



2025:DHC:6483



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

% Reserved on : 30.07.2025
Pronounced on : 05.08.2025

+ **CRL.A. 632/2024**

HUSSAIN AHMED

Through: Mr. Kanhaiya Singhal, Mr. Prasanna,
Mr. Rahul Bhaskar, Ms. Ankita
Makan, Mr. Binwant Singh and Ms.
Shringarika, Advs.

versus

STATE (NCT) OF DELHI THROUGH
CHIEF SECRETARY

.....Respondent
Through: Mr. Pradeep Gahalot, APP for the
State. SI Satish Bhati, PS Sarita
Vihar.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred under Section 415 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) by the appellant challenging the judgment of conviction dated 27.04.2024 and the order on sentence dated 01.06.2024 passed by the learned ASJ-03, South East District, Saket Courts, New Delhi in Sessions Case No. 128/2022 arising out of FIR No. 328/2021 registered at Police Station Sarita Vihar, Delhi under Sections 394/397/411/34 IPC and Section 25 of the Arms Act.



Vide the impugned judgment, the appellant was convicted for the offences punishable under Sections 394/397/411/34 IPC and Section 25 Arms Act. By the order on sentence, he was sentenced to undergo rigorous imprisonment (RI) for 10 years under Section 394/34 IPC, RI for 10 years under Section 397 IPC, and simple imprisonment (SI) for 1 year under Section 25 of the Arms Act. All sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C. was also extended to the appellant.

2. The brief facts of the case, is that on 20.09.2021 at about 7:30 p.m., the complainant (PW-5) was sitting outside his house along with his minor son and his cousin Md. Sultan Alam (PW-7) when four unknown boys arrived and attempted to snatch his mobile phone. On intervention by PW-7, one of the assailants stabbed him with a knife, while another assailant snatched the complainant's mobile phone. Thereafter, the assailants fled from the spot, abandoning their motorcycle. The appellant and one CCL 'A' were apprehended nearby by a police patrolling team. A knife was recovered from the possession of the appellant and the mobile phone of the complainant was recovered from CCL 'A.' The arrested persons disclosed the involvement of the other co-accused, namely *Sultan Ahmed* and *Faizan*. The appellant was stated to be the person who inflicted the stab injury on PW-7. After completion of investigation, a chargesheet was filed under the aforesaid provisions. During the course of proceedings, co-accused *Sultan Ahmed*'s trial was abated vide order dated 18.09.2023 on account of his death and co-accused 'CCL A' was declared a juvenile and the fourth accused, *Faizan*, remained untraced. Charges were framed against the appellant under Sections 397/394/34 IPC and Section 25 Arms Act. In his



statement under Section 313 CrPC, the appellant denied all incriminating evidence put to him and claimed that he had been falsely implicated. The appellant led no evidence nor examined any witness in his defence.

3. In total, the prosecution examined 11 witnesses. *Mohd. Shamshad*, the complainant was examined as PW5. The injured eyewitness *Mohd. Sultan Alam* was examined as PW7. *Akash*, a resident of the locality, who was an eyewitness to the immediate aftermath of the incident, deposed as PW10. Dr. Shah Aakash Harakhchand (PW1), Sr. Resident, AIIMS Trauma Center, and Dr. Akshay Kumar (PW2), Junior Resident, deposed regarding the medical treatment and MLC of the injured victim. ASI Surender Pal and HC Dharambir, who apprehended two of the assailants, were examined as PW6 and PW8. The rest of witnesses were formal in nature who deposed as to various aspects of the investigation.

4. Learned counsel for the appellant assailed the conviction by contending that the recovery was vitiated and it was argued that the prosecution failed to establish the ownership of the allegedly robbed mobile phone, as no documentary proof or ownership records were brought on record. The testimony of PW-7 indicates that the act of snatching the mobile phone was committed by the juvenile co-accused, CCL 'A', and not by the appellant. It was further submitted that no forensic examination was conducted on the recovered knife to detect blood traces. Learned counsel for the appellant also raised a legal contention that Section 397 IPC, could not be invoked in conjunction with Section 34 IPC. In the alternative, learned counsel for the appellant, on instructions, prays that since the appellant has already undergone a substantial portion of the sentence, and considering his



young age, family circumstances, and overall conduct in custody, a lenient view may be taken by the Court and his sentence may be reduced to the statutory minimum period of 7 years prescribed under Section 397 IPC.

5. *Per contra*, Learned APP for the State, supported the impugned judgment, and submitted that all essential ingredients of the offences punishable under Sections 394/34 IPC, 397 IPC, and Section 25 of the Arms Act stand duly proved against the accused. It was further submitted that both PW-5 and PW-7 had correctly identified the appellant, and that the testimony of PW-7—being the injured witness—remained consistent in cross-examination. The MLC supported the version of injury and the use of a sharp weapon. The knife recovered at the instance of the appellant further corroborated the prosecutions' case.

6. A perusal of the Trial Court Record would show that the complainant PW5 has supported the prosecution version. He has deposed that he was sitting outside his house with his son and PW7 when four persons came and started beating him and attempted to snatch his blue coloured mobile phone of make 'TECNO' and one of the accused person gave a knife blow to PW7. He further stated that they attempted to escape on a motorcycle which however did not start. They tried escaping on foot but two of them were apprehended by the police. He identified the appellant as the one who stabbed PW-7 and co-accused Sultan Ahmad against whom proceedings were abated due to his death. He further identified the knife (Ex. P2) and mobile phone (Ex. P1), and confirmed their recovery from Hussain Ahmad and CCL 'A' respectively. He corroborated that PW-7 was injured while



trying to prevent the robbery. Nothing came out in his cross examination which could shake his testimony.

7. The injured eye-witness *Sultan Alam* deposed as PW-7 and stated that while intervening to prevent the robbery, he was stabbed on his right thigh by the appellant by a *buttondar knife*. He also identified the appellant in Court and attributed the role of inflicting injury with a knife to him.

8. PW6 and PW8 deposed that when they were on duty in ERV vehicle they saw four persons running and some people chasing them. They managed to apprehend two people, the appellant and CCL 'A'. They further deposed that from the appellant a knife was recovered which the complainant identified to be the one used in the incident. The complainant also identified one mobile phone of make 'TECNO' which was recovered from the CCL.

9. The MLC (Ex.PW1/A) described the injury as a stab of approx. 5x4 cm over right mid-thigh which was simple in nature and caused by a sharp weapon. The examining doctor (PW-1) proved the MLC. The sketch memo of the knife (Ex. PW5/D) shows that the total length of the knife was 21 cm, and the length of the blade was 11 cm.

10. The testimonies of PW-5 and PW-7, which remained unshaken in cross-examination, unequivocally established that a knife was used by the appellant to inflict injury during the commission of robbery. The testimonies are supported by the MLC and the recovery of the knife from the appellant and the phone from the co-accused. In the present case, the prosecution has duly proved that the appellant, in the course of his co-accused forcibly



taking away the mobile phone of the complainant, used a knife to inflict injury on the intervening witness, thereby causing fear and hurt to facilitate the escape. A Co-ordinate Bench of this Court in *Asif v. State (NCT of Delhi)*¹ has held that the use of a deadly weapon even during the escape with the stolen property brings the act within the ambit of Section 397 IPC.

It holds as under:-

"It is trite law that even if the weapon of offence is shown after snatching had taken place for running away along with snatched article, offence under Section 397 IPC is attracted... Section 390 IPC provides that in a robbery, there is either theft or extortion. It is further provided that theft is 'robbery' if, in order to committing of the theft or in committing the theft, or in carrying away or attempting to carry away property obtained by 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... Thus, if the offender uses the deadly weapon at the time of committing robbery or dacoity which would include even the fear of instant death or instant hurt or wrongful restraint or an attempt to cause death or hurt or wrongful restraint even while carrying away or attempting to carry away the property obtained by theft, the act of the offender will fall within the four corners of Section 397 IPC."

The said precedent reinforces the settled legal position that the use of a deadly weapon, even during the escape with the stolen property, brings the act within the ambit of Section 397 IPC. The sequence of events, involving both the snatching and the use of the weapon during the attempted flight, is squarely covered by the principles laid down in *Asif v. State (supra)*. Thus, the conviction under Section 397 IPC in the present case is fully justified and stands upheld in law.

11. In view of the consistent ocular testimony, corroborative medical evidence, and recovery of weapon, no infirmity is found in the judgment of

¹ 2022 SCC OnLine Del 270



conviction or the order on sentence. Though learned counsel for the appellant has prayed for a reduction of the sentence, a perusal of the nominal roll indicates that he has previously been convicted under Section 307/34 IPC in proceedings arising out of FIR No. 302/11 registered at PS. Jamia Nagar where he was sentenced to undergo RI for 03 years & fine of Rs.5,000/-. In addition, the nominal roll shows involvement of the appellant in FIR No. 282/21 under Sections 393/397/398/34 IPC and FIR No. 31/21 under Section 394/397/411/34 IPC, both registered at PS. Sarita Vihar.

12. In view of the nature and gravity of the offence, the evidence duly proved on record, and taking into consideration the fact that the appellant is involved in other pending criminal cases, no grounds are made out for any leniency in sentencing. Accordingly, the prayer for reduction of sentence is rejected.

13. Consequently, the judgment of conviction dated 27.04.2024 and the order on sentence dated 01.06.2024 are upheld. Accordingly, the appeal is dismissed.

14. Let a copy of this judgment be communicated to the concerned Jail Superintendent as well as the learned Trial Court for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 05, 2025

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