



2026:DHC:191



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

% Reserved on : 16.12.2025
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+ **CRL.A. 995/2016**

ASHOK

.....Appellant

Through: Mr. Aly Mirza, Advocate (*Amicus Curiae, Pro Bono*)

versus

THE STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal filed under Section 374 Cr.P.C., the appellant seeks to assail the judgment of conviction dated 24.08.2016, whereby he was convicted for the offences punishable under Sections 395/397 IPC, and the order on sentence dated 30.08.2016, whereby he was sentenced to undergo RI for a period of 14 years along with a fine of Rs.10,000/-, in default whereof he would undergo SI for 1 year, for the offence under Section 395 IPC, and further sentenced to undergo RI for a period of 10 years along with a fine of Rs.10,000/-, in default whereof he would undergo SI for 1 year, for the offence under Section 397 IPC. Both sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant.

CRL.A. 995/2016

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2. The co-convicts, namely *Sikandar*, *Irshad Ali*, and *Ekant Bansal* had preferred their individual criminal appeals bearing CRL.A. Nos. 951/2016, 1157/2016, and 126/2017 respectively. The first two appeals came to be disposed of by the Coordinate Bench of this Court vide common judgment dated 24.03.2025 by considering the plea of sentence being commuted to the period already undergone by them. The other convict, namely *Ekant Bansal*, also did not press his appeal on merits and pleaded that his sentence be modified to the period already undergone by him. This Court, vide order dated 23.07.2025, while upholding the co-convict/*Ekant Bansal*'s conviction, partly allowed the said appeal in view of the sentence of 10 years and 8 months undergone by him.

3. Insofar as the present appellant is concerned, he had preferred an application seeking suspension of sentence on the ground that he had to urgently repair his house as well as perform the marriage of his daughter. The Coordinate Bench of this Court, vide order dated 17.03.2017, on a Status Report filed verifying the aforesaid facts, suspended his sentence for a period of 4 weeks; however, the appellant did not surrender thereafter and all efforts to serve him remained futile. Even the NBWs issued against him remained unserved. In light of the decision in Bani Singh & Ors. Vs. State of U.P.¹, this Court appointed Mr. Aly Mirza, Advocate, as *Amicus Curiae* to represent the appellant.

4. The facts as emerging from the record are that the appellant along with his associates committed dacoity by overpowering the driver as well as conductor of a truck, and stole the vehicle as well as its cargo, i.e., 230 bags of betel nuts (*supari*). It was further alleged that the accused also gave

¹ (1996) 4 SCC 720



beatings to the victims, tied them up, and forced them to consume some tablets due to which they lost consciousness.

5. On completion of investigation, the charge-sheet was filed against the appellant herein as well as the co-accused persons. The appellant, along with other co-accused, was charged for the offences punishable under Section 395 IPC read with Section 34 IPC, and Section 328 IPC read with Section 34 IPC. The appellant was additionally charged for the offence under Section 397 IPC. The appellant as well as the other co-accused pleaded not guilty and claimed trial.

6. *Manzoor Alam*, the driver of the stolen truck, was examined as PW-1. He deposed that he was employed as a driver with “Hyderabad Road Carriers”, the office of which was at *Sanjay Gandhi Transport Nagar, Delhi*. He was driving the truck bearing no. RJ14 GA 6283. One *Ram Avtar* was the conductor. They were bringing the cargo of betel nuts (*supari*) from *Bangalore to Delhi*. Another truck, bearing no. HR47 B 0420, driven by one *Rohtash* and also loaded with betel nuts, was coming along with their truck from *Bangalore to Delhi*. At about 1.30 am, when they were on NH-1 and had crossed the *Shahjahanpur* border, he received a call on his mobile number from *Rohtash* (the driver of other truck), who told that his truck had developed a snag. The witness stopped his truck and went towards the truck of *Rohtash*, leaving the key in the ignition. *Ram Avtar*, the conductor, remained in the witness’ truck. The witness noticed one black-coloured car (make Mahindra Scorpio) behind his truck. The truck of *Rohtash* was parked behind the said Scorpio car. The witness asked *Rohtash* to take diesel from his truck, but *Rohtash* stated that he would send his conductor to a nearby petrol pump to bring diesel. His conductor left with a bucket to bring diesel.



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At that time, the witness noticed that his truck had been started by someone. As the conductor *Ram Avtar* did not know how to drive, the witness, suspecting foul play, asked *Rohtash* to call the police as well as the owner. The witness started running towards his truck, but two persons came out, one of whom put a pistol on the witness' head, and threatened him not to make any noise. He was taken towards his truck, and he found 2/3 persons already sitting inside. The conductor *Ram Avtar*, who had already been overpowered, had been made to lie down in the truck and was covered with a sheet. The witness was made to sit in the truck, beaten up, and made to consume some intoxicating material after which he fell unconscious. When he regained consciousness, he found himself lying in the *Narela-Bawana* area in the fields near *J. J. Colony*. The witness' driving licence and Rs.7,000/-, which he was carrying, were also missing. He left the spot and reached the office, where he met with the owner and told the entire story. The witness identified the present appellant as the person who had put a pistol on his head. He also identified the other convicts.

In cross-examination, he denied knowing any official by the name *Kanhiya* or that he informed *Kanhiya* upon reaching Delhi. He stated that he met the owner in the morning of 12.12.2009. He denied the suggestion that he contacted the owner on 19.12.2010. A suggestion was given that the witness, along with the owner, *Tarun Jain*, had misappropriated the goods and concocted a false story, and the same was denied. He stated that the Scorpio car was of black colour, but that he couldn't notice the number. A suggestion was given that the appellant was already known to the complainant prior to the incident as the appellant had been working as a *mistri* in *Sanjay Gandhi Transport Nagar*, and the same was denied. A



suggestion to the effect that photographs and videos of the accused were shown to the witness at the police station was given, which was also denied. He stated that he came to know that the betel nuts had been recovered from a place near Banaras and that he was with the police at that time.

7. *Ram Avtar*, the conductor of the truck, was examined as PW-2. His testimony is cumulative to the testimony of *Manzoor Alam*, the driver of the truck. He deposed that *Manzoor Alam* had stopped the truck when he received a call from *Rohtash*, who stated that he had no diesel in the truck. When *Manzoor Alam* went towards the truck of *Rohtash*, 2/3 persons boarded the truck that the witness was sitting in; one of them put a pistol on his head and forced him to eat something, after consuming which he fell unconscious. When he regained consciousness, he found himself in the Bawana Area. He made a call to the police, who came and took him to a hospital, and thereafter to the owner. He disclosed the facts to the owner. The witness identified *Irshad Ali* and *Sikander* as the accused who had boarded the truck. He stated that it was the accused *Sikander* who had forced him to take the pills. When he regained consciousness, he found *Manzoor Alam* at a distance. He also identified the present appellant.

During cross-examination by the learned APP for the State, he admitted that he had seen *Manzoor Alam* be brought inside the truck, but his face was covered with a blanket thereafter. His hands and legs were tied with the help of tape and his mobile phone was also robbed. The accused had further also taken away *Manzoor Alam*'s mobile phone.

In cross-examination by the appellant, he stated that he had not seen any of the accused prior to the incident. They had gone to P.S. *South Rohini*, where they had seen the accused persons. He again said that though they had



gone to the police station, the accused persons were not shown to them.

8. *Tarun Jain*, the owner of the trucks, was examined as PW-8. He deposed about running the concerned transport company. He further deposed that on 05.12.2009, one transport company had booked two trucks, on which they had sent trucks bearing nos. RJ14 GA 6283 and HR47 B 0420. The trucks were loaded with betel nuts for delivery in *Delhi*. He stated that one *Kale* was the driver of the truck bearing no. HR 47 B 0420. *Kale* was mixed up with some criminals, as a consequence of which the truck bearing no. RJ14 GA 6283 was looted. The full name of the driver was *Rohtash*.

9. One *Kultaran Singh* was examined as PW-9. He stated that he was also running a transport company, in the name and style of “*Maha Ganesh Transport Carrier*” in *Sanjay Gandhi Transport Nagar*. One *Parveen Jain* and one *Arvind Mishra* were his partners. On 05.12.2009, *M/s Rashid Traders, Heroor, Siddapur, Mangalore*, had booked 320 gunny bags of betel nuts. These bags were looted. These bags were in total weighing about 16 tons. The bags were loaded in truck bearing No. RJ14 GA 6283. *Bilty* was issued on the said date and a photocopy of the same was handed over to the I.O. Relevant documents including the copy of the *Bilty* were seized by the I.O. vide seizure memo (Ex. PW-9/A) and the copy of the *Bilty* was exhibited as Ex. PW-9/B.

10. One *Nishant Arora* was examined in the context of the *Scorpio* car. He appeared as PW-10 and stated that his father is the registered owner of the concerned *Scorpio* car bearing No. DL3C AJ 4215. He stated that on 05.12.2009, he had parked the car in the *gali* outside his house; however, the next morning he found his car to be missing. The ownership documents



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were lying in the car itself. FIR No. 61/2009 under Section 379 IPC was lodged at P.S. *Ranjit Nagar* in this regard. A copy of the FIR was exhibited as Ex. PW-5/A.

11. *Parveen Jain* was examined as PW-11. He deposed that on 03.01.2010, he had joined the investigation in the present case and gone to *District Azamgarh, U.P.*, with the I.O. concerned. The I.O. had seized 220 gunny bags of red *supari* lying in one room of *SGRY Khadyan Vitran Kendra, Jiyapur, P.S. Mehnazpur*. He identified the said bags as belonging to him and exhibited the seizure memo as Ex. PW-11/A. The *supari* was taken on *superdari* through his partner, *Kahniya Lal*. He stated that the premises from where the bags of betel nuts were recovered, was in the possession of one *Brijesh Singh @ Guddu Pradhan* of village *Jiyapur*.

In cross-examination, he denied the suggestion of identifying the case property at the instance of police.

12. SI *Mohd. Saleem Javed*, examined as PW-12, deposed that on 03.01.2010, on the basis of secret information received, 220 bags of betel nuts were recovered from the room of *SGRY Khadyan Vitran Kendra, Sahayak Sahkari Limited, Mehlaulpur, Jiyapur, Mehnazpur, U.P.*

13. One *Subhash Chander Mishra* was examined as PW-13, and he deposed that he was employed as a *Sachiv* in the office of *Sahakari Samiti Ltd., Behlaulpur, District Azamgarh, U.P.* The office of the *Samiti* had a hall, which was used to store fertilisers for disbursement among the villagers later. At the relevant time, one *Brijesh Singh* was the *Pradhan* of village *Jiyapur*. On 18/20/22.01.2010, two police officials reached the witness' house and told him about the recovery of 220 bags of *supari* from the godown of *SGRY*.



14. Insofar as the arrest of the accused is concerned, the prosecution examined HC *Surender*/PW-15, who deposed that on receipt of secret information by HC *Rohtash* on 24.12.2019 that a truck loaded with rice from *Alipur* would come from *Mangol Puri* industrial area and pass through *Rohini*, a raiding party was formed and the truck was stopped. The appellant was one of occupants in the truck. He was found carrying a pistol of 7.65 mm. The other accused, namely *Irshad*, *Ekant Bansal*, *Rafiq*, and *Sikander*, were also apprehended and 193 bags of rice were seized.

15. HC *Rohtash*, examined as PW-16, deposed on similar lines as PW-15.

16. PW-17, a seller of betel nuts, deposed as to getting the concerned two trucks loaded with bags of betel nuts in *Karnataka* and the same being sent to *Delhi*. PW-18 booked the concerned trucks for delivery of betel nuts from *Karnataka* to *Delhi*. PW-19, a Commission Agent for transports in *Bangalore*, deposed as to receiving a call inquiring about the availability of trucks and then deploying the concerned two trucks, driven by *Manzoor Alam* and *Rohtas @ Kale*, for loading of goods.

17. In his statement recorded under Section 313 Cr.P.C., the appellant denied the prosecution case and examined himself as DW-2. As DW-2, he deposed that in the intervening night of 22/23.12.2009, while he was sleeping, 5/6 persons came in civil dress and forcibly took him to P.S. *Rohini*, where other accused were already present. He also examined his wife, *Kiran*, as DW-3 and she deposed on the same lines.

18. Mr. Aly Mirza, learned *Amicus Curiae* for the appellant has contended that the prosecution failed to prove any PCR call. The Trial Court also failed to appreciate that *Tarun Jain* (PW-8) and *Parveen Jain* (PW-11) were the real culprits who had framed the appellant. The identification of the



appellant is also of no use as he was shown at the police station.

19. Learned APP for the State has repelled the contentions put forth on behalf of the appellant, stating that the driver of the truck concerned, i.e., the complainant *Manzoor Alam* (PW-1) has fully supported the prosecution case. The complainant duly identified the appellant in Court and attributed to him the specific role of pointing a pistol at his temple during the truck-jacking in question. Learned APP further submits that the conductor of the said truck, i.e., *Ram Avtar*/PW-2, has lent corroboration to the complainant's testimony on all material particulars. He further submits that all the material background facts also stand established in view of the testimonies of the other prosecution witnesses.

20. I have heard the learned counsels for the parties and carefully examined the record.

21. The appellant, in his statement under Section 313 Cr.P.C. and in his examination as DW-2, has professed his innocence and claimed false implication. He has stated that he was lifted from his house by the police and subsequently implicated in the present case; however, no credible material has been placed on record to illustrate why the complainant, who the appellant has admitted to not knowing in his statement under Section 313 Cr.P.C., would falsely implicate the appellant. Similarly, no credible reason has been put forth as to why the conductor of the truck (PW-2), or the police officials for that matter, would falsely implicate him.

22. With respect to the contention that the appellant's TIP stands vitiated since the concerned witnesses visited the police station and saw him there, the Trial Court has noted that the witnesses went to the police station only during police custody remand after the TIP had already been conducted. A



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perusal of the appellant's statement dated 09.04.2013 reveals that he has not disputed his TIP, which was conducted on 12.01.2010.

23. Pertinently, the Trial Court has noted the fact that while the appellant has claimed that he was lifted from his house on 22.12.2009, the incident in question statedly occurred in the intervening night of 11/12.12.2009. The Trial Court has held this defence put forth by the appellant of being lifted from his house to have no bearing on the case in light of the fact that no defence has been produced by the appellant as to where he was on the intervening night of 11/12.12.2009.

24. PW-1 and PW-2 are the star witnesses of the prosecution. Both supported the prosecution version, correctly identified the appellant in Court, and withstood the test of lengthy cross-examination. They have unflinchingly corroborated each other on all material particulars, and their testimonies are cumulative to each other. Together, the two have painted a clear, cogent, and trustworthy picture of the incident in question and no material inconsistencies were elicited in their testimonies to discredit the prosecution version. This Court is of the view that both the said witnesses are credible and reliable.

25. It is also pertinent to note that the complainant has attributed to the appellant the specific role of pointing a pistol at his head when he was approaching his truck after alighting from the truck driven by *Rohtash*. It is settled law that simple exhibition, brandishing, or even holding a weapon openly to generate fear or apprehension in the victim's mind is sufficient to secure a conviction under Section 397 IPC. Reference in this regard may be made to the decision of the 3-Judge Bench of the Supreme Court in Ram



Ratan v. State of M.P.², wherein it was held as under:-

“17. From the position of law as enunciated by this Court and noted above, firstly, it is clear that the use of the weapon to constitute the offence under Section 397 IPC does not require that the “offender” should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient. The other aspect is that if the charge of committing the offence is alleged against all the accused and only one among the “offenders” had used the firearm or deadly weapon, only such of the “offender” who has used the firearm or deadly weapon alone would be liable to be charged under Section 397 IPC.”

It is also worth mentioning that HC *Rohtash*, examined as PW-15, has deposed that a 7.65 mm pistol was recovered at the instance of the appellant at the time of his apprehension.

26. In light of the above discussion, this Court has no hesitation in upholding the appellant’s conviction under Sections 395/397 IPC. The well-reasoned impugned judgment and order on sentence passed by the Trial Court do not warrant interference. The same are accordingly upheld and the present appeal is dismissed.

27. Before parting, this Court places on record its appreciation for Mr. Aly Mirza, Advocate, the learned *Amicus Curiae* appointed to represent the appellant, for the valuable assistance rendered by him.

28. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 09, 2025/nb

² 2021 SCC OnLine SC 1279