



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

% *Judgment reserved on: 13.07.2026*
Judgment pronounced on: 17.07.2026

+ **CRL.A. 250/2017**

STATE GOVT OF NCT OF DELHIAppellant

Through: Ms. Manjeet Arya, APP for the State.

Versus

SURAJ @ MACHHARRespondent

Through: Mr. Vaibhav Gulia, Advocate.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), by the State in Sessions Case No. 06 of 2014 on the file of the Additional Sessions Judge-04 and Special Judge, NDPS, South East, Saket Courts, New Delhi, assails the judgment dated 09.03.2015 as per which the sole accused has been acquitted of the offences punishable



under Sections 392, 394 read with Section 34 and Section 397 of the Indian Penal Code, 1860 (IPC).

2. The prosecution case is that on 12.02.2014 at about 11:15 p.m., near the under-construction underpass at C-Block Jhuggi, Okhla Industrial Area-II, Delhi, the accused, acting in furtherance of his common intention with his two associates, namely, Bittu @ Chusa and Bineet @ Binny (both Child in Conflict with Law), robbed PW2 of his belongings. During the commission of the robbery, it is alleged that hurt was caused to PW2 and that the accused, along with his associates, used a deadly weapon, that is, knife. Hence, as per the charge-sheet/final report, the accused is alleged to have committed the offences punishable under Sections 392, 397, 411 read with Section 34 IPC.

3. On the basis of Ext. PW2/A FIS/FIR of PW2 given on 13.02.2014, Crime No. 105 of 2014, Okhla Industrial Area Police Station, that is, Ext. PW1/A FIR was registered by PW1, Assistant



Sub-Inspector. PW10, Sub-Inspector, conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report alleging commission of the offences punishable under the aforesaid Sections.

4. When the accused was produced before the committal court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. The case was committed to the Court of Sessions under Section 209 Cr.P.C. *vide* order dated 30.04.2014.

5. After hearing both sides, the trial court, *vide* order dated 15.05.2014, framed a Charge under Sections 392, 394 read with Section 34 and Section 397 IPC, which was read over and explained to him, to which he pleaded not guilty.

6. On behalf of the prosecution, PWs. 1 to 10 were examined and Exts. PW1/A-B, PW2/A-C, PW3/A, PW 6/A-E, PW6/E1-E2, PW6/F, PW7/A and PW10/A were marked.



7. 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 led by the prosecution. He denied all those circumstances and maintained his innocence. He submitted that he had a quarrel with PW2 about four to five days prior to the registration of the case, owing to which the latter falsely implicated him. PW4 and PW9 deposed against him as they are friends of PW2. He was picked up from his house by the police and taken to the police station and shown to PW2 and PW9.

8. 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 to have been 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.

9. No oral or documentary evidence was adduced by the accused in support of his case.

10. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 09.03.2015, acquitted the accused under Section 235(1) Cr.P.C. of the offences punishable under Sections 392, 394 read with Section 34 and Section 397 IPC. Aggrieved, the State has preferred this appeal.

11. It was submitted by the learned Additional Public Prosecutor for the State that the impugned judgment is contrary to the facts and circumstances of the case, is bad in law as the trial



court has failed to appreciate the materials on record and, therefore, liable to be set aside.

12. It was submitted by the learned counsel for the respondent/accused that there is no infirmity in the judgment calling for an interference by this Court.

13. Heard both sides and perused the materials on record.

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

15. I will refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW2/A the FIS/FIR of PW2 recorded in Hindi on the date of the incident, i.e., 13.02.2014, translated reads thus: *“On 12.02.2014 at around 11:00 p.m., after finishing our work, I, along with my colleagues Gautam (PW4) and Jitender (PW9), was going to the house of Jitender (PW9) in Village Tehkhand, Delhi. At around 11:15 p.m., while*



walking from C-Block Okhla Phase-II through the jhuggis toward Tehkhand and when we reached near the underpass, one of the three boys gathered there around a fire (aag sek rahe the) asked me for a matchbox, which I refused. One of the boys caught hold of me by my collar. When I resisted, the boy, who was approximately 20 to 21 years old, and another boy, whose age was around 18 to 19 years, repeatedly punched and kicked me and pulled out ₹4,000/- from the front pocket of my pants. The third boy, who was also approximately 20 to 21 years old, took out my white Micromax-445 mobile phone from the right pocket of my pants. Meanwhile, those three boys also threatened and pushed Gautam (PW4) and Jitender (PW9) back. My mobile phone contained a SIM card bearing no. 9718986033. All the three boys then fled toward the jhuggis of C-Block, Okhla Phase-II. We searched for them but could not find them. Shortly after, Virendra (PW5), who works with us, arrived there and called the police. The three boys



beat me up and snatched my money and mobile phone. Strict legal action be taken against them.”

16. PW2 when examined before the court, deposed that on 12.02.2014, at about 11:00 -11:15 p.m., after finishing his work, he, along with his colleagues, namely, Gautam (PW4) and Jitender (PW9), were on their way to the house of Jitender (PW9) at Village Tekhand on foot. On their way through the jhuggis, when they reached near a flyover which was still under construction, they noticed three people sitting around a fire (*aag sek rahe the*). One of the three boys asked him for a matchbox. As he was not carrying one, he refused. The three boys caught hold of him. Jitender (PW9) and Gautam Ram (PW4) attempted to rescue him, but when one of the boys showed a knife to them, they fled the spot, leaving him behind. The three boys then took his purse containing ₹4,000/-; his Voter Identity Card, and his mobile phone, a white-coloured Micromax 455 touchscreen handset with SIM no.



9718986033, from his pocket. One of the boys also slapped him on his face. All the three boys fled towards C-Block, Phase-II Jhuggis after robbing him of his belongings. As he proceeded towards Jitender's (PW9) house, he met Jitender (PW9) and Gautam (PW4) on the way. Virender (PW5), who was also working with them, met them on the way. He told the entire incident to Virender (PW5), who informed the police. The police arrived at the spot, and he narrated the incident to the police officials. The next day, i.e., on 13.02.2014, he accompanied the police and showed them the place of occurrence. Ext. PW2/B site plan was prepared by the police. PW2 identified the accused as one of the robbers.

16.1 PW2 in his cross-examination denied that it was dark at the scene of occurrence. PW2 admitted that he can only identify one of the robbers and not the others. After the incident, he had seen the accused for the first time at the police station, where he had been called by Parveen Kumar (PW10), Sub-Inspector, for the



purpose of identification. He denied the suggestion that PW10 had told him that the accused was the culprit. According to PW2, he was able to identify the accused as he had seen him in the *jhuggis* near the place of occurrence even before the incident and was, therefore, acquainted with the latter. PW2 further deposed that it was the accused herein who had assaulted him at which time he had seen the latter clearly and therefore possible to identify him.

17. PW4, an eye-witness, deposed that on 12.02.2014, at about 11:00 p.m., after finishing work, he, along with Rajesh (PW2) and Jitender (PW9), were returning to Tekhand Village on foot. At about 11:15 p.m., as they reached near an underpass which was under construction, they saw three boys sitting around a fire (*aag sek rahe the*). The boys asked for a matchbox, but they did not respond. Rajesh (PW2), who was behind him, started moving fast. Then the three boys started scuffling with Rajesh (PW2) and began snatching his belongings. One of the boys pointed a knife



towards him and asked him and Jitender (PW9) to run away. Hence, he and Jitender (PW9) ran away, but the boys caught hold of Rajesh (PW2). When they reached a little ahead, they met one of their colleagues, namely, Virender (PW5). They informed PW5 about the incident. When they returned to the place where the incident had occurred, they saw Rajesh (PW2) coming alone. Rajesh (PW2) told them that his Micromax mobile phone and purse containing ₹4,000/- had been snatched by the three boys. Virender (PW5) informed the police, who reached the spot and recorded his statement as well as the statements of Rajesh (PW2) and Jitender (PW9). PW4 was unable to identify the offenders. According to PW4, he had not seen them properly as it was dark. He identified Ext. MO-1 mobile phone of PW2.

17.1 The prosecutor is seen to have sought permission of the trial court to put questions as put in cross-examination to PW4 under Section 154 of the Indian Evidence Act, 1872, on the ground



that he was resiling from his previous statement. Permission was granted by the trial court. On further examination, PW4 admitted that the incident had occurred on 12.02.2014. He admitted that the person who had asked for a matchbox had shown a knife; that one boy had given a fist blow on Rajesh's (PW2) face and had taken away the latter's purse. PW4 admitted that the third boy took out Rajesh's (PW2) mobile phone from his right pant pocket. Thereafter, the three boys ran away towards C-Block. He admitted that Rajesh (PW2) had told them that his purse contained ₹4,000/-. He admitted that, in his examination-in-chief, he could not recollect some of the above facts due to passage of time.

17.2 PW4 in his cross-examination admitted that Rajesh (PW2) had not purchased Ext. MO-1 mobile phone in his presence, but he had seen PW2 using the same. He admitted that when the mobile phone and purse were snatched from PW2, he was not present at the scene of occurrence. He admitted that he, along with



Jitender (PW9), had taken to their heels in order to save themselves as one of the robbers showed them a knife. He admitted that not only was it darkness, but there was heavy fog also on the night of the incident.

18. PW9, another eye-witness, deposed that on 12.02.2014, he, along with his colleagues, namely, Rajesh (PW2) and Gautam (PW4), were returning home on foot to Tekhand. At about 11:15 p.m., when they reached the under-construction underpass near the *jhuggi* area at Okhla, Phase-II, they saw three persons warming themselves by a fire (*alao i.e., fire par taap rahe the*). One of the said persons asked Rajesh (PW2) for a matchbox. Rajesh (PW2) refused as he did not have a matchbox. Immediately thereafter, the three persons apprehended Rajesh (PW2) and started beating him. When he and Gautam (PW4) tried to intervene, one of the boys took a knife and placed it on Gautam's (PW4) abdomen. One of the boys took the mobile phone from the right pocket of Rajesh's



(PW2) pants, while another boy took the purse from the latter's pant pocket. One of the boys also fisted Rajesh (PW2). Out of fear, he and Gautam (PW4) fled from the spot. When the police reached the spot, he, along with the police, searched for the robbers, but they could not be found. On 16.02.2014, he accompanied the police to the *jhuggi* area. When they reached in front of C-Block, Okhla, Phase-II, he saw one of the robbers and pointed him to the police. The said person, that is, the accused herein, was apprehended by the police. PW9 identified the accused before the trial court. The accused was arrested *vide* Ext. PW6/C arrest memo and his personal search was conducted *vide* memo Ext. PW6/D. Ext. PW6/E disclosure statement of the accused was recorded pursuant to which, the knife was recovered from the accused's *jhuggi*, where it was lying beneath a *takhat*. The knife was seized, and a sketch was prepared. PW9 identified Ext. MO-2 knife before the trial court.



18.1. PW9 in his cross examination admitted that he took to his heels when one of the robbers took out the knife. He admitted that he along with the police had never visited the scene for a second time. The police came to his workplace on 16.02.2014 and took him to the *jhuggi* of the accused. According to PW9, the incident took place in the night, but there was light from the electric post. There was no fog. PW9 admitted that he cannot identify the other two boys involved in the incident. The accused had uttered “*chaku marro*”, and hence the reason he was able to identify the former. He had gone to the place of occurrence for the second time with police official Parveen (PW10). He had seen the accused at the time of the incident; then at the police station, and thereafter in the court.

19. PW5, Virender Kumar Yadav, deposed that he was unable to recall the exact date of the incident. In February 2014, after finishing his work while on his way home, at about 11:30



p.m., when he reached the underpass near the Power House, Okhla, Phase-II, he met his colleagues, Rajesh (PW2), Gautam (PW4) and Jitender (PW9). They told him that three persons had robbed Rajesh (PW2) of his mobile phone and had fled from the spot. He called the police from his mobile phone bearing no. 9711268487. The police made inquiries from him in this regard, and his statement was recorded.

19.1. PW5 in his cross-examination deposed that it was quite dark and there was heavy fog on the night of the incident.

20. PW10, Sub-Inspector, Okhla Industrial Area police station, the Investigating Officer (IO), deposed regarding the various steps taken during the course of investigation. He arrested the accused with the help of PW9. During the course of interrogation, he recorded Ext. PW6/E disclosure statement of the accused. The accused led him to a jhuggi in the area of New Sanjay Camp, Okhla Phase-II, where a *takhat* was lying. From



underneath the *takhat*, the accused took one knife and handed it over to him. PW9 identified the knife as the one used in the commission of the offence. He prepared Ext. PW6/A sketch of the knife and seized the same *vide* Ext. PW6/B seizure memo.

21. Section 386(1) Cr.P.C dealing with the power of the Appellate Court says that the Court may in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused may be re-tried or committed for trial, as the case may be, or find the accused guilty and pass sentence on him according to law. The general principles regarding the powers of the appellate court while dealing with an appeal against acquittal are:- firstly, the appellate court has the power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. Secondly, the Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it, may reach its own conclusion, both



on questions of fact and of law. Thirdly, various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. Fourthly, an appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused, that is, (i) the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law, (ii) the accused having secured his acquittal, the presumption of his innocence is further reinforced,



reaffirmed and strengthened by the trial court. Lastly, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court (See **Babu Sahebogouda Rudragoudar and others v. State of Karnataka (2024) 8 SCC 149**, **Rajesh Prasad v. State of Bihar (2022) 3 SCC 471**, **Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**).

21.1 In **H.D. Sundara v. State of Karnataka (2023) 9 SCC 581**, it has been held that the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible. The appellate court can interfere with the order of acquittal only if it comes to a finding



that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond reasonable doubt and that no other conclusion was possible. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles: (i) the judgment of acquittal suffers from patent perversity; (ii) the same is based on a misreading/omission to consider material evidence on record; and (iii) no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

22. As noticed earlier, the accused has been charged by the trial court for the offences punishable under “*Sections 392, 394 read with Section 34 and Section 397 IPC*”. The prosecution primarily rests upon the testimony of PW2, PW4, PW5 and PW9.



23. In Ext. PW2/A FIS/FIR, PW2 says that he can identify the robbers if they are shown to him. He has no case of any prior acquaintance. No identification marks of the robbers are also seen stated in the FIR. However, PW2 in the box has a new case that he was acquainted with the accused herein as he had seen him on earlier occasions also and hence the reason why he was able to identify the accused. But this aspect is conspicuously absent in Ext. PW2/A FIS/FIR. According to PW2, the incident took place at about 11:00-11:15 PM on 12.02.2014. It would certainly have been dark at the time of the incident. There is no reference to any source of light at the place of occurrence in Ext. PW2/A FIS/FIR. PW4, as well as PW9, the alleged eyewitnesses, admit that it was dark at the scene of occurrence. PW5, another witness who came to the scene of occurrence immediately after the occurrence, admits that it was not only dark but there was also heavy fog. PW9, has a case which the other witnesses do not have. According



to PW9, there was light from an electric post situated nearby. It is only PW2 and PW9 who have identified the accused herein. However, in the light of the aforesaid aspects, the identification of the accused by the said persons is highly doubtful. PW9 has no case that he is in any way acquainted with the accused or that he had at any point of time had the occasion to see or meet the accused before the date of incident. PW9 admitted in his cross-examination that as soon as the accused had drawn the knife, he had taken to his heels. Therefore, it is doubtful whether PW9 had actually seen the accused as claimed by him.

24. According to PW10, the Investigating Officer (I.O.), Ext. PW6/E is the disclosure statement based on which the knife used for the crime was seized from the accused. However, on going through Ext. PW6/E statement, it can be seen that it is a totally inadmissible statement in the light of the bar contained under Section 25 of the Evidence Act, and therefore it ought not to



have been marked or brought in evidence. Further, the mobile phone alleged to have been robbed from PW2 was admittedly recovered/seized from one of the alleged associates of the accused, namely, one Bittu (Child in Conflict with Law). The same was never recovered from the accused herein. In the light of the aforesaid unsatisfactory evidence, the trial court has acquitted the accused.

25. In an appeal against acquittal, interference is warranted only when the view taken by the trial court is perverse or wholly unreasonable. The appreciation of evidence by the trial court, holding that the prosecution failed to establish the identity of the accused beyond reasonable doubt, is a plausible view based on the evidence on record. There is no perversity or omission or misreading of the material(s) on record by the trial court.

26. Hence, no ground for interference into the impugned judgment has been made out.



2026:DHC:5689



27. In the result, the appeal *sans* merit is dismissed.
28. Application(s), if any, pending shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 17, 2026
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