



2026:DHC:5656



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

% *Judgment reserved on: 13.07.2026*
Judgment pronounced on: 16.07.2026

+ CRL.A. 677/2016

RAJU

.....Appellant

Through: Mr. Harshit Joshi, Advocate.

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Shivam, P.S. Seelampur.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the sole accused, in Sessions Case No. 44253/2015 on the file of Additional Sessions Judge, North East, Karkardooma Courts, Delhi, assailing the judgment dated 06.06.2016 and order on sentence dated 10.06.2016 as per which he has been convicted for



2026:DHC:5656



the offences punishable under Sections 392 and 397 read with Section 34 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 29.07.2015 at about 8 PM near Metro Pillar No. 162, 66 Futa Road, Seelampur, Delhi, the accused in furtherance of his common intention along with his associate namely, Roshan (not traceable) robbed the mobile phone of PW1 at knife point. Hence, as per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 392, 397, 411 read with Section 34 IPC and Sections 25 and 27 Arms Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1, given on 29.07.2015, Crime no. 562/2015, Seelampur Police Station, i.e., Ext. PW 2/C FIR was registered by PW2 Head Constable. PW7, Sub-Inspector conducted investigation into the crime and on completion of the same filed the chargesheet/final report against



the accused alleging the commission of the offences punishable under abovementioned sections.

4. When the accused was produced before the trial court, all copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 20.10.2015, framed a Charge under Sections 392 read with Section 34 IPC, 397 IPC, 411 IPC and Sections 25 and 27 of the Arms Act against the accused. The Charge was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 7 were examined and Ext. PW1/1, PW 1/A-G, PW 2/A-D and PW5/A were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the



evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that he has been falsely implicated.

7. After questioning the accused 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 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 has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

8. No oral or documentary evidence was adduced by the accused.



9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court *vide* impugned judgment dated 06.06.2016 held the accused guilty of the offences punishable under Sections 392 read with Section 34 IPC, 397 IPC and Section 25 of the Arms Act. Accordingly, *vide* order on sentence dated 10.06.2016, the accused has been sentenced to rigorous imprisonment for a period of 07 years for the offence punishable under “*Section 392/34 IPC read with 397 IPC*” and fine of ₹1,000/- for the offence punishable under Section 392 read with 34 IPC, and in default of payment of fine, to simple imprisonment for 06 months. He has been further sentenced to rigorous imprisonment for a period of 01 year for the offence punishable under Section 25 of the Arms Act. The sentences have been directed to run concurrently.

10. The learned counsel for the appellant/accused submitted that the evidence regarding identification of the



accused is quite doubtful, because PW1, the informant/aggrieved, does not support the prosecution case. The only other testimony is that of PW3, the Head Constable, which is quite doubtful. It was also pointed out that as per Ext. PW 1/A FIS/FIR, the time of the incident is around 07:50 PM. According to PW3, he received a call regarding the crime at about 08:30 – 08:35 PM after which he along with PW4 reached the spot, and apprehended the accused from nearby. It is quite unnatural and improbable for the accused to have remained near the spot after having committed the robbery. In the normal course, after the commission of a crime, the attempt would only be to get as far away from the scene of the crime and not loiter nearby.

11. *Per contra*, it was submitted by the learned Additional Public Prosecutor that there is no infirmity in the impugned judgment calling for an interference by this Court. PW1 in the box narrated the entire incident regarding the robbing



of his mobile phone. Only on the point of identification of the accused he has turned hostile. However, identity is proved by the testimony of PW3. Further, the accused while questioned under Section 313(1)(b) Cr.P.C., never tendered any explanation as to how and why he was apprehended at the scene of the incident. The materials on record, according to the prosecutor are sufficient to convict the accused.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgment warranting an interference by this Court.

14. I shall briefly refer to the evidence on record relied on by the prosecution in support of the case. Ext. PW1/A FIS/FIR given on 29.07.2015 by PW1 reads thus:-“...On 29.07.2015, at about 7:50 PM, I got off the metro and boarded an auto-rickshaw from Seelampur Stand. Two boys were hanging



onto the back of the auto-rickshaw. My Lava phone was in my right hand. As soon as the auto-rickshaw reached near the Metro Pillar No. 162, they suddenly snatched my phone. When I protested, they showed me a knife and ran away with my Lava White Color phone no. 9953909778 towards the 66 Futa Road. I dialed 100 with my other phone and the PCR van came there immediately and started looking for them. The boy who had shown me the knife, was found standing nearby whom I identified and he was apprehended. My phone was recovered from his left hand. Upon his personal search, a sharp knife was also recovered from him, which he had used. On enquiry, his name was found to be Raju (the accused), s/o Ramesh, r/o I-87, Welcome, Delhi. The mobile phone and knife recovered from the personal search of Raju (the accused), has been handed over...”

15. PW1 when examined before the trial court, broadly supported the version given by him in Ext. PW1/A



2026:DHC:5656



FIS/FIR. However, he resiled from his version in Ext. PW1/A wherein he had identified the accused. PW1 deposed that on 29.07.2015 at about 7 PM or 8 PM, he was on his way home and that when he reached near Metro Pillar No. 162, 66 Futa Road, two unknown persons accosted him. One of them pointed a knife at him and while the other snatched away his Lava mobile phone, after which they ran towards Jafrabad. He made a call to 100 number. PW1 further deposed that the accused person present in the Court is not one of the robbers. The prosecutor sought the permission of the court to '*cross-examine*' the witness on the ground that he was resiling from his earlier statement. This request was allowed by the trial court and on further examination by the prosecutor, PW1 denied having stated to the police that the police officials who came to the scene on his call had overpowered the accused herein or that he had identified the accused as the robber before the police, or that a knife and his



mobile phone had been recovered from the accused present in the court. PW1 denied having stated to the police that he could identify the associate of accused/robber who had fled from the spot. PW1 admitted his signatures in Ext. PW1/B, the seizure memo of the knife; Ext. PW1/C seizure memo of the Lava mobile phone; Ext. PW1/D sketch of the knife; Ext. PW1/E arrest memo of the accused and Ext. PW1/F the personal search memo of the accused. However, he denied that the aforesaid documents had been prepared by PW7, the Investigating officer (IO) at the spot. PW1 failed to identify the knife alleged to have been used in the crime. PW1 admitted that he had taken his mobile phone on ‘*Superdari*’. He was unable to produce the same before the Court as he had lost it regarding which he gave Ext. PW1/1 complaint to the police.

16. PW3, the vehicle-in-charge at Backer 57 and base at Tent wala School, Zafrabad, Delhi, deposed that on the



2026:DHC:5656



date of the incident, he along with Constable Kishan Kumar, the gunmen, and Constable Sanjeev, the driver (PW4), were on duty. At about 08:30 – 08:35 PM, they received a call from the control room stating that two boys had snatched a mobile phone and fled towards Jafrabad, Seelampur. He recorded the information received in the call book. They proceeded to the scene where they met PW1 who told them that after robbing his mobile phone, the two boys had fled the scene towards Seelampur area. PW3 further deposed that they parked the police vehicle by the side of the road and started searching for the two boys. One of the boys was overpowered by them on PW1 identifying him from one *gali* falling within the jurisdiction of Seelampur police station. The other boys managed to flee. PW3 identified the accused herein as the person apprehended by the police on the said day. PW3 further deposed that a Lava white colour mobile phone along with one knife were found in the possession of the accused. Within



2026:DHC:5656



about 20 to 25 minutes two police officials from Seelampur Police Station arrived and so he handed over the accused; PW1; the mobile phone, and the knife to Sub-Inspector Rizwan (PW7) and Constable Naresh Veer (PW5). PW3 identified the knife alleged to have been in the possession of the accused and the same has been marked as Ext. P1.

16.1. PW3 in his cross-examination deposed that he had received a call from the control room at about 08:40 PM. He admitted to have made an entry in the call book regarding the aforesaid incident. He further deposed that there were three police officials on duty in the vehicle who had searched for the robbers. There were passersby moving along the road near Metro Pillar No. 162. However, none joined the search. According to PW3, it was he and the gunman, namely, Constable Kishan Kumar who had overpowered the accused in the *gali*.



2026:DHC:5656



17. PW4, Constable Sanjeev Pal, supported the version of PW3 in his examination-in-chief. However, in his cross-examination, he admitted that he had not accompanied PW3 and Constable Kishan Kumar when they went in search of the robbers. According to PW4, he being the driver, remained in the vehicle.

18. PW7, Sub-Inspector, Seelampur Police Station, the Investigating Officer (I.O.) deposed that on the night of the incident while he was on duty at about 09:00 PM, the duty officer informed him of the incident. He along with Constable Naresh Veer (PW5) proceeded to the scene, that is, Metro Pillar No. 162, 66 Futa Road, Seelampur, Delhi, where PW1 produced the accused herein along with a mobile phone and knife, at which time PW3, PW4 and Constable Kishan were present. The police officials informed him that they had overpowered the accused herein while the latter was attempting to flee and that the



associate of the accused had managed to flee. He recorded Ext. PW1/A FIS/FIR of PW1. He prepared Ext. PW1/B sketch of the knife and seized it *vide* Ext. PW1/B seizure memo. He also seized the mobile phone as per Ext. PW1/C seizure memo. The accused was arrested *vide* Ext. PW1/E arrest memo and Ext. PW1/F is the search memo of the accused. PW7 identified the accused as the person who had been handed over to him on the said date.

18.1. PW7, in his cross-examination, deposed that he had reached the spot at about 09:10 PM. He had requested 3 to 4 passengers to witness the arrest and recovery proceedings. But, none agreed.

19. PW5 supports the version of PW7.

20. The trial court has found the accused guilty of the offences punishable under “*Sections 392/397/34 IPC read with Section 25 of the Arms Act*”. Accordingly, he has been sentenced to rigorous imprisonment for 7 years “*under Section 392/34 IPC*”



read with Section 397 IPC.” 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. Section 397 IPC deals with robbery, or dacoity, with attempt to cause death or grievous hurt. As per the Section, if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished, shall not be less than 7 years. The offences contemplated under the aforesaid Sections are two distinct offences, though the



2026:DHC:5656



element of robbery is common in both. As is evident from a reading of Section 392, there is no reference to any deadly weapon as is the case in Section 397 IPC.

21. I will now consider the question whether the materials on record satisfy the ingredients of the aforesaid sections. As noticed earlier, PW1 did not identify the accused in the box. It was only PW3 to PW5 and PW7, the police officials, who have identified the accused before the trial court. It is true, as held by the Apex Court in **Tahir vs. State, (1996) 3 SCC 338** and **Anter Singh vs. State of Rajasthan, (2004) 10 SCC 657**, that police officials are competent witnesses and there is no such principle that they are not competent witnesses or that their testimony must be corroborated by independent witnesses. It is also true that merely because a witness turns hostile his entire testimony is not liable to be discarded. That portion of his testimony which is credible and believable is admissible and there



2026:DHC:5656



is no bar to base a conviction based on such testimony if it is corroborated by other reliable witnesses. (See **Prithi vs. State of Haryana (2010) 8 SCC 536**, **LellaSrinivasa Rao vs. State of Andhra Pradesh AIR 2004 SC 1720**, **Lakshman Bhai vs. State of Gujarat AIR 2000 SC 210**). Therefore, the question to be considered is whether the testimony of the police officials examined in this case are credible, believable and trustworthy so as to accept the case of the prosecution relating to the identity of the accused.

22. In Ext. PW1/A FIS/FIR the time of incident is stated to be 07:50 PM. In the box the case of PW1 is that the incident took place sometime between 07:00 and 08:00 pm and that it was immediately thereafter that the accused had been apprehended with the assistance of the police. According to PW3, the PCR call was received at about 08:30-08:35 PM. However, in the cross-examination PW3 deposed that the call was received at



2026:DHC:5656



08:40 PM. PW7, the IO, claims to have received information at about 09:00 pm and that immediately thereafter he proceeded to the scene of occurrence along with PW5 and that he had reached the scene at 09:10 PM. According to PW7, it was PW1 who had handed over the custody of the accused, the mobile phone and knife to him whereas, PW3 claimed that it was he who had handed over the custody of the accused, the mobile phone and the knife to PW7. Further, a reading of the examination-in-chief of PW7 gives the impression that the arrest of the accused was affected at the scene itself and that immediately thereafter Exts. PW1/B and PW1/C, the seizure memos relating to the knife and mobile, were prepared. PW7 in his cross-examination deposed that he had in fact requested 3 to 4 passersby to witness the arrest and recovery, which apparently means that the seizure memos were prepared immediately thereafter at the site itself. However, Ext. PW1/E arrest memo records the time of arrest as 12:40 AM



2026:DHC:5656



on 30.07.2015. If PW7 had reached the scene at 09:10 PM and had immediately thereafter arrested the accused, the time of arrest would not have been 12:40 AM as recorded in the arrest memo.

23. PW3 claims that the phone and the knife found in the possession of the accused when he was apprehended by him and handed over to PW7. However, PW7 has no such case. PW7 on the other hand deposed that it was PW1 who had handed over the knife and mobile phone along with the accused to him. Ext. PW1/B seizure memo is seen attested by PW1 and PW5. However, PW1 does not support the prosecution case that it was from the accused herein that the knife had been seized. PW5 has never a case that he had witnessed the seizure or recovery of the knife from the accused. On the other hand, his case is that he had accompanied PW7 to the scene of occurrence on receipt of information by PW7 regarding the incident by which time the accused herein is alleged to have been already apprehended and



2026:DHC:5656



the recovery/seizure affected. PW3 who is alleged to have apprehended the accused and seized/recovered the knife and mobile phone from the accused is not an attester to Ext. PW1/B for which no reasons have been furnished by the prosecution. Likewise, in Ext. PW1/C seizure memo relating to the phone, PW1 alone is the attester. But PW1 does not support the prosecution case that it was from the accused herein that the mobile phone had been seized/recovered.

24. Further, it was submitted by the learned Additional Public Prosecutor that the accused offers no explanation for his arrest at the scene of occurrence and merely answered when questioned under Section 313(1)(b) Cr.P.C. that he has been falsely implicated in this case. Reference was also made to Section 114 of the Evidence Act and illustration (a) thereto, which says that when a man is found in possession of stolen goods soon after the theft, the presumption is that he is either the



2026:DHC:5656



thief or has received the goods knowing them to be stolen unless he can account for his possession. Therefore, the argument of the learned Additional Public Prosecutor is that in the light of Section 114 it shall be presumed that the accused herein is the person who had robbed the mobile phone of PW1, which was recovered/seized from the accused soon after the incident.

25. I am afraid I am unable to agree with the argument advanced by the learned Additional Public Prosecutor. The burden is always on the prosecution to establish the case and the burden never shifts to the accused unless he takes up a specific defense. The accused while questioned under Section 313(1)(b) Cr.P.C. does not admit that he was arrested by the police from the place of occurrence. This is apparent from his answers given while questioned under Section 313(1)(b) Cr.P.C. A specific question was put to the accused that PW7 had arrested him on 30.07.2015 at 12:40 AM and that Ext. PW1/E is the arrest memo



2026:DHC:5656



to which he answered that the same is incorrect. Therefore, there is no admission of the prosecution case by the accused that he had been arrested by PW7 from the spot or that he had been apprehended by PW3 along with the other police officials immediately after the alleged incident. The evidence regarding the arrest as well as seizure/recovery of the mobile phone and the knife is unsatisfactory for the reasons aforesaid discussed. It is only when the arrest and seizure/recovery are proved, the presumption contained under Section 114 of the Evidence Act would be attracted. In the light of such unsatisfactory evidence, I find it unnecessary to discuss the point as to whether the offence under Section 25 of the Arms Act is made out. As the prosecution has been unable to establish the offences charged against the accused beyond reasonable doubt, I find that he is entitled to the benefit of doubt.



2026:DHC:5656



26. In the result, the appeal is allowed. The impugned judgment is set aside and the accused is acquitted under Section 235(1) Cr.P.C. for the offences punishable under Section 392, 397 read with Section 34 IPC as well as Section 25 of the Arms Act. The appellant/accused shall be set at liberty and his bail bond shall stand cancelled.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 16, 2026
Mj/kd