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

Reserved on: 02nd September, 2025
Date of Decision: 15th September, 2025

\+ **CRL.A. 994/2002 & CRL.M.A.11621/2024**

BUDH BHASKAR .....Appellant

Through: Ms. Tanya Agarwal, Advocate (DHCLSC) alongwith Appellant in person.

versus

STATE .....Respondent

Through: Mr. Satinder Singh Bawa, APP for the State with SI Gaurav, PS Kalyanpuri.

CORAM:
JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

RAJNEESH KUMAR GUPTA, J.

1. The present appeal is filed on behalf of the Appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the *"CrPC")* against the judgment dated 14th November, 2002 (hereinafter referred to as the *"impugned judgement")* and against the Order-on-Sentence dated 15th November, 2002 (hereinafter referred to as the *"impugned Order on Sentence"*) passed by the court of Additional Sessions Judge, Karkardooma Courts, Delhi (hereinafter referred to as the *"Trial Court")* in Sessions Case bearing No. 145/2001 arising out of the FIR bearing No. 301/2000 registered at Police Station-Kalyan Puri, Delhi.

2. The Appellant *vide* the impugned judgement was held guilty for

committing the offence punishable under Sections 307/34 and 392/ 397/34 of the Indian Penal Code, 1860 (hereinafter referred to as the *"IPC").*The Appellant *vide* the impugned Order on Sentence dated 15th November, 2002 was sentenced to concurrently undergo Rigorous Imprisonment for a period of 7 years along with a fine of ₹2,000/- each and in default of payment of fine to undergo Rigorous Imprisonment for 6 months for the offences under Section 307 read with 34 IPC and to further undergo Rigorous Imprisonment for 7 years and to pay a fine of ₹2,000/- each and in default of payment of fine to undergo Rigorous Imprisonment for 6 months for offences under Section 392 read with Section 397 and 34 IPC.

3. Briefly stated, the Prosecution's case as reflected in the impugned judgment is that on 18th September, 2002, complainant-Raj Kumar had gone to Seelampur during day time for collecting some money. He boarded a bus of route no. 319 for going back to his house and at about 10 P.M. he got down from the bus and near Kondli pull (bridge) and started going to his house at Trilokpuri on foot by the side of part of canal. At about 10:15 P.M., when he reached near the office of DSIDC then all of a sudden, appellant-Ramlot and his son appellant-Budh Bhaskar who were known to the complainant came from the bushes alongwith two other companions. Thereafter, appellant-Ramlot caught hold of the complainant and appellant-Budh Bhaskar started giving knife blows to the complainant. Other companions of appellant-Budh Bhaskar also gave knife blows to the complainant on chest, right arm pit, back side and on the right thigh and as a result of the same, complainant made cries and on this appellant-Ramlot also stated that he will be finished today and while running away from the spot, appellant-Ramlot, his son and their other two companions took away

Rs.9,200/- which were there in a *thaili* tied on the back of the complainant and thereafter the complainant reached his relative *Beggi* and a telephone call was made to the police and thereafter the police reached there and the Complainant was removed to the hospital. Thereafter, FIR was registered under Sections 307/34 IPC. After investigation, the charge-sheet was filed under Sections 307/34 IPC and under Sections 392/397 IPC.

4. The Appellant was charged under Sections 307/34 IPC and under Sections 392/397 IPC read with Section 34 IPC to which he pleaded not guilty and claimed trial. The Prosecution, in order to prove its case, examined 09 witnesses. The statement of the appellant was recorded under Section 313 CrPC, wherein the appellant had denied incriminating evidences and pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant. The appeal *qua* appellant-Ram Lot was abated *vide* order dated 16th September, 2014 as he had passed away during the pendency of the present appeal.

5. Learned Counsel for the appellant has argued that the Trial Court has passed the impugned judgment on the basis of surmises and conjectures which is against the facts of the case. There are material contradictions in the testimonies of the prosecution witnesses which make the case of the prosecution doubtful. It is argued that there is no recovery of alleged weapon of offence and the alleged robbed amount. The opinion as to the nature of injuries of the injured in the MLC is also doubtful as no surgical reports and medical treatment records have been brought in evidence. From the evidence placed on record, prosecution has failed to prove its case beyond reasonable doubt against the appellant. It is prayed that the appeal

be allowed and the appellant be acquitted.

6. On the other hand, learned APP for the State has argued that the Trial Court has passed the impugned judgment after considering the evidences on record. The evidences produced on behalf of the prosecution have proved the case beyond reasonable doubt. The arguments of the appellant are without any merits. The appeal is liable to be dismissed.

7. I have heard the learned Counsel for the appellant and learned APP for the State and have examined the record.

8. Dr. Usha Upreti, CMO has been examined as PW-1. She deposed that on 19 September, 2000 she examined the injured- Raj Kumar, and proved his MLC as Ex.PW-1/A. As per Ex.PW-1/A, the injuries were opined to be dangerous with sharp object and are as follows:

> *"1. Multiple stab wounds on the chest wall; air bubbles were observed escaping from a wound on the anterior surface of the chest wall.*
>
> *2. Surgical emphysema was present on the right side of the chest wall. Air entry decreased on the right side chest. Multiple stab injuries on other parts of the body."*

PW-3 Raj Kumar who is the injured has deposed that on 18th September, 2000, he had gone to Seelampur to bring his money from the relative of *Dhannu* because he had sold a buffalo to him. On return, he boarded a bus of route no. 319 from Bihari Colony at about 07:00 PM. He got down from the bus on the *pulia* of *kodli*. From there, he proceeded to his house on foot alongside the *naala*. At about 10:15 PM, near a school like building, four persons caught hold of him. Appellant-Ram Lot exhorted his son, namely, appellant-Budh

Bhaskar and other companions to finish him. On this, appellant-Bhaskar started giving knife blows to him. He raised an alarm and tried to escape but appellant-Ram Lot caught hold of him by putting his hands around his waist and exhorted his associates to kill him. On this, the other two companions also gave him knife blows. He sustained injuries on his right arm pit and on the right side from arm pit to the waist. He also sustained injury on his right thigh. He raised an alarm. Thereafter, appellant-Budh Bhaskar removed from his person Rs. 9,200/- and gave to appellant-Ram Lot. He further deposed that a dispute had been going on between him and appellant-Ram Lot over a plot of land. The appellants attempted to kill him on account of the said dispute. The police recorded his statement, which is Ex PW-3/A.

In cross-examination, PW-3 was confronted with his statement Ex.PW-3/A and has also deposed that he had not informed the IO of the denomination of the currency notes allegedly taken away by the appellant from him. He denied the suggestion that he was a tenant of appellant-Ram Lot in the above mentioned premises. He also denied that he had lost a suit filed by the appellants and that such loss was a motive for falsely implicating them.

PW-6, Dr. Praveen Sodi has deposed that he examined the surgical records in respect of injured-Raj Kumar including his MLC Ex. PW-1/A, he had opined the injuries mentioned in MLC as grievous vide his opinion Ex. PW-6/A on the said MLC.

9. Section 307 IPC reads as follows:

***"Section 307** Attempt to Murder: Whoever does any act*

> *with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.*

Upon perusal of Section 307 IPC, it can be inferred that what the Court has to see is whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the appellant must be such as is necessary if he by that act caused death, he would be guilty of murder. Under Section 307 IPC, the intention precedes the act attributed to the appellant. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue.

10. PW-3 Raj Kumar, is the injured and is the material witness of the case. In his testimony, he has supported the case of the prosecution that appellant-Budh Bhaskar had given knife blows to him and he had sustained injuries on his person. The testimony of PW-3 is also supported by his MLC which is Ex. PW-1/A and his statement, which is Ex.PW-3/A, on the basis of which the FIR was registered.

As to the evidentiary value of the injured witness, it is relevant here to mention the observations of the Hon'ble Supreme Court in ***State of U.P. versus Naresh and Ors. 2011 (4) SCC 324*** which are as under:

> *"23. The High Court has disbelieved Balak Ram (PW.5), who had suffered the gun shot injuries. His evidence could not have been brushed aside by the High Court without assigning cogent reasons.*

> *Mere contradictions on trivial matters could not render his deposition untrustworthy.*
> *The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence.*
> *Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].”*

The contradictions which have been brought by the appellant in the cross-examination of PW-3 are minor contradictions and they do not affect the credibility of the testimony of PW-3. It has been consistently held by Courts that minor contradictions and improvements are natural in human testimony and cannot be grounds to discard otherwise reliable evidence. In ***Rammi versus State of M.P. (1999) 8 SCC 649***, the Hon’ble Apex Court had held as under:

> *“20….. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally nondiscrepant. But*

> *courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny." In the same case, how far a contradiction in the two statements can be used to discredit a witness has also been discussed."*

11. In view of the above discussions, the testimony of the PW-3 is found to be reliable and trustworthy with regard to the injuries inflicted upon him by the appellant with a knife on vital parts of his body. The injuries were also proved to be grievous in nature with sharp object. Accordingly, the offence under Section 307 IPC stands proved against the appellant.

12. Learned counsel for the appellant has further argued that, from the evidence on record, the offence under Section 392 IPC read with Section 397 IPC has not been made out. It is argued that there is no material evidence on record which would show that the appellant, while taking away the alleged amount of Rs.9,200/-, used "violence" as provided in Section 390 IPC, in relation to the injured.

To support this argument, the learned counsel for the appellant placed reliance upon the judgment of High Court of Punjab and Haryana in ***Om Prakash and Ors. Vs. State of Haryana 1987 SCC OnLine P&H 285*** which held as under:

> *"26. The matter that now calls for consideration is with regard to the offences said to have been committed by the appellants. Here, it was forcefully argued by the counsel for the appellants that in the circumstances, no offence under Sections 394 and 397 of the Penal Code, 1860 could be said*

to have been committed by any of the appellants in respect of the snatching away of the bag of Kurda Ram by Ami Lal. Reference was, in this behalf made to Indrasana Kuer v. State, 1970 Cri LJ 647, where it was observed that it was clear from the definition of robbery that there should be use of force or attempt to use force for the purpose of committing theft or in carrying away or attempting to carry away property obtained by theft. Mere fact that the assault and the theft took place in the same transaction is not ???. The ??? must be to facilitate commission of theft. To a similar effect were the observations in Kohipalliylik Muhammad v. State, 1974 Cri LJ 204, where it was held that to constitute robbery, it is necessary that the act must be in order to the committing of the theft or in carrying away or attempting to carry away the property obtained by theft and the hurt or the attempt to hurt must have been caused voluntarily for that end in view."

The Hon'ble Supreme Court in ***Mohammad Wajid vs State Of U.P.*** *reportable as* ***2023 INSC 683***, has observed as under:-

"14. Theft amounts to '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. Before theft can amount to 'robbery', the offender must have voluntarily caused or attempted 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. The second necessary ingredient is that this must be 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 third necessary ingredient is that the offender must voluntarily cause or attempt to cause to any person hurt etc., for that end, that is, in order to the committing of the

theft or for the purpose of committing theft or for carrying away or attempting to carry away property obtained by the theft. It is not sufficient that in the transaction of committing theft, hurt, etc., had been caused. If hurt, etc., is caused at the time of the commission of the theft but for an object other than the one referred to in Section 390, IPC, theft would not amount to robbery. It is also not sufficient that hurt had been caused in the course of the same transaction as commission of the theft."

13. In Ex.PW-3/A, PW-3 has stated that while running away from the spot, the appellant along with his accomplices took away his Rs.9,200/-. In his testimony, PW-3 had deposed that when he raised an alarm, appellant-Budh Bhaskar removed a sum of Rs.9,200/- from his person and handed it over to the appellant-Ram Lot.

14. On perusal of the prosecution evidence, in light of Section 390 IPC, this Court finds that there is no evidence to prove that the assault upon PW-3 was committed by the appellant with the object of committing theft of the money carried by PW-3. Accordingly, this Court is of the opinion that only the offence under Section 379/34 IPC instead of offence under Section 392/397/34 IPC stands proved against the appellant.

15. In view of the foregoing reasons, this Court does not find any infirmity in the impugned judgment as to the conviction of the appellant–Budh Bhaskar under Sections 307/34 IPC and it is accordingly upheld, however, impugned judgment as to the conviction under Sections 392/397/34 IPC is modified to Section 379/34 IPC.

16. The appellant has, however, prayed for modification of the sentence seeking reduction to the period already undergone. In support of his plea, the

appellant submitted that the appellant is now 51 years of age. He has a wife and two minor children aged 14 and 17 years respectively. He is a poor person and he is the sole earning member of his family. This Court has considered these contentions and perused the relevant material.

The present case relates to an incident which had occurred 25 years ago, while the impugned judgment itself was delivered nearly about 23 years ago and undergoing 7 years rigorous imprisonment at this distant point of time would be too harsh.

17. In view of the aforesaid mitigating circumstances, the sentence of the appellant is modified to RI for a period of five years along with a fine of Rs.2,000/- in default of payment of fine SI for 15 days under Section 307/34 IPC and to RI for a period of six months and fine of Rs.2,000/- in default of payment of fine SI for 15 days under Section 379/34 IPC. Both the sentences shall run concurrently with benefit of Section 428 Cr.P.C. to the appellant.

18. The appellant is directed to surrender within a period of three days before the concerned Jail Superintendent and serve his remaining sentence as ordered. His bail bonds will thereupon, stand cancelled.

19. The concerned Jail Superintendent is directed to file a compliance report with regard to the surrender of the appellant before the concerned Trial Court. In case the appellant fails to surrender, then the concerned Trial Court shall take appropriate steps, in accordance with law, to execute the sentence as ordered.

20. In view of the above, the present appeal is disposed of. Pending application(s), if any, also stand disposed of.

21. A copy of this judgment be communicated forthwith to the concerned

Trial Court as well as to the concerned Jail Superintendent for necessary information and compliance.

RAJNEESH KUMAR GUPTA
JUDGE

SEPTEMBER 15, 2025
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