



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

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Judgment reserved on: 27.04.2026

Judgment pronounced on: 04.05.2026

+ **CRL.A. 1484/2025**

AMAR UGARSEN BHARADWAJ

.....Appellant

Through: Mr. Amit Rao, Advocate with Ms.
Siya Yadav and Mr. Hasan Ali,
Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State with
Inspector Mukesh and SI Jitender
Singh

+ **CRL.A. 1491/2025**

UMA SHANKAR YADAV

.....Appellant

Through: Mr. Siddharth Satija, Advocate
(DHCLSC) with Mr. Akash Sachan,
Advocate

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Utkarsh, APP for State with
Inspector Mukesh and SI Jitender
Singh



+ **CRL.A. 1612/2025**

GANESH KUMAR MAHTO

.....Appellant

Through: Mr. Amit Rao, Advocate with Ms.
Siya Yadav and Mr. Hasan Ali,
Advocates

versus

STATE THROUGH S.H.O. OF P.S. MOTI NAGAR DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State with
Inspector Mukesh and SI Jitender
Singh

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In these appeals under Section 415(2) read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, the accused persons, namely, the first accused (A1); the second accused (A2), and the third accused (A3) in Sessions Case No. 56314/2016 on the file of Additional Sessions Judge (FTC) West Tis Hazari Court,



Delhi, assail the judgment dated 25.08.2025 and the order on sentence dated 02.09.2025 as per which A1, A2, and A3 have been convicted for the offences punishable under Sections 452, 392 read with 34 IPC as well as Section 411 IPC. A1 has also been convicted for the offence punishable under Section 397 IPC.

2. The prosecution case is that on 10.05.2012 at about 02:30 p.m. A1 to A3 in furtherance of their common intention trespassed into the house of PW1 after having made preparations for causing hurt and committed robbery by stealing about ₹20 to 25 lakhs and a substantial amount of jewellery. Hence, as per the charge sheet/final report A1 to A3 are alleged to have committed the offences punishable under Sections 452, 392, 397 read with Section 34 IPC and Section 411 IPC.

3. On the basis of Ext. PW 1/A FIS/FIR of PW1 given on 10.05.2012, Crime No. 88/2012, Moti Nagar Police Station, that is,



Ext. 2/A FIR was registered by PW 2, Assistant Sub Inspector. PW 21, Sub Inspector, conducted the investigation into the crime and on completion of the same filed the charge-sheet/final report against A1 to A3 alleging the commission of the offences punishable under the abovementioned sections. The fourth accused (A4) Dev Nath although chargesheeted u/s 411 IPC, absconded and hence is seen to have been declared Proclaimed Offender *vide* order dated 11.12.2013 passed by the jurisdictional Magistrate.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.P.C. Thereafter, in compliance with Section 209 Cr.P.C., the case was committed to the Court of Session concerned. On appearance of A1 to A3 and after hearing both sides, the trial court as per order dated 23.05.2014, framed a Charge under Sections 452, 392 read with



2026:DHC:3728



Section 34 IPC as well as Section 411 IPC which was read over and explained to them, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs, 1 to 21 were examined and Exts. PW1/A, PW2/A, PW1/B, PW1/C, PW1/E, PW1/F, PW1/H, PW1/P, PW1/Q, PW 4/A to PW4/F, PW 5/A, PW 11/A, PW 11/B, PW 11/F, PW 11/G, PW 11/H, PW 11/J, PW 12/B, PW 12/F, PW 12/G, PW 13/A, PW 15/F, PW 19/A and marks A to F were marked.

6. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence led by the prosecution. They denied all those circumstances and maintained their innocence. A1 submitted that he had been falsely implicated by the police at the instance of PW1 because there was a dispute between the '*cousin uncle*' of A2 and



PW1 in respect of salary of a maid servant who had been employed at the house of PW1 and also because he had cordial relations with A2. A2 submitted that he has been falsely implicated by the police at the instance of PW1 because of a salary dispute between his uncle Nageshwar Mandal and PW1 relating to the salary of a maid servant employed at the house of PW1 and also that he has been implicated due to his cordial relations with A2. Nageshwar Mandal was running a placement agency in the name and style M/s Lakshmi Placement Agency. Nageshwar Mandal died during the Covid pandemic. A3 submitted that he has been falsely implicated by the police at the instance of PW1 because there was a dispute between his cousin brother Vijay Yadav (DW1) and PW1 relating to the salary of a maid servant employed by his cousin brother at the house of PW1. Vijay Yadav, the son of his paternal aunt, used to run a placement agency at Pitampura.



7. After questioning A1 to A3 under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen to be done by the trial court. However, non-compliance of the said provision does not, ipso facto vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89: 2009 SCC OnLine Ker 2888**). Here, the accused persons have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to them. No oral or documentary evidence was adduced by the accused persons.

8. On consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found the accused persons guilty of the offences



punishable under Sections 452, 392, 397 read with Section 34 IPC as well as Section 411 IPC. Consequently, the trial court vide order dated 02.09.2025 sentenced A1 to A3 to undergo rigorous imprisonment for 03 years each and fine of ₹5,000/- each for the commission of the offence punishable under Section 452 IPC and in default of payment of fine to undergo simple imprisonment for 10 days each; A1 has been sentenced to rigorous imprisonment for 07 years and fine of ₹10,000/- and in default rigorous imprisonment for 01 month for the offence punishable under Sections 392, 397 IPC and A2 and A3 to undergo rigorous imprisonment for 05 years and fine of ₹10,000/- and in default rigorous imprisonment for 01 month for the offence punishable under Section 392 IPC. No separate sentence has been awarded for the offence punishable under Section 411 IPC.

9. It was submitted by the learned counsel for A3 that the



2026:DHC:3728



prosecution has failed to place any documentary evidence on record to establish any employer-employee relationship between A3 and PW1. The defence's suggestion that A3 never worked for PW1 remained unrefuted, and the prosecution's failure to examine PW1's husband and daughter creates a significant gap in the case of the prosecution. Furthermore, the credibility of PW1 was assailed due to material contradictions regarding the CCTV footage; while she initially claimed it was functional, she later claimed in cross-examination that it was not. It was argued that the investigating agency failed to satisfy itself regarding the status of the CCTV footage, which, was the best evidence in the case and should have been their primary focus. The involvement of the officials of the Special Cell police station was also challenged. It was submitted that there is no materials on record to show the exchange of information between the Moti Nagar police station



and the Special Cell regarding the arrest of A2 and A3. The Special Cell's reliance on secret information regarding the presence of A2 and A3 at the New Delhi Railway Station was characterized as unsubstantiated, as no evidence was brought forth to show how their identities were communicated between the two police stations prior to the arrest. Regarding the recovery of the stolen goods, it was submitted that the disclosure statement of A3 (Ex. PW11/A) is inadmissible under Section 27 of the Indian Evidence Act.

9.1. It was submitted that the "chance prints" lifted from the scene of crime (Ext. PW10/A and Ext. PW5/A) never matched with that of A3. In the absence of any MLC of PW1, the claim of physical injury is unsubstantiated. It was pointed out that the trial court failed to consider the testimony of DW1, which provided an alternate version. There are glaring loopholes in the investigation



2026:DHC:3728



which should enure to the benefit of the accused. There has been failure to put all incriminating circumstances in the evidence of the prosecution witnesses, when A3 was questioned under Section 313(1)(b) Cr.P.C. Hence, it was argued that A3 is entitled to be acquitted. Reference was made to the following dictums in **Pramila v. State of Uttar Pradesh (2021) 12 SCC 550, Parminder Kaur @ P.P.Kaur @ Soni v. The State of Punjab (2020) 8 SCC 811, Satbir Singh v. State of Haryana (2021) 6 SCC 1, Mani v. State of Tamil Nadu (2009) 17 SCC 273 and Surajit Sarkar v. State of West Bengal (2013) 2 SCC 146** in support of the aforesaid arguments.

10. *Per contra*, it was submitted by the learned Additional Public Prosecutor (APP) that the prosecution has proved its case beyond reasonable doubt and the impugned judgment warrants no interference.



11. I will first refer to the evidence on record relied on by the prosecution in support of the case. Ext. PW 1/A, the FIS/FIR given on 10.05.2012 by PW1, reads:- “I reside at the above-mentioned address with my family and I am a housewife. Today, on 10.05.12, during the afternoon, I was at home. Apart from me, our long-time servant Uma Shankar Yadav, (A3) S/o Bhola Yadav, a resident of Bihar, was also present. He has been working as a servant at our place for about the last 5–6 years. This afternoon, at around 2:30 PM, I was in my room. Servant Uma Shankar was also present. While I was laying on my bed, I noticed a shadow near the door of my room. I mentioned this to Uma Shankar, (A3) but he ignored it. A young man then entered my room holding a kitchen knife. He picked up a pillow lying on the bed, placed it over my mouth, and pressed it down. He threatened me, saying that if I made any noise, he would kill me. He stayed near me for



2026:DHC:3728



about 20–25 minutes, keeping a pillow pressed down and continuously threatening to kill me and intimidating me. During this time, another boy tied my legs. I was extremely terrified. After this, the boys left me and warned that if I shouted, they would kill me. During those 20–25 minutes, someone else was checking the cupboards and other items in my house, as I could hear the noise. After being released, I gathered courage and came out of my room. I saw that the entire house was in a state of disarray, and items from my room and other places were scattered everywhere. My servant Uma Shankar (A3) was also found missing. Upon checking, I found that approximately 20–25 lakh rupees in cash was missing, along with a significant amount of jewellery. I will provide the details of the jewellery later. My servant Uma Shankar, (A3) along with other accomplices, has committed this robbery in my house. I can identify them if they are shown to me.



12. As per the orders dated 16.05.2012 and 21.05.2012 the Test Identification Parade (TIP) was conducted by PW2 and PW4 in which proceedings, A1 and A2 were identified by PW1.

13. PW1 when examined, deposed fully stood by her case in Ext. PW1/A FIS/FIR. PW1 deposed that when she felt that the boys had left, she somehow untied her hands and saw that all the articles were scattered around the room and A3, her servant was not present in the house. She managed to call her daughter, who in turn informed her husband and other relatives living in the neighbourhood. Her family doctor (PW6) on being informed came and untied her legs. Thereafter, her husband and daughter also reached. On verification, she found that about ₹20,00,000/- to ₹21,00,000/- and several items of jewellery were missing. The police was informed who recorded her statement marked as Ext.PW1/A. The knife used for threatening her was seized by the



police vide seizure memo Ext. PW1/D.

13.1. PW1 in her cross examination deposed that she was unable to recall if the police had asked for the CCTV footage or whether she had given the same to them. According to PW1, at the time of the incident and about an year and a half before the incident, the CCTV was not in working condition. PW1 admitted that she had engaged A3 through a placement agency and that she had not done any police verification regarding his previous antecedents. She did have the contact details of A2 and A3. She was informed after about 7 to 12 days of the incident, by the officials of Moti Nagar, police station that her jewellery items had been recovered. PW1 admitted that she had seen A1 for the first time during the time of the incident and that A2 used to visit her house often to meet A3. PW3 in her cross examination reiterated her case that at the time of the incident, A3 had been employed as



a servant at her house and that she used to pay his salary in cash.

14. PW2, the Duty Officer, Moti Nagar, Police Station, deposed that on 10.05.2012 at about 05:15 p.m. Sub-Inspector Sunil Dagar (PW21) sent Ext. PW1/A on the basis of which he registered the crime i.e. Ext. PW2/A FIR.

15. PW3 the then Metropolitan Magistrate, Tis Hazari Court, deposed that he conducted the TIP proceedings of A1 on 31.05.2012 as well as of the case property. PW4, Metropolitan Magistrate, Tis Hazari Court, deposed that on 21.05.2012 he conducted the TIP proceedings of A2 as well as of the case property. PW3 and PW4 were never cross examined by A1 to A3.

16. PW5 deposed that on 10.05.2012, he was posted as in-charge, mobile crime team, West District. On the said day, on receipt of information from the District Control Room, West District, he alongwith his team which included the crime team



2026:DHC:3728



photographer reached the place of occurrence between 05:00 and 06:30 p.m. The photographer took photos of the crime scene. Head Constable Amit (PW10) lifted eight chance prints from the scene. He prepared Ext. PW5/A Crime Scene report. PW5 in the cross examination deposed that he had received the information from the district control room on wireless. The information received was that an incident of robbery had taken place. The fingerprints were sent on the next day to the Finger Print Bureau. PW5 admitted that the record showing the forwarding of fingerprints to the bureau has not been brought on record.

17. PW10, Head Constable (Finger Print proficient) deposed that on 10.05.2012 he was posted in the Mobile Crime Team, West District. On that day he had accompanied PW5 to the crime scene. He lifted eight chance prints from the wooden door and wooden almirah. After developing the chance prints, the same



were deposited in the CRO Branch, Kamla Market, New Delhi. According to PW10, Ext. PW10/A is the fingerprint report which was submitted by the Investigating Officer (IO) alongwith the final report/chargesheet.

18. PW6, Visiting Physician, D.K. Charitable Clinic, D-16, Raja Garden, New Delhi, deposed that Ramesh Kumar Mittal (PW1's husband) and family are his close friends. On 10.05.2012, he received a message from the son of PW1 requesting him to reach their house at the earliest. He immediately proceeded to the house. There he found PW1 lying on the floor with her hands and feet tied with a *chunni*. When he saw her, she had a swelling on her mouth. He untied her and gave water. He gave her primary treatment, that is, he re-assured her. In the meantime, her family members also came. He found the household articles scattered around the house at that time. PW6 was never cross examined by



A1 to A3.

19. PW7 deposed that on 10.05.2012, he was posted at Moti Nagar, Police Station and was on emergency duty. On receipt of DD No. 19/A, i.e. Ext. PW7/A, he proceeded to the scene of occurrence, where he saw the household articles scattered around. He informed the SHO about the incident. Thereafter, Sub-Inspector, Sunil Dagar (PW21) and team reached the scene. The *chunni* used to tie PW1 and a kitchen knife used to threaten her, were seized as per Exts. PW1/G and PW1/D, seizure memos. The *chunni* and knife were marked as Exts. PX and PY respectively. PW9 another Constable of Moti Nagar, Police Station, supports the version of PW7.

20. PW8 stated to be friend of A4 deposed that latter in the year 2011 had borrowed a sum of ₹3,00,000/- from him. On 14.05.2014, A4 called him to the former's house at Haridwar and



returned ₹2,00,000/-. A4 promised him that he would shortly return the balance amount also. On 19.05.2015, the wife of A4 called him over phone and informed her that a sum of ₹2,00,000/- that A4 had given to him was out of the stolen money and that A4 had been apprehended by the Delhi Police. On 20.05.2015, he alongwith the wife of A4 came to Delhi and handed over the amount of ₹2,00,000/- to PW21, who seized it as per Ext. PW8/A seizure memo. PW8 further deposed that he never knew that the money that he had received from A4 was stolen property. He signed Ext. PW8/A seizure memo but, the wife of A4 refused to sign.

21. PW11 deposed that on 17.05.2012, he was posted in the Special Cell, Lodhi Colony. On that day, on receipt of secret information, he alongwith his team proceeded to the New Delhi Railway Station (NDRS). A trap was laid at about 12:15 p.m. The



two suspects were identified. They were seen coming out of the railway station and going towards Paharganj side. Both of them were stopped and interrogated. On interrogation their names were revealed as Ganesh Kumar Mahto (A2) and Uma Shankar Yadav (A3). PW11 identified A2 and A3 in the Court. According to PW11, Exts. PW11/A and PW11/B are their disclosure statements. From the possession of A2 and A3, huge amount of cash and jewellery were recovered, which were seized vide Ext. PW11/C and Ext. PW11/D seizure memos respectively. During the personal search of A2 and A3, alongwith personal effects such as mobile phone, wallets, identity cards, etc., two train tickets of 16.05.2012 from Bandra terminal to New Delhi were also seized. Ext. PW11/J Kalandara under Section 41(1) Cr.P.C. was prepared and thereafter A2 and A3 were produced before the Court concerned after their arrest. PW11 in cross examination deposed that the secret



2026:DHC:3728



information was received by Inspector Ramesh Lamba, but he does not know whether the secret information was received by the Inspector “orally or telephonically”. He was not present in the room when the Inspector received the information. Inspector Ramesh Lamba, on receipt of the secret information, discussed the matter with him at about 07:30 a.m. on 17.05.2012. He and team left their office at about 08:30 a.m. and proceeded to the Railway Station in both private and government vehicles. They reached NDRS within an hour. He admitted that he had not seen the suspects before. He came to know about the present FIR on the next day and also through the information received from the special cell. According to PW11, it took him about 06 hours to interrogate A2 and A3 and to effect recovery. PW11 denied the suggestion that the recovered articles had been falsely planted on A2 and A3 or that A2 and A3 had been apprehended from their



respective residence.

22. PW20, Inspector, Crime Branch, Mumbai City, deposed that on 12.05.2012, the crime branch received information from the office of special cell, Delhi that Amar Ugarsen Bharadwaj (A1) wanted in the present crime was in Mumbai. On receiving information, he alongwith his team conducted a search and A1 was apprehended from Sanpada area, Navi Mumbai. A1 was brought to the crime branch office. PW12 and team arrived in the Mumbai office. PW12 interrogated A1 and on being convinced of A1's involvement, arrested A1 vide Ext. PW12/A arrest memo. During the personal search of A1, ₹770; a driving licence; some visiting cards, a Nokia mobile phone and a paper in which the mobile number of A2 and A3 were written, were seized. According to PW20, Ext. PW12/ D is the disclosure statement given by A1 to PW12. Pursuant to Ext. PW12/ D, A1 led them to



his house at Plot No. 189, Room No.202, Kohinoor Apartment, Sector-05, Sanpada, Navi Mumbai, from where ₹1,99,000/-, three gold rings and a gold bangle were seized at the instance of A1 vide Ext. PW12/D seizure memo. When the seizure was effected, father of A1 and two to three other persons were also present.

23. PW12 deposed that on 12.05.2012, he was posted as sub-Inspector (SI), Special Cell, Lodhi Colony, New Delhi. On the said day, secret information was received that the accused persons in the present crime had fled to Mumbai after committing robbery in Bali Nagar, Moti Nagar, New Delhi. On finding the secret information to be true, the information was shared with the Crime Branch, Mumbai Police. On the basis of the information given, Special Cell, Mumbai Police detained A1. He, then, proceeded to Mumbai. On 12.05.2012, he interrogated A1 in the office of the Crime Branch, Mumbai and during interrogation he was convinced



2026:DHC:3728



of the involvement of A1 and hence, he arrested A1 *vide* Ext. PW12/A arrest memo. A personal search of A1 was conducted. On search, a purse; ₹770/-, a driving licence; a pan card; old visiting cards and a paper containing the mobile numbers of A2 and A3 were seized. According to PW12, Ext. PW12/D is the disclosure statement of A1. After the arrest of A1, a search was conducted at the residence of A1 at Plot No. 189, Room No.202, Kohinoor Apartment, Sector-05, Sanpada, Navi Mumbai, from where ₹1,99,000/-, three gold rings, and a bangle were seized as per Ext. PW12/E (colly) seizure memo. On 13.05.2012, A1 was produced before the Court in Mumbai and transit remand till 16.05.2012 obtained. A1 was produced before the Tis Hazari Court, Delhi, on 14.05.2012. On 14.05.2012 *vide* DD No. 19/A information regarding arrest of A1 was given to Moti Nagar, Police Station and they were informed that A1 would be produced before the



2026:DHC:3728



Magistrate, Tis Hazari Court, Delhi. Pursuant to the same, PW21, the I.O. came to the said Court and effected formal arrest of A1.

23.1. PW12 further deposed that on 18.05.2012, secret information was received in the office of special cell to the effect that the robbed property consisting of cash and jewellery could be recovered from hotel named Yatri Niwas, Haridwar, Uttarakhand. Accordingly, on 19.05.2012, he alongwith his team went to the aforesaid hotel. PW21 and team were already there. He his team joined the investigation alongwith PW21 and team. During investigation PW21 interrogated Dev Nath (A4-PO), the Manager of the said hotel, who informed the police that he had snatched the robbed articles from A2 and A3 while the latter stayed in the hotel after the robbery. According to PW12, Ext. PW12/H is the disclosure statement of A4. A4 was arrested by PW21 in his presence vide Ext. PW12/J arrest memo. PW21 interrogated A4



2026:DHC:3728



and seized ₹9,55,715/- and some items of jewellery alongwithan I-Pad as per Ext. PW12/K seizure memo. PW12 further deposed that A3 was also present in the Hotel alongwith the local police. PW12 was never cross examined by A1 to A3.

24. PW19, Head Constable, Moti Nagar, Police Station, deposed that on 18.05.2012, he alongwith PW21, the IO and team and A3, who was in police custody left for Haridwar. A3 took the police team to hotel Yatri Niwas, Haridwar, Uttarakhand. When they reached the hotel, the Police team of special cell, Delhi Police consisting of PW12 and team were already present there. They also joined the investigation. A3 identified A4, who the former accused of having snatched the bag containing the robbed articles. A4 was arrested by PW21. At the instance of A4, the bag snatched from A3 containing ₹9,57,715/-, some items of jewellery, an Apple I-Pad were seized as per Ext. PW12/K, seizure memo. The



2026:DHC:3728



disclosure statement of A4 is stated to be Ext. PW12/H. Thereafter, the entire police team alongwith A3 and A4 went to the local police station and made necessary entries there. Thereafter, they returned to Moti Nagar Police Station alongwith A3 and A4 and the seized articles.

25. PW13, Constable, Moti Nagar, Police Station, deposed on 10.05.2012, he alongwith PW21 went to Tis Hazari Court, Delhi. There SI Pawan, (PW11) produced A2 and A3 before the Court. PW21 interrogated A2 and A3 with the permission of the Court. According to PW13, Ext. PW13/A is the disclosure statement of A3. A2 was remanded to judicial custody. Police custody of A3 was obtained as a co-accused was required to be arrested and recovery effected. A3, pursuant to Ext. PW13/A disclosure statement, led the police to Haridwar where they met the officials of the special team. A3 led the police to the hotel from



where Dev Nath, (A4-PO), was arrested. Custody of A4 was handed over to him and thereafter the police team returned to Delhi with A3 and A4. PW13 deposed that on the intervening night of 21.05.2012-22.05.2012, A4 led the police team to his house in Haridwar from where the robbed cash amounting to ₹1.10 lakhs was seized as per Ext. PW13/D1 seizure memo. PW14, Head Constable, Moti Nagar, Police Station, deposed that he had also joined the investigation team led by PW21. PW14 supported the version of PW13 regarding the recovery effected at the instance of A4 from the residence of A4.

26. PW15 deposed that on 29.05.2012, he was posted at Moti Nagar, Police Station. He was entrusted with the investigation of the case. He moved an application for conducting a TIP of the case property which was fixed on 31.05.2012. As several articles were there, the TIP was conducted on 31.5.2012



and 04.06.2012. During the TIP, the case property was correctly identified by PW1. During investigation, PW1 had produced Ext. PW15/B, a copy of sale agreement of ₹15 lakhs in reply to the investigating team's query about the source of cash in her possession. PW15 further deposed that the result from the fingerprint bureau was obtained and filed before the Court. The cash and jewellery were released on *superdari* to PW1. PW15 in his cross-examination admitted that he had not questioned the person shown as purchasers in the sale agreement produced by PW1. He also did not question the person stated to be a witness in the said agreement. He never gave notice to PW1 or her husband for production of the original agreement, but according to PW15, they had shown him the original agreement.

27. PW21, Sub-Inspector, Moti Nagar, Police Station, (IO) deposed that on 10.05.2012, he was on emergency duty. While he



was on emergency duty, he received a call from the duty officer who told him about DD No. 19/A regarding theft at House Number C-37, Bali Nagar, Moti Nagar, New Delhi. When he reached there, Head Constable Ram Niwas, (PW7) and Constable Vinod, (PW9) were already there along with PW1. On inspection he found the house in complete disarray with goods scattered everywhere and it was apparent that a robbery had occurred. He enquired with PW1 and recorded her statement, that is, Ext. PW1/A. PW1 showed him the kitchen knife used by the robbers at the time of the commission of the offence as well as the *chunni* with which they had tied her up. The crime team was summoned and they lifted chance prints from the spot. On 14.05.2012 information was received, vide DD No. 19/A from the special cell that Sub-Inspector Vinay, (PW12) had arrested A1 under Section 41 Cr.P.C and that the latter would be produced before the Tis Hazari Court.



He then proceeded to Tis Hazari Court where A1 was produced by the special team. He moved an application before the Court for interrogation of A1 which was allowed. On interrogation of A1, he was convinced of the involvement of A1 and hence arrested him as per Ext.PW21/B arrest memo. The TIP of A1 was conducted by the Magistrate. On 17.05.2012, he collected from the *Malkhana*, Special Cell NDR, the case property recovered at the instance of A1 and deposited the same in the *Malkhana* of the Moti Nagar, Police Station.

27.1. On 18.05.2012, he received information, vide DD Number 25B from the Special Cell, NDR regarding arrest of A2 and A3 and that they would be produced before the Tis Hazari Court. So he along with Constable Krishan (PW13) and Constable Ram Niwas (PW7) proceeded to Tis Hazari Court where A2 and A3 were produced. A2 and A3 were interrogated with the



2026:DHC:3728



permission of the Court. He made arrangements for the TIP of A2 and relating to the property recovered by the special team at the instance of A1. A2 was remanded to judicial custody. Police custody of A3 was obtained. The interrogation of A4 revealed that the suspects had stayed at the hotel after the crime and that A4 had taken the bag containing the stolen property from them. At the instance of A4, a black bag containing an Apple I-Pad and several items of jewellery and an amount of ₹9,55,715 was seized as per Ext. PW12/K seizure memo. Thereafter the police team along with A3 and A4 went to the local police station and made entry i.e. Ext. PW21/D. The team then returned to Delhi and deposited the recovered property in the *malkhana* at Moti Nagar Police Station. On 20.05.2012, when A4 was further questioned, he revealed that he had given an amount of ₹2,00,000/- out of the stolen money to Vijay Dubey (PW8). He then contacted PW8 who by evening



came to the police station with the wife of A4 and produced ₹2,00,000/-. The sum was seized as per Ext. PW8/A seizure memo. A3 and A4 were produced before the Court. A3 was sent to judicial custody and police custody of A4 was obtained. On 21.05.2012, TIP of case property and TIP of A2 was conducted. While A4 was in police custody, he along with Head Constable Rajesh (PW14) and Constable Krishan (PW13), went to Haridwar as led by A4. On 22.05.2012, they reached Haridwar. A4 led them to Room Number, 302/303 Sudarshan Apartment from where ₹1,10,000/- was recovered. The money was seized as per Exhibit PW13/D seizure memo. PW21 further deposed that Exhibit PW13/C is the disclosure statement of A4. He along with A4 went to the local police station to make DD entry of their arrival and departure, which is Exhibit PW21/F. Thereafter they returned to Moti Nagar, Police Station and the case property was deposited in



the *Malkhana*.

28. I also make a brief reference to the testimony of DW1 who was examined on behalf of A3. DW1 Vijay Yadav, deposed that from 2005 till 2011-2012, he was running a placement agency in the name and style of SS Enterprises, A-27, village Pitampura, Delhi. Uma Shankar Yadav (A3) is his maternal uncle's son. Uma Shankar Yadav (A3) worked in his placement agency during the period from 2008 till 2010. According to DW1, it was the duty of Uma Shankar Yadav (A3) to drop both males and females servants at the places where they were employed by the agency and to collect the money from them. In the year 2008, he used to get ₹10,000/- as commission. In the year 2008, he had provided a female maid servant to PW1, who worked there for about an year. There was a dispute between PW1 and the maid regarding the latter's salary. DW1 further deposed that he does not want to say



anything else in the matter. In the cross-examination, DW1 admitted that he had no documentary evidence to show that he was running a placement agency. He was also unable to produce any documents to show that he had provided a maid to PW1. DW1 deposed that he is unaware whether Uma Shankar (A3) and Ganesh (A2) are friends. He denied the suggestion that Uma Shankar (A3) was a house help in the house of PW1.

29. It was argued by the learned counsel for A1 and A2 that prosecution has been unable to establish the ingredients of the offence punishable under Section 392 IPC. No materials or evidence has been brought in to show that any injury had been caused to PW1. It was submitted by the learned counsel for A3 that no medical certificate has been produced to prove any injury to PW1. Therefore, there is no evidence of hurt having been caused to PW1.



2026:DHC:3728



30. Section 392 IPC deals with punishment for robbery. Robbery defined in Section 390 IPC says that in all robbery there is either theft or extortion. Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint. Hurt has been defined under Section 319 IPC to mean bodily pain, disease or infirmity to any person. PW1 in the box deposed that A1 had given her two fist blows on her lips and had threatened her with dire consequences by placing a knife on her neck. A2 tied her hands, legs and neck with a piece of cloth, while A1 sitting on her abdomen had tried to smother her with a pillow. PW6, a doctor and an acquaintance of PW1 and family deposed that on receipt of



2026:DHC:3728



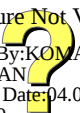
information from the son of PW1, he had immediately rushed to their house. On reaching there, he found PW1 lying on the floor with her hands and feet tied with a *chunni*. There was also a swelling on her mouth. The testimony of PW1 and PW6 on these aspects has not been discredited in any way. PW6 was never cross-examined by any of the accused persons. Therefore, the testimony of PW1 and PW6 certainly shows that hurt had been caused to PW1 during the course of robbery. The testimony of PW1 shows that she was wrongfully restrained. A1 to A3 forbade PW1 from raising an alarm as the former threatened that they would kill her. Therefore, not only was hurt caused to PW1, she was also put to fear of instant death. Therefore, the argument that the aforesaid ingredients are not established, is only liable to be rejected. I will shortly come to the question whether it was A1 to A3 who committed the robbery.



2026:DHC:3728



31. It was submitted that the prosecution has failed to establish ownership relating to the valuables alleged to have been robbed from the house of PW1. The learned counsel for A3 drew the attention of this Court to the testimony of PW15, who conducted the initial investigation in the case. PW15 deposed that he had in fact asked PW1 as to the source of the money that was stolen from her house. PW1 had assured that the details would be provided but the same were not provided. Likewise, there are no documents produced to show the ownership regarding the valuables, jewellery, etc. that are alleged to have been robbed from the house of PW1. Therefore the argument of the learned counsel for A1 to A3 is that the prosecution has been unable to establish ownership of the valuables and money that are alleged to have been robbed from the house of PW1, which is one among the several defects in the prosecution case.





32. Section 378 IPC defines theft as- whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to take such taking, is said to commit theft. Therefore, any person who takes any movable property out of the possession of that person without that person's consent would be committing theft. In the case on hand PW1 deposed that the material objects/case property which were identified by her before the trial court had been removed or taken away from her house on the date of the incident. The same were later on recovered by the police and restored to her. Section 378 IPC does not say that ownership has to be proved. It is sufficient that possession of PW1 is established, which fact is established by the testimony of PW1.

33. Another argument that was advanced is that neither the husband, daughter nor any other close relative(s) of PW1 was



examined. However, as pointed out by the learned Additional Public Prosecutor, none of the close relatives of PW1 had witnessed the incident and therefore non-examination of the said witnesses has in no way affected the prosecution case.

34. It was further pointed out by the learned counsel for A3 that PW1 initially in her testimony deposed that she does preserve the footage of CCTV. However, the I.O. never thought it fit or necessary to examine the same or produce the same before the Court. This is one piece of best evidence that could have been produced by the prosecution. However, for reasons best known to them, the same has not been produced and therefore this is yet another reason to disbelieve the prosecution case for suppressing material evidence in the case.

35. The testimony of PW1 on this aspect reads thus-

“ *It is correct that CCTV camera is installed at*



my house. I do not remember if police had asked for the CCTV footage from me or whether I had given the same to the police..... I.O. had not obtained any CCTV footage of the camera installed at my house regarding any occurrence or subsequent period thereof. We are maintaining the recording of CCTV footage of my house. I have no knowledge about the mode of procuring of the recording of the CCTV footage like pen drive, CD's or any other mode. At the time of incident CCTV camera installed at my house was not in working order and it was not working for the last one and a half year prior to the present incident. It is wrong to suggest that no such incident had taken place in my house or that due to this fact I am concocting false persons by stating that the CCTV camera was not in working order at that



2026:DHC:3728



time.....”

36. PW21, the IO, also deposed that the CCTV cameras installed at the place of the incident were not in working condition and therefore he had not seized the same. The testimony of PW1 and PW21 has in no way been discredited by A1 to A3. Therefore, in such circumstances the argument that best evidence has been suppressed by the prosecution is liable to be rejected.

37. The prosecution relies on several “*disclosure statements*” alleged to have been made by A1 to A3, that is, Ext. PW 12/D, Ext. PW 11/A and Ext. PW 11/B respectively. However the learned APP fairly conceded that these statements are inadmissible under Section 27 of the Evidence Act. On going through the same, I find that they are inadmissible in evidence as they do not comply with or satisfy the essential requirements as contemplated under Section 27. (See **Pulukuri Kottaya v.**



Emperor, AIR 1947 PC 67; K. Chinnaswamy Reddy v. State of Andhra Pradesh, AIR 1962 SC 1788; Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872; Earabhadrapa Alias Krishnappa vs State Of Karnataka, 1983 2 SCC 330; Shamshul Kanwar v. State of U.P. (1995) 4 SCC 430; State of Rajasthan v. Bhup Singh (1997) 10 SCC 675).

38. Though the aforesaid disclosure statements are inadmissible under Section 27, the question is whether the provisions of Section 8 Evidence Act can be invoked in this case. The learned counsel for A3 argued that Section 8 can never be invoked as there are no materials on record to show that A3 had stayed at the hotel referred to at Haridwar. No independent witnesses were examined to establish the same. The ownership of the said hotel has not been established. There is also no materials on record to show whether the said hotel even exists or not.



39. As stated earlier, the arrest of A1 is spoken to by PW12 and PW20 to whose testimony I have already referred to in detail. According to PW12, Ext.PW12/D is the disclosure statement of A1. Ext. PW12/D is admittedly not admissible due to the bar contained under Section 25 of the Evidence Act. The said statements also do not come under Section 27 of the Evidence Act. According to PW12, after the arrest of A1, a search was conducted at the residence of A1 situated at plot number 189 room number 202, Kohinoor Apartment, Sector 5, Sanpada, Navi Mumbai. On search an amount of ₹1,99,000/-, 3 gold rings and 1 bangle was affected. All the said articles were seized as per Ext. PW12/E (colly) seizure memo. This version of PW12 is corroborated by the statement of PW20 also. As noticed earlier the disclosure statement is inadmissible in evidence in the light of the bar under Section 25 of the Evidence Act. However, the prosecution does not



seem to have a case that the seizure was effected under Section 27 of the Evidence Act because in Ext.PW12/E seizure memo, the search and seizure of an amount of ₹1,99,000/- from the house of A1 is stated to have been made pursuant to a search conducted under Section 102Cr.P.C. Ext. PW12/E is seen attested by two police officials of the Mumbai police and one independent witness. These witnesses are not seen examined. But A1 has no explanation as to how he came into possession of such amount of money or the gold ornaments. A1 has no case that the said valuables belong to him. The ornaments were identified by PW1. Though the disclosure statement of A1 is inadmissible in evidence, his conduct of leading the police to his residence from where cash and ornaments, later identified as belonging to PW1 was seized, is certainly a conduct admissible under Section 8 of the Evidence Act. (See **Himachal Pradesh Administration v. Om Praksh,**



2026:DHC:3728



AIR 1972 SC 975; Prakash Chand v. State (Delhi Admn.), (1979) 3 SCC 90; Ghanshyam Das v. State of Assam, (2005) 13 SCC 387; A.N. Venkatesh and Anr. v. State of Karnataka (2005) 7 SCC 714 and Shahaja v. State of Maharashtra, (2023) 12 SCC 558).

40. The arrest of A2 and A3 is spoken to by PW11, whose testimony also I have referred to in detail. According to PW11, on interrogating the suspects, that is, A2 and A3, they gave disclosure statements marked as PW11/A and PW11/B, which apparently are hit due to the bar contained under Section 25 of the Evidence Act and hence inadmissible. However, PW11 deposed that from the possession of A2 and A3, huge amount of cash and jewellery were recovered, which he seized as per Exts. PW11/C and PW11/D seizure memos. Pursuant to the same he arrested A2 and A3 *vide* Exts. PW11/E and PW11/F arrest memos. In the personal search



conducted of A3, apart from other things two train tickets of 16.05.2012 from Bandra terminal to New Delhi was also seized. It is true that the arrest of A2 and A3 is stated to have been effected at a public place where there would have been other independent witnesses also. However, no witnesses have been examined to establish the same. Merely because independent witnesses were not examined is no ground to disbelieve the case, if the testimony of the official witnesses is found credible and believable and inspires confidence in the mind of the Court. On going through the testimony of the official witnesses, I do not find any reason(s) to disbelieve or discard their version.

41. As A4 is absconding and has not stood trial, I am not referring to the materials on record relating to the recovery of the stolen goods alleged to have been made at his instance.

42. It is true that when A2 and A3 were arrested, mobile



phones were also seized from their possession. However, no investigation was conducted relating to the same. But the same has not in any way affected the prosecution case as A1 to A3 are unable to explain the possession of the money and valuables.

43. Another argument advanced is that the train tickets that were alleged to have been seized from A3 were never exhibited before the Court, which was pointed out as yet another defect in the prosecution case. According to PW11, out of the five items seized on personal search of A3, two train tickets from Bandra Terminal to New Delhi had also been seized. This is referred to as item no. (3) in Ext. PW11/H search memo of A3. The tickets are not seen marked in this case. However, the seizure of the articles during the personal search of A3 including the train tickets spoken to by PW11 in the box is not seen disputed or challenged when PW11 was cross examined.



44. Another argument advanced by the learned counsel for A3 is that PW1 identifying A3 in the box is an incriminating piece of evidence, which evidence was never put to A3 while he was questioned under Section 313(1)(b) Cr.P.C. Therefore, relying on the dictums in **Pramila v. State of Uttar Pradesh (2021) 12 SCC 550**, **Parminder Kaur v. State of Punjab (2020) 8 SCC 811**, **Satbir Singh v. State of Haryana (2021) 6 SCC 1**, it was argued that this is yet another major infirmity in the prosecution case.

45. The relevant portion of the testimony of PW1 regarding identity of A3 reads thus- *“On 10.05.2012 at about 2:30 PM I was present in my house and was taking rest after taking lunch. My servant/accused Uma Shankar present today in the Court (correctly identified) was also present in my house. Accused Uma Shankar was working in my house for the last 5-6 years of the incident. I saw a shadow of some person on the wall and I told the*



same to Uma Shankar but he ignored.....”

45.1. Questions number 2 and 3 and answers to the same given by A3 while he was questioned under Section 313(1)(b) Cr.P.C. reads thus:-

“Q.2. It is in evidence against you the accused Uma Shankar that you were working in the house of PW1 for last 5-6 years prior to the date of the incident. What do you have to say?

Ans. It is incorrect.

Q.3. It is in evidence against you and your co-accused in the testimony of PW1 that on the date and time of the incident PW1 saw a shadow of some person on the wall and told the same to accused Uma Shankar, but he ignored and in the meantime, one boy, i.e. your co-accused Amar Ugrasen Bharadwaj came in the room PW1 and gave two fist blows on the lips of PW1 and put knife on her neck. What do you have to say?



Ans. It is incorrect.”

46. Therefore, it is apparent that the relevant part of the testimony of PW1 identifying A3 as her servant and that he was present in her house before and during the incident, has been put to A3 and so the argument that the identification of A3 by PW1 was never put to him during questioning under Section 313(1)(b) Cr.P.C. is also liable to be rejected.

47. PW1 in the box asserted that A3 was her house-help servant for about 5-6 years. This aspect of her testimony has not been discredited in any way. DW1 was examined on behalf of A3 to establish his defence. According to DW1, A3 is his maternal uncle's son and that the latter was an employee of his placement agency. The duty of A3 Uma Shankar was to drop maidservants (both males and females) at the places where they were employed by the Agency and also to collect money from the said places.



2026:DHC:3728



DW1 is supposed to have provided a female help in the house of PW1, who worked there for about an year. There was a dispute between PW1 and the said help regarding the salary to be paid to the latter and hence he has been falsely implicated. Such a defence was taken by A3 only when he was questioned under Section 313(1)(b) Cr.P.C. Such a case was never put to PW1 while she was in the box. When this aspect was pointed out to the learned counsel for A3, it was submitted that it was absolutely unnecessary for A3 to have put any such suggestions or questions to PW1 because the burden is always on the prosecution to establish its case beyond reasonable doubt and therefore it was quite unnecessary for A3 to have even challenged the version of PW1 that he was working in the house when his specific defence is that he had no connection whatsoever with the house of PW1 and that he had been picked up from his residence.



2026:DHC:3728



48. It is no doubt true that the burden is always on the prosecution to establish the prosecution case. However, if a defence is taken up by the accused, then he needs to establish the same, though his burden may not be to prove the same beyond reasonable doubt. He need only establish his defence by a preponderance of probabilities. As noticed earlier PW1 in the box testified that A3 had worked as a househelp for about 5 to 6 years. She also identified A3 in the box. PW1 also deposed that A3 was present in her house just before the incident as well as after the incident. But immediately after the incident, he was not to be seen and he disappeared from the scene. The remaining materials on record show that when A3 was arrested along with A2, they were found in possession of substantial amount of money and other valuables including jewellery, which personal items were identified by PW1. This identification of the articles by PW1 is not



2026:DHC:3728



disputed by A1 to A3. A3 has never a case that the money and valuables belong to him. No explanation comes from A3 as to how such valuables came in his possession. Therefore, the defence version that he never worked under PW1 or that he was picked by the police from his residence does not appear probable.

49. It was further pointed out by the learned counsel for A3 that though the prosecution has a case that chance prints were lifted from the scene of crime, it has not been shown that the chance prints matched the fingerprints of A3. In addition, the CCTV footage was also not produced. These two pieces of evidence were the best pieces of evidence that could have proved the case. However, the same have been kept away from the Court and therefore an adverse inference needs to be drawn, goes the argument.

50. As noticed earlier the testimony of PW1 is to the effect



2026:DHC:3728



that the CCTV was not working at the time of the incident. They were not working for the past about an year or so. It is true that no evidence has come relating to the chance prints that were lifted from the scene of occurrence. The same has apparently not been produced as the same does not support the prosecution case. However, as stated earlier, A1 to A3 when arrested by the police were found in possession of money and gold ornaments and other valuables for which they were unable to give any explanation whatsoever. A1 to A3 do not have a case that the said cash and valuables belong to them. These articles were identified by PW1. That being the position, I find that the absence of CCTV footage or any materials regarding the chance prints seized from the scene of crime is not of much consequence.

51. The identification of A1 and A2 in the TIP proceedings and thereafter before the Court by PW1 is not disputed or



2026:DHC:3728



challenged.

52. The learned counsel for A1 and A2 submitted that since they are first offenders the provisions of the Probation of Offenders Act, 1958 may be applied. I am afraid the said provision cannot be applied to the case on hand in the circumstances in which the crime was done. A3 was a house help in the house of PW1 for several years. He took advantage of the said position and brought in two of his associates, namely, A1 and A2. They jointly overpowered PW1, caused hurt to her, put her in fear of instant death and then robbed her of money and valuables. A3 was a servant in the house of PW1. Therefore his initial entry into the house though legal, turned to one of trespass the moment he decided to commit the offences and committed the same. A1 and A2 criminally trespassed into the house of PW1 and after immobilizing PW1 and causing hurt, robbed valuables and money



from her house. Therefore, this is not a case in which the benevolent provisions of the Probation of Offenders Act is liable to be invoked.

53. I do not find any infirmity in the conclusion reached by the Court regarding the guilt of the accused. Hence, I find no grounds for interference.

54. In the result, the appeals, *sans* merit, are dismissed.

55. Application(s), if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 04, 2026
mj/p'ma