



2025:DHC:10723



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

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+ **CRL.A. 897/2024**

PAWAN SONI

.....Appellant

Through: Mr. Rohan J. Alva, Advocate
(DHCLSC) with Mr. Anant Sanghi,
Advocate.

versus

THE STATE (GOVT. OF NCT) DELHI

.....Respondent

Through: Ms.Shubhi Gupta, APP for State with
SI Atul Prabhakar PS Okhla Industrial
Area, New Delhi and HC Jaspal,
Special Cell (NDR).

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Being convicted and sentenced for the offence punishable under Sections 394/34 IPC read with Section 397 IPC, the appellant has preferred the present appeal seeking setting aside of the judgment dated 30.03.2024 and order on sentence dated 20.07.2024 passed by Ld. Additional Sessions Judge-07, South-East, Saket Courts, New Delhi.

The appellant was directed, for the offence under Section 394 IPC to undergo 3 years RI along with a fine of Rs. 10,000/-, in default whereof he



was to undergo SI for 1 month. For the offence under Section 397 IPC, he was sentenced to RI for 7 years. The benefit of section 428 CrPC was given to the appellant and both the sentences were to run concurrently.

2. Facts as per case of the prosecution are that DD No. 9A was received on 31.12.2022 at 12.39 A.M. regarding stabbing of one boy and snatching of his mobile phone and purse. ASI *Subhash* and Ct *Roki* reached the spot to find that injured had been taken to hospital. Another DD No.15A regarding admission of patient/injured *Abid Ali* in AIIMS Trauma Centre was received at 02.04 A.M. In hospital, the statement of complainant was recorded, wherein he stated that on 30.12.2022, while returning after attending a marriage ceremony, he was going to get his projector repaired at the company located at No.47/5, Okhla Phase-II around 11:00 p.m. While he was walking to the said address after alighting from the rickshaw, four boys came near him. While one of them took out his Samsung mobile phone and Rs.5,000/- from the pocket, the other three caught hold of him. When he asked them to return his bag, then the fourth boy stabbed him with a sharp object in his stomach. The accused persons, thereafter, fled after leaving his bag there on the ground. The injured complainant inquired about hospital from a person who called the PCR which subsequently took him to AIIMS trauma Centre. Statement of the caller, *Sanjay Kumar* was also recorded.

3. On the basis of secret information, on 02.01.2023, the appellant and one co-accused *Ashish @ Kalia* were apprehended from the container yard at Okhla Phase-II. One power bank was recovered from the appellant, and the mobile was recovered from the co-accused.

4. The charge was framed under Sections 392/394/397/411/34 IPC against the accused appellant/*Pawan @ Soni*, to which he pleaded not guilty



and claimed trial.

5. The prosecution examined eight witnesses to substantiate its case. The most material of them being the complainant *Abid Ali*, who was examined as PW-1. *Sanjay Kumar*, the public witness who called the PCR after the incident was examined as PW-5. The officials of the companies from where CCTV footage was to be collected were examined as PW-2 and PW-6. HC *Jaspal*, the IO was examined as PW8. The remaining witnesses were formal in nature, who deposed as to the various aspects of investigation.

6. In his statement under Section 313 CrPC, the appellant claimed false implication. He did not lead any evidence in his defence.

7. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. He submits that the CCTV does not capture the incident of stabbing and robbery. The appellant was identified by the complainant in the police station and his identification in Court is meaningless. Moreover, it is alleged that the seals were tampered as while the complainant states that he identified the mobile in the police station and thereafter it was sealed, HC *Jaspal* has deposed that the mobile phone was seized and sealed and thereafter brought to the police station. Even though the appellant was arrested after a few days, yet he was found in possession of the robbed goods.

8. Learned APP for the State strongly opposes the present appeal and contends that the Trial Court has rightly convicted the appellant. The complainant has remained consistent and fully supported the prosecution case and has attributed the role of stabbing him to the appellant. The presence of appellant and other co-accused is also established by the CCTV footage.



9. Injured complainant/*Abid Ali*, examined as PW1, deposed that on the day of the incident, i.e., 30.12.2022, he came to Delhi to attend a marriage ceremony which concluded around 11:00 pm. He wanted to get the projector that he had purchased earlier repaired, for which he contacted the seller. He went to Okhla Phase-II for the said purpose. While he was going on foot to the shop after alighting from the auto rickshaw, he passed four boys who came to him and one of them asked if he had a match box, which he denied. Thereafter, he was caught hold of by one of them from behind, while another one put a knife on his neck. Of the remaining persons, one tried to snatch his bag in which the projector, blanket and jacket were kept, while the remaining one stood at a distance. On his resistance, the one who had put a knife to him tried to stab him. However, during an attempt to save himself with the help of his bag, the said knife was broken. The person standing at the distance was then instructed to bring another knife. He brought the second knife from a *Jhuggi*, gave it to the person who tried to stab the complainant earlier, and caught hold of the complainant. Thereafter, he was stabbed on the right side of the belly by the same person who tried to stab him earlier. His bag, purse containing Rs.5,000-7,000/-, Samsung mobile phone, power bank and headphone were forcibly taken by the accused persons. They left his bag and purse after taking out the money and fled with the remaining articles.

After the incident, he states that while he was enquiring about a chemist shop from two boys, they called the police on seeing him bleed. Thereafter, he was taken to the AIIMS for treatment where his statement was recorded. He was admitted to the hospital for two days. He further states that he was called by the IO to the police station two days after the incident.



He identified the recovered articles, Samsung mobile phone and the power bank, as the ones robbed from him. He further deposed that the IO had arrested the appellant and *Ashish*, and identified his signatures on their arrest memos. In Court, he identified appellant as the one who had stabbed him, co-accused *Ashish* as the one who held him from behind, *Ravi* as the one who took away the articles forcibly.

In his cross-examination, he affirmed the statements made in the chief examination and stated that the facts could not be mentioned at the time of initial complaint because he was injured and in hospital for 2 days and could not recall the entire incident. He denied the suggestion that he had deposed falsely at the instance of the IO.

10. *Sanjay Kumar* (PW-5) stated in his deposition that on the intervening night of 30-31.12.2022, around midnight, a person knocked on the door of his shop and enquired about the way of nearby hospital. He made a call to the police at 100 number from his mobile number on the request of the injured person. The police reached the spot and recorded his statement. He further stated that he had not seen the incident but was informed by the injured that 3-4 persons had stabbed him and taken his mobile and purse. He was not cross examined, despite opportunity.

11. *HC Jaspal*, examined as PW-8, stated that on receiving DD No.9A, he alongwith Ct. *Roki* went to X-26, Okhla Phase-II where he found out that the injured person was taken to the hospital. He received another DD No.15A regarding admission of injured *Abid Ali* in AIIMS Trauma Centre. After reaching there and taking the necessary permissions, he recorded the statement of victim and prepared the *Rukka*, Ex. PW8/A. The same was handed over to Ct. *Roki* who went to the PS and registered the F.I.R. He



further states that when he along with Ct. *Roki* went to the spot to search for the CCTV footage, he could not collect it as the office was closed and there were no eye-witnesses. He went to the spot again and spoke with the caller.

Two days after the incident, i.e., on 02.02.2023, he went again to the spot and prepared the site plan in the presence of the complainant. He also collected the CCTV footage from the two offices situated at X-26 & X-51, Okhla Phase-II, Delhi. On this day, he met a secret informer and based on his information, he along with Ct. *Jaswant* and Ct. *Satyanarain* went to the Container Yard, Okhla Phase-II, where appellant and *Ashish* were present. They were apprehended and the disclosure statements of both the accused were recorded. The robbed properties were recovered from them, particularly the Samsung mobile phone from *Ashish* and the power bank from the appellant/ *Pawan Soni*. He deposed that once the accused were taken to the police station, the injured also came there and identified both the accused persons. On 28.03.2023, the co-accused *Ravi @ Munna* surrendered in the PS.

12. Ct *Satyanarayan* (PW3) and HC *Jaswant* (PW4) and Ct. *Roki* (PW7) also deposed on similar lines as to the manner of arrest of the appellant and recovery of the power bank from him and the complainant coming to the police station and identifying the appellant and the co-accused.

13. The formal proof of the MLC (Mark -X) was dispensed with in view of the appellant's statement recorded under Section 294 CrPC. It was prepared on 31.12.2022 at 01.38 AM. It records a stab wound at lower chest region. The weapon used was categorized as sharp and the nature of injury was grievous.

14. The present is not a case where the appellant was apprehended at the



spot. He was apprehended from the container yard at Okhla Phase-II on 02.01.2023, while the incident occurred on the night of 31.12.2022. From him, one power bank was recovered, whereas from his co-accused, the mobile phone of the complainant was recovered. Interestingly, the initial statement of the complainant does not mention any power bank. He only states that a mobile and cash were robbed from him. *Sanjay Kumar* (PW5), the PCR caller, has also deposed that he did not witness the incident and the complainant had informed him of snatching of mobile and purse. Thus, even he does not state about the power bank. Yet, PW3, PW4, PW7, and PW8 have categorized the power bank as robbed property. Not stopping at that, all of them have further deposed that the complainant came to the police station on the day of the arrest and identified the appellant and co-accused and his property. The complainant has also deposed that after 2 days of the incident, he was called by the IO to the police station where he identified the mobile phone and black power bank which was recovered by the police. He also identified his signatures on the arrest memo of the appellant (Ex. PW1/F), even though he was not a part of the arresting party.

15. Despite the appellant being a stranger to the complainant, no judicial TIP was conducted. The purpose of the TIP is that the witness, who claimed to have seen the culprit at the time of occurrence of the incident, is able to identify them in the midst of other people. The Supreme Court in Gireesan Nair (Supra) has held as follows: -

28. We may, at the outset, note that the eyewitnesses questioned by the prosecution did not give out the names or identities of the accused participating in the riot and involved in the destruction of public property. Therefore, the IO (PW 84) had to necessarily conduct a TIP. The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was



seen by them in connection with the crime. Second, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Third, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 44, 45 & 55 : (2010) 2 SCC (Cri) 1150]).

29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P. [Matru v. State of U.P., (1971) 2 SCC 75, para 17 : 1971 SCC (Cri) 391] ; Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 41 & 43 : (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]).

Dock identification, in a case where the accused is not previously known to the appellant, especially when it takes place when a long time has passed between the incident and the identification in Court, is a weak piece of evidence. Reference may be made to the decision of Supreme Court in Nazim v. State of Uttarakhand¹, wherein it was held that: -

“41. Both PW-3 and PW-4 thus identified the Appellants for the first time in court. No TIP was conducted, even though PW-3 admitted he had never known the accused earlier. It is well settled that dock identification without a prior TIP has little evidentiary value where the witness had no prior familiarity with the accused. In P. Sasikumar v. State³, this Court acquitted the accused on precisely this ground...

42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The following paragraph of P. Sasikumar (supra) is indicative of the same:

“21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial.

¹ 2025 SCC OnLine SC 2117



23. [...] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness.

24. [...] We are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused.”

16. Once the appellant was already shown to the complainant in the police station, his dock identification in Court became meaningless. In Jafar v. State², the complainant was already shown the accused in the police station. No TIP was conducted. Though he identified the accused in Court as well, not much value was assigned to it by the Supreme Court, which held as under: -

“8. Anil Kumar (PW-8), who is the Investigating Officer (IO), has also admitted that PW-1 identified the accused persons by seeing them at the police station. He has further admitted that no identification parade was conducted. As such, it can be seen that the identification of the appellant herein by PW-1 is quite doubtful as no identification parade has been conducted. PW-1 clearly states that he has identified the accused persons since the police had shown him those two people.

9. In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. ...”

17. The CCTV footage is also of no help to the prosecution as the same does not record the incident of robbery taking place. There are also certain improvements in the complainant’s testimony over his initial complaint. He has stated for the first time that one boy asking him for a matchbox, him using his bag as a shield resulting in the first knife breaking, and the other person bringing a second knife from the *Jhuggi* from which he was stabbed,



them taking away his headphone and power bank in addition to the cash and mobile phone.

18. Considering the entire facts and circumstances, this Court finds that serious doubts have been raised about the appellant's identification due to the police showing him to the complainant in the police station without conducting a judicial TIP, rendering his identification in Court useless. The complainant also has shown a tendency to improvise, and the power bank has been mentioned as one of the robbed properties after the appellant was arrested. The case against the appellant has not been proven beyond reasonable doubt, and as such, the benefit must go to the appellant.

19. Consequently, the appeal is allowed. The appellant is held to be acquitted. The impugned judgment and the order on sentence are accordingly set aside.

20. The appellant be released forthwith, unless wanted in any other case.

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

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 01 , 2025

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²² 2024 SCC OnLine 310