-5, as “Nil”. A new counsel had appeared on that date i.e. 05.03.2019 and sought time to prepare, which was denied, causing grave prejudice to the Appellant.

13. Further, the complainant in his statement recorded by the Police, did not mention the colour of the Appellants’ clothes or identify Akash as the person holding the pistol in his initial statement. This improvement was made only in the supplementary statement.

14. Further, no country-made pistol was recovered. The conviction u/s 397 IPC is unsustainable without the recovery of the weapon.

15. It is further contended that there are material contradictions regarding the location where the police met the Complainant i.e. either at Durgapuri Chowk or T.R. Sahni Motors. Further, there is a discrepancy in the number of police officials present on the spot. The Complainant has stated that there were three and the Police witnesses have stated that they were two.

16. It is also stated that it is improbable that the Complainant could identify the accused on a moving motorcycle from 70 meters, in the night.

17. The Appellant/Kuldeep (in CrI. A. 487/2025) challenges the order of conviction on **the grounds** that the Appellant had not been apprehended by the Police but he had surrendered himself in the Court on 12.04.2017 and police interrogated him there. The TIP was conducted on 20.04.2017. It is submitted that though he was correctly identified, but it is unreliable as the police might have shown him or his photographs to the Complainant before the Test Identification Parade (TIP), rendering the identification valueless.

18. Further, PW-6/Ct. Amit initially hesitated and sweated profusely when asked to identify the accused in the Court, casting doubt on his testimony.



2026:DHC:30



19. It is contended that *the recovery was planted*. It is highly unbelievable that the Appellant would keep the allegedly robbed documents (i.e. DL, ATM Card, etc.) safe at his native home for 15 days, rather than disposing of them

20. Despite the incident occurring in a public area, no independent public witnesses were joined in the investigation.

21. *Thus, it is prayed that the Appeal be allowed and conviction be set aside.*

22. ***The Ld. Additional Public Prosecutor for the State*** submitted that the prosecution has proved its case beyond reasonable doubt.

23. It was argued that the Complainant/PW-5 is a natural witness, who had no prior enmity with the accused. His testimony is corroborated by the immediate arrest of Appellant Akash and the recovery of the robbed mobile phone from his possession, within hours of the incident.

24. Regarding the denial of cross-examination for Akash, the State argued that the appellant had ample opportunity, and the tactic was a delay strategy.

25. **Regarding Kuldeep**, the State relied on the recovery of specific personal documents of the complainant from Kuldeep's house, which could not have been planted. The TIP was conducted lawfully and the accused was correctly identified.

26. The State contended that minor contradictions regarding distance or number of police personnel do not go to the root of the matter, given the passage of time between the incident and the recording of evidence.

27. This Court has heard the learned counsels for both the appellants and the learned Additional Public Prosecutor for the State.



2026:DHC:30



28. The Trial Court Record, including the testimonies of PW-3/ASI Om Prakash, PW-5/Complainant, PW-6/Ct. Amit Kumar, and PW-9/IO SI Ram Singh, along with the impugned judgment and sentencing order has been perused.

29. The Charge Sheet was filed under S. 392/397/411/34 of IPC. The Ld. ASJ *vide* impugned Order dated 16.02.2018 framed Charges under S.392/34 of IPC against both the accused persons and under S. 397 IPC specifically against accused/Akash.

30. The Prosecution had examined 9 witnesses, main being the **PW-3/ASI Om Prakash**, **PW-5/Complainant**, **PW-6/Ct. Amit Kumar**, and **PW-9/IO SI Ram Singh**.

31. The case of the Prosecution rests on the testimony of **PW-5/Uttam Verma**, the victim. He consistently narrated the incident as stated in his Complaint dated 31.03.2017 Ex.PW5/A in regard of robbery. He deposed on 31.03.2017, around 01:30 am, two men boarded his auto at Durga Puri Chowk. Near Hanuman Mandir, they forced him to stop; one man (*identified as Akash*) aimed a pistol at his chest, while the other (**Kuldeep**) robbed him of his mobile phone, a black Redmi Note-3, and a wallet containing Rs.2,500/- and various personal documents. He also identified Akash in court as the person with the pistol and identified Kuldeep during a judicial Test Identification Parade (TIP).

32. Multiple witnesses corroborated the immediate aftermath of the robbery and the arrest of the first accused.

33. **PW-3/ASI Om Prakash** and **PW-6/Ct. Amit Kumar** were on patrolling duty in an ERV when the complainant approached them. While searching the area, the complainant spotted the suspects on a motorcycle.



2026:DHC:30



34. After a brief chase, the police intercepted the motorcycle. While one suspect escaped, they overpowered the rider, **Akash**. A casual search of Akash yielded the complainant's **Redmi Note-3 mobile phone**. The motorcycle (Passion Pro, DL 1SU 2172) was also seized.

35. **PW-8/Ct. Monu** and **PW-9/SI Ram Singh** confirmed that Akash was brought to the Police Station with the recovered property and subsequently interrogated.

36. The investigation into the second suspect, **Kuldeep**, involved **PW-1/ASI Jaivir Singh** and **PW-9/SI Ram Singh** testified that Kuldeep surrendered in court on 12.04.2017, where he was formally arrested and his confessional statement recorded.

37. On 27.04.2017, **PW-7/Ct. Rohit Kumar** joined **PW-9/SI Ram Singh** in taking Kuldeep to his village in Baghpat, UP. Kuldeep led them to his house and produced a wallet from an almirah.

38. The wallet contained the Complainant's **PAN card, ATM card, Aadhar card, and Auto Badge**.

39. Witnesses noted that while Kuldeep disclosed he had thrown the country-made pistol (*katta*) into a drain in Ashok Nagar, the weapon was never recovered.

40. **PW-2/ASI Begraj Singh** testified to marking the case file, extending judicial remand, and filing the Chargesheet.

41. **PW-4/ASI Rattan Lal** confirmed he was the Duty Officer who recorded FIR No. 111/17 based on the *rukka* presented by ASI Ram Singh.

42. **The Appellant/Akash** in his Statement under S.313 dated 10.11.2022 admitted the genuineness of the TIP proceedings. Further in his statement dated 13.11.2024, has denied being present with Kuldeep at the time of



2026:DHC:30



incident and that he never fled away as he was going for some personal work from Loni Gole Chakkar to his home at Durga Puri and is not involved in the incident. He stated that he has been falsely implicated in this case and that he is innocent.

43. *The Appellant/Kuldeep* in his Statement under S.313 has denied being present with Akash at the time of incident and that he never fled away as he was not involved in the incident. He further deposed that he had surrendered in the Court and no document was prepared at his instance or in his presence. Further, it is deposed by him that he has filed an application for surrender and also, neither any TIP was conducted nor did he make any disclosure statement.

Submissions Heard and Record Perused

44. In an incident dated 31.03.2017 at around 01:30 AM where the accused persons allegedly pulled out a *katta* and stole money, mobile and documents from the Complainant. The Court found both guilty under S.392/411 IPC and the Appellant/Akash for offence under S. 397 IPC.

45. To appreciate the grounds of appeal raised by Appellants and assess the case of the prosecution, it is imperative to refer to the essential ingredients of the Sections 392/397/411 IPC and also appreciate the evidence led by the Prosecution in support of its case.

Offences under Sections 392, 397 & 411 IPC

46. Section 392 IPC punishes the offence of Robbery. The offence itself is defined under Section 390 IPC.



47. The prosecution has failed to establish the guilt of the Appellants beyond a reasonable doubt, as the entire case rests upon contradictory testimonies, improbable recoveries, and highly suspect circumstances. The evidence on record, when scrutinized, reveals a narrative that is inconsistent and lacks the necessary corroboration to sustain a conviction.

48. The most material witness to prove the case of the prosecution is **PW5/Sh. Uttam Verma** (Complainant). He deposed that he is an auto driver and on 31.03.2017, at about 1.30 A.M., while he was going towards his house in his Auto Rickshaw from Shahdara, Delhi, he was signalled to stop by two boys at near Durga Puri Chowk, who asked him to take them to Loni Round About (i.e. Loni Gole Chakkar). They both boarded the auto and when they reached near Hanuman Mandir, MIG Flats, Loni Road, they asked him to stop the auto. One boy de-boarded the auto and aimed a country-made pistol at him and asked him to hand-over, whatever he had with him. However, second boy, who was sitting on the back seat of the auto, took his purse which contained Rs.2,500/- cash, PAN Card, ATM card of PNB, AADHAR Card, License and Badge along with his mobile phone Redmi Note 3 MI (black colour) having SIM No.7982151960. Thereafter, both boys, after robbing him, ran towards MIG Flats.

49. He further described that the boy, who had aimed at him with the pistol, was wearing a red colour shirt with blue jeans and other boy, who had taken the articles, was wearing check pattern shirt of white and black colour with blue jeans. On his Complaint, Ex.PW-5/A, the FIR, Ex.PW-4/A, was registered.

50. **PW-5/Sh. Uttam Verma** further deposed that he thereafter, reached at Durga Puri Chowk, near Jyoti Nursing Home, where a Police Gypsy was



2026:DHC:30



standing. He narrated the entire incident to the Police, who took him along the Gypsy in search of the robbers. They reached near MIG Flats, where robbers had ran away after the incident, but could not be found. They also searched them in nearby streets but got no success. Thereafter, they reached in front of T.R. Sahni Motors, where one another police gypsy was standing, who were also briefed about the incident and search of the robbers. At about 02:30-03:00 AM, he spotted the robbers on the motorcycle and immediately told the Police about them and one of the accused, who name was later found to be Akash, along with the motorcycle Passion Pro black colour was apprehended at Gali No.7, Chappal Market, Ashok Nagar. On his search, Redmi Note-3 mobile phone was recovered. Other robber Kuldeep managed to escape.

51. Appellant / Accused Akash was interrogated by Police, who disclosed the name of co-accused robber as Kuldeep and told that Kuldeep had run away with looted articles and country made-katta. Police seized the motorcycle vide memo Ex.PW-3/A, his mobile phone vide memo Ex.PW-3/B and Appellant Akash was arrested vide memo Ex.PW-5/B and personally searched vide memo Ex.PW-5/C.

52. Witness was duly examined on behalf of the Appellant. Certain incredulous facts have emerged in the testimony of PW-5. According to him, the incident happened at 01:30 AM and the Appellants ran towards MIG Flats. Pertinently, he has admitted that he did not raise any alarm, despite his own admission, in his cross-examination that the Police Gypsy was standing at a distance of 500 meters. There also is a contradiction as he has deposed that he had met the Gypsy at Durga Puri Chowk, near Jyoti Nursing Home. This fact, aside from not being disclosed in the Complaint Ex.PW-5/A, is



2026:DHC:30



also not palatable, in view of the fact that there is no indication about the distance where Durga Puri Chowk is located from the place, where the incident happened.

53. The other factor, which is of significance, is that as per his testimony, the two Police officials from Gypsy sat in his auto, while one Police official drew the Gypsy and they all searched for the robbers in the area till 02:30-03:00 AM.

54. Pertinently, in his cross-examination, he states that while search was being made by the first Police Gypsy, they met another Gypsy at about 02:45-03:00 AM near T.R. Sahni Motors, which also had three Police officials. Police officials of first Gypsy, who were travelling with him in his auto, were later on dropped at the place, where such Gypsy was stationed. Pertinently, according to him, there was first Gypsy, which he met at about 01:30 AM and thereafter, they met second Gypsy, these aspects are not mentioned in the Complaint Ex.PW-5/A.

55. According to PW-5 Sh. Uttam Verma (Complainant), he spotted the motorcycle from a distance of about 70 meters, on which two persons were travelling. Motorcycle along with one accused Akash was apprehended on the spot, while co-accused Kuldeep managed to escape. It is difficult to comprehend as to why two Appellants, who had motorcycle, would have hired an auto in the first place. Moreover, there is no evidence, which has been brought on record by the prosecution, to explain that as to how two Appellants came in possession of motorcycle, on which they were allegedly travelling at the time of their apprehension.

56. Another interesting fact, which emerges is that according to the Complainant, Accused Akash had shown the pistol while mobile and purse



along with other articles were robbed by co-accused Kuldeep. Interestingly, mobile got recovered from Akash, on his apprehension. If the mobile had been taken away by Kuldeep, it is not comprehensible as to why the mobile was in possession of Akash, while purse and other articles continued to be in possession of Kuldeep. It is also not comprehensible as to why and where the alleged country made pistol came into possession of Kuldeep. The entire evidence of apprehension of two Appellants, at about 03:00 AM, is also incredulous.

57. It does not appear to appeal reason that after robbing the Complainant at about 01:30 AM, they would continue to roam around the same area, to be conveniently apprehended by the Police at 03:00 AM. Involvement of two Gypsies in search of robbers is again not comprehensible, especially, when admittedly no call was made by the PCR to concerned Police Station, on getting the information of alleged robbery from the Complainant. Complainant may have been robbed by two persons, but the involvement of present two Appellants in the alleged robbery is highly unbelievable.

58. The other supporting witness examined by prosecution is PW-3 ASI Om Prakash, who deposed that on intervening night 30-31.03.2017, he along with PW-6 Constable Amit Kumar (DHG) was on duty from 08:00 PM to 08:00 AM on vehicle ERV-61. While patrolling at around 01:40 AM, when they reached near T. R. Sahni Motors on Wazirabad Road, one TSR driver Uttam Verma approached them and informed that he had been robbed by two persons at about 01:30 AM, who had hired his auto to go towards Loni Gol Chakkar. They, on being informed that the two robbers had gone towards MIG Flat after robber, all went in search of the robbers. At about 03:00 AM, one motorcycle was noticed by the Complainant on Wazirabad



Road and he identified those two riders as the robbers. They followed the motorcycle. On seeing PCR, two persons on motorcycle increased the speed and took a turn from under the Meet Nagar Fly Over towards Ashok Nagar. Police intercepted the motorcycle and accused Akash was overpowered, while other accused Kuldeep managed to escape. Mobile phone of the Complainant was recovered from Akash. Motorcycle was subsequently, found to be a stolen property.

59. According to PW-3 ASI Om Prakash, they in the PCR along with the Complainant had made constant search from 01:40 AM till 03:00 AM, when the Appellant Akash was apprehended. He does not mention about any second Police Gypsy.

60. Significantly, PW-6 Constable Amit Kumar (DHG) though was with PW-3 ASI Om Prakash and the Complainant, when the Appellants were allegedly apprehended. But interestingly, he in his testimony deposed that both the Appellants were apprehended, though he thereafter, corrected him by saying that one of the two accused was apprehended. Pertinently, the witness identified accused Akash and Kuldeep, reflecting that he could not corroborate the apprehension of Appellant Ashok on the spot. His cross-examination was deferred and he was again examined on 13.09.2021. Pertinently, in his re-examination, he deposed exactly on similar lines as of PW-3 and also correctly identified the Appellant Ashok.

61. Testimony of PW-6 Constable Amit Kumar (DHG) is therefore, in the light of contradictions, does not inspire confidence about the apprehension or identification of the two Appellants.

62. As per the case of prosecution, Appellant Kuldeep managed to escape, while the Appellant Akash, who was apprehended by Police was brought to



2026:DHC:30



the Police Station along with the Motorcycle and the investigations were conducted by PW-9 SI Ram Singh. He deposed that he interrogated the Appellant Akash, who was brought to the Police Station, who made complete disclosure about the entire incident of robbing the Complainant. He had obtained the police custody remand of the Appellant Akash, who along with the Police team led to Biharipur, Baghpat, U.P. in search of co-accused Kuldeep, but he was not found there. Thereafter, they returned to the Police station.

63. Subsequently, on 12.04.2017, Appellant Kuldeep moved an Application in regard to his surrender and for Bail. He was interrogated and arrested vide memo Ex.PW-1/A and his disclosure statement Ex.PW-1/C was recorded.

64. As per PW-9 SI Ram Singh, the TIP Application was filed on 20.04.2017 and Kuldeep was sent to judicial custody. The TIP of the Appellant Kuldeep was conducted at Rohini Jail on 20.04.2017, where he was correctly identified by the Complainant.

65. Relevant facts which emerge are that Kuldeep was not apprehended on the spot. The incident had occurred at about 01:30 AM, while Appellant was seen by the Complainant at about 03:00 AM from a distance of about 70 meters and he was able to escape. Pertinently, incident happened on 31.03.2017, while Kuldeep surrender on 12.04.2017. His TIP was conducted on 20.04.2017. Though the Complainant may have identified the Appellant Kuldeep, but it cannot be relied upon safely as there is every likelihood of he or his photograph having been shown to the Complainant.

66. The very fact that the incident happened in the midnight and identification of the Appellants was done after about a month does not



2026:DHC:30



inspire any confidence, rather it points out to the implication of the Appellants.

67. Another interesting aspect is that as per PW-9 SI Ram Singh, Appellant Kuldeep, pursuant to his disclosure statement Ex.PW-1/C recorded on 12.04.2017, he led the Police on 26.04.2017 to Biharipur, Baghpat, U.P., he took out a purse (rexine) from the Almirah of his house. It was checked and found to contain Aadhaar Card, Driving Licence, ATM Card of Punjab National Bank, Driver Badge and other documents all belonging to the victim. They were seized vide seizure memo Ex.PW-7/A.

68. It is again difficult to accept that Kuldeep would have retained the purse along with the documents and kept them in almirah in his house, despite the fact that the purse and documents had no value or significance for him. No rational person, who has allegedly robbed a person, would keep the tell tale evidence of the purse and documents hidden in his house for the police to recover them conveniently and to implicate him. Identify of the Kuldeep and alleged recovery of the purse and documents from his possession does not appeal to reason.

69. Also, there is a material contradiction regarding the colour of the allegedly recovered mobile phone. The seizure memo (Ex. PW-3/B) describes the phone as “Silver”, whereas PW-5 identified it in court as “Black”. This again creates a doubt about the identity of the alleged stolen article from the Appellant/Akash.

70. Further, the recovery of the Complainant’s purse and documents from Kuldeep’s house in Baghpat, UP, occurred 15 days after the incident. It is highly unbelievable that a robber would keep non-monetary documents like



an ATM card, PAN card, and driving license in his home for over two weeks rather than disposing of them immediately.

71. The absence of any independent public witnesses, despite the incident occurring in a public area, further weakens the Prosecution's case.

72. When the material contradictions between the star witness and the police officials are viewed alongside the suspect demeanor of PW-6 and the discrepancies in the case property, it becomes clear that the circumstances are highly suspect.

73. *Consequently, the offences under Sections 392 and 411 IPC cannot be said to have been proved beyond a reasonable doubt against either of the accused persons.*

74. Appellant/Akash was convicted u/s 397 IPC, which mandates a minimum sentence of 7 years. The case of the prosecution is that Akash pointed a "Katta" (country-made pistol) at the chest of the Complainant.

75. *To sustain a conviction u/s 397 IPC*, the Prosecution must prove that the offender "used" a "deadly weapon". While non-recovery of the weapon is not always fatal, there must be cogent evidence regarding the nature of the weapon.

76. In the present case, the alleged weapon was never recovered. The only evidence is the visual description by the Complainant in the dead of night at about 1:30 AM. Without the weapon being seized and examined, or without any injury caused to the victim that could substantiate the nature of the weapon, it is difficult to conclusively hold that the object used was indeed a "deadly weapon" capable of causing death or grievous hurt.

77. The benefit of this doubt regarding the specific nature of the weapon must go to the accused.



2026:DHC:30



78. While the act of robbery is proved by the threat used, the specific aggravation required for Section 397, i.e. the use of a *deadly* weapon, is not established beyond reasonable doubt due to non-recovery and lack of corroborative injury.

79. *Consequently, the conviction of Appellant/Akash under Section 397 is set aside.*

Conclusion:

80. From the aforesaid discussion, it is concluded that the prosecution has failed to establish the identity of the two persons, who had robbed the Complainant in the night of 31.03.2017.

81. The alleged recovery of the stolen property also is not proved beyond reasonable doubts.

82. The Appellants are therefore, entitled to be acquitted.

Order:

83. The Appeals are **allowed**.

84. In view of the aforesaid discussion, the Judgement of conviction dated 13.12.2024 in FIR No. 111/2017 and the Order on Sentence dated 09.01.2025 is accordingly **set aside**.

85. The Appeals stand disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 05, 2026/RS