



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

% Reserved on : 30.07.2025
Pronounced on : 04.08.2025

+ **CRL.A.1195/2016**

ARYAN @ MAXIAppellant
Through: Mr. Sudhir Naagar and Mr. Piyush
Aggarwal, Advocates

versus

STATERespondent
Through: Ms. Shubhi Gupta, APP for State

+ **CRL.A.1026/2017**

VICKY @ VIKAS @GANJAAppellant
Through: Mr. Moksh Arora, Advocate

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The appellants, through the present appeal filed under Section 374 Cr.P.C. impugns the judgment on conviction dated 24.09.2016 and order on sentence dated 29.09.2016 in SC No.191/2013 arising out of FIR No.186/2013 registered under Sections 392/394/397/34 IPC at P.S. Rani Bagh, Delhi. On conclusion of the investigation, the chargesheet came to be filed under Sections 392/394/397/411/414/34 IPC.



Vide the impugned judgment, the appellant in CRL.A.1195/2016, namely, *Aryan @ Maxi*, has been convicted under Sections 392/394/34 IPC, and the appellant in CRL.A.1026/2017, namely, *Vicky @ Vikas @ Ganja*, has been convicted under Sections 392/394/397 IPC. There were two other accused, namely *Neeraj @ Rahul* who was convicted under Sections 392/394/34 IPC and *Ispreet Singh @ Honney* who was convicted under Section 411 IPC.

Vide order on sentence, appellants were sentenced to undergo RI for 07 years for the offence under Section 392 IPC along with fine of Rs.10,000/-, in default whereof, appellants were sentenced to undergo simple imprisonment for 02 months and further sentenced to undergo RI for 09 years for the offence under Sections 394 IPC along with fine of Rs.10,000/- in default whereof, appellants were sentenced to undergo simple imprisonment for 02 months. The appellant/*Vicky* was additionally sentenced to undergo RI for 10 years for the offence under Section 397 IPC. All the sentences were directed to run concurrently. The appellants were also given the benefit of Section 428 CrPC.

2. Wheels of the investigation were put in motion on receipt of a complaint from one Anuj Sehdev (PW10), wherein it was stated that on 05.06.2013, the complainant was coming back from District Centre, Janak Puri in his Wagon-R car bearing No. DL-3C-BJ-6784 and when he reached near Madhuban Chowk, Pitampura, Delhi, at about 11:45 pm, three boys, who were on a motorcycle, stopped and inquired about the way to Power House, Pitampura. While the complainant was guiding them, they robbed him of his car. The complainant protested and lay down on the bonnet, and when they could not remove him from the bonnet, one of the boys fired a



shot in the air, and later the same person fired a shot at the complainant. The complainant sustained a bullet injury on his left hand and consequently, he fell down on the road. Thereafter, they ran away with the car alongwith 2 mobile phones and one purse containing Rs.4000, debit cards, credit cards, driving license and RC of the said car. The above articles were lying in the car. Consequently, the present FIR was registered. Tracking of one of the stolen phones lead to co-accused *Ishpreet @ honey*, who stated that the same was sold to him by Appellant/*Aryan*.

3. Pertinently, the role assigned to the appellant/*Aryan @ Maxi* is that, he along with the two main accused, i.e. *Neeraj @ Rahul* and appellant/*Vicky*, came on the motorcycle to commit robbery, and appellant/*Vicky* was the person who fired at the complainant. The bullet was seized from the spot vide seizure memo Ex.PW30/B. The appellant/*Aryan @ Maxi* was arrested on 26.06.2013 and thereafter, he made the disclosure statement (Ex.PW-28/B) and the stereo of the said car was recovered from his house (Ex.PW-28/E) at his instance. The car was recovered at the instance of co-accused *Neeraj* and appellant/*Vicky*. The pistol and cartridge (Ex.PW-7/B and Ex.PW-7/C resp.) used in the commission of crime and purse (Ex.PW-25/A) including articles as mentioned in paragraph 2 were recovered at the instance of appellant/*Vicky*. During the course of investigation, the role of co-accused *Ishpreet @ honey*, was revealed by PW14, *Sanjeev Malhotra*, who stated that co-accused *Ishpreet* offered to sell him the robbed mobile phone.

4. Post completion of the investigation, charges for the offence under Sections 392/394/411/34 IPC were framed against the appellants. Additionally, charge under Section 397 IPC was framed against the



appellant/*Vicky*. The appellants pleaded not guilty and claimed trial.

5. In total, the prosecution has examined 30 witnesses, out of which PW-10 is the complainant, PW-13 and PW-15, public witnesses who deposed on similar lines with the complainant. Rest of the witnesses were public witnesses, police witnesses, medical and forensic witnesses who deposed about various aspects of the investigation. Statement of the appellants were recorded under section 313 Cr.P.C wherein they denied the prosecution's case and claimed innocence and false implication. They, however, did not examine any defence witness.

6. Pertinently, Co-accused *Neeraj @ Rahul* also preferred an appeal against conviction before this Court bearing CrI.A.No.1025/2017. However, he chose not to press the appeal on merits and rather prayed that he be released on period already undergone, which was allowed vide order dated 18.07.2023.

Similarly, CrI.A.No.987/2016 preferred by the co-accused, *Ishpreet @ honey* has also not been pressed on merits and he has been directed to be released on period already undergone, as noted in the order dated 30.07.2025.

7. While assailing the conviction, it was contended on behalf of Mr. Naagar, learned counsel for the appellant/*Aryan @ Maxi* that the identification of the appellant is not established beyond reasonable doubt as the complainant failed to identify the appellant/*Aryan* in trial and further, the testimony of PW-13 and PW-15 did not corroborate the testimony of complainant insofar as appellant's identity is concerned. It is next contended that the recovery of the car stereo at the instance of the appellant/*Aryan @ Maxi* is also not duly proved as the prosecution failed to put any suggestion



with respect to the same at the stage of recording his statement under Section 313 CrPC.

8. The sentence of Appellant/ *Vicky* was suspended, however, he after being released failed to appear and all efforts to serve him remained unsuccessful. As per status reports, the appellant could not be traced and produced despite issuance ofailable/non-ailable warrants by this Court vide orders dated 28.11.2024 and 24.07.2025 respectively. In this eventuality, Mr. Moksh Arora, Advocate was appointed as an *Amicus* to represent the appellant/*Vicky*.

Learned *Amicus* contended that apart from the testimony of PW-10, there is no other witness to corroborate and establish the identity of the appellant. It is further submitted that the prosecution has relied on the testimony of PW-13 & PW-15 to corroborate the incident of robbery, however, both the witnesses failed to identify the appellants, and neither deposed anything with respect to the factum of gunshot injury to the complainant. It is further submitted that offence of Section 397 IPC as alleged was not attracted against the appellant/*Vicky @ Vikas @ Ganja*, as even as per the prosecution version, the gun was used after the offence of robbery was already committed.

9. *Per contra*, the learned APP for State would submit that the identity of the appellants was duly established in the testimony of PW-10 and the details of the incident were further corroborated by the testimony of PW-13 & PW-15. Furthermore, the recoveries affected at the instance of the appellants, along with MLC and FSL results, substantiate the version of the complainant. It is also submitted that the refusal to participate in TIP proceedings by the appellants further draws an adverse inference against



them. Pertinently, the appellant/*Vicky* is stated to be the BC of the area.

10. The complainant's testimony would reveal that on 05.06.2013 at around 11.45 pm, 3 boys on a motorcycle had made him stop his car in front of Shiva Market, Madhuban Chowk on the pretext of asking for directions and blocked his car with their bike. While one of the accused, appellant/*Aryan* ran away, the other two, being *Neeraj @ Rahul* and appellant/*Vicky*, removed the complainant from his car and tried to escape. However, due to rush on the traffic signal, the complainant was able to lie on the bonnet of the car in an attempt to stop them, even as the accused continued driving the car, with the complainant on the bonnet. The accused stopped the car at some distance and appellant/*Vicky* took out his gun and fired two shots, the first in the air near the foot of the complainant and the second at his hand, injuring him, as a result of which he let go of the car and the accused escaped from the spot. PW13 and PW15 were public witnesses who corroborated the complainant's version of the incident. They deposed that they saw one boy on the bonnet of a 4-wheeler at Madhuban Chowk red light at 11.30 pm. They also stated that someone was giving beatings to the person who was crying for help. However, they could not identify any of the assailants.

11. The complainant's MLC (Ex.PW9/A) was proved by PW9. The MLC records that the complainant had sustained a punctured wound , approx. 1 cm in diameter over the left lower third of forearm and an abrasion approximately 1x .5 cm in size present over the anterior aspect of the chest. The MLC thus lends credence to the complainant's version of receiving a gunshot wound and injuries due to laying down on the bonnet.



12. Firstly, with respect to the appellant/*Vicky @ Vikas @ Ganja*, the complainant in his testimony before the court has correctly identified the appellant/*Vicky* as the person who had given beatings to him and fired a shot due to which he sustained a bullet injury. As noted above, the factum with respect to the gun shot injury is further corroborated by the MLC (Ex. PW9/A). The appellant/*Vicky* was arrested in connection with FIR No. 297/13 and at the time of arrest, one pistol containing one magazine with two cartridge and one cartridge in barrel of the pistol were recovered from him. The recovery of the pistol and the bullets used in the commission of offence was duly proved by PW7 and PW30 respectively and the complainant's purse that was lying in the robbed car was also recovered at the instance of the appellant/*Vicky* (Ex.PW-25/A). The FSL report (Ex. PW12/A) was proved by, A. Dey, Principal Scientific Officer (PW12) who stated that on 16.08.2013, one sealed parcel was received by him for examination with respect to the present case and in the said parcel, he found one 7.65 mm fired bullet (marked BC/1 by him). After forensic examination, in the FSL Report, he opined that the said bullet had been fired through 7.65 mm country-made pistol (earlier marked W/2).

13. The contention that the gun was not used during the commission of the offence but only used later after the robbery was committed, is meritless. As per complainant, while the accused were trying to get away in complainant's car, he had chased and latched on to the bonnet of car. The gun was used by the appellant at the time of commission of the offence and thus the act falls squarely within the ambit of Section 397 IPC. This Court is fortified in reaching the conclusion with the observations of a Co-ordinate



Bench of this Court in Asif v. State (NCT of Delhi)¹ wherein it was held as under:-

“9. 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 Cr.P.C. 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. Thus the contention of learned counsel for the appellant that Section 397 IPC is not made out as the blade was allegedly shown after the mobile phone was robbed, deserves to be rejected. The decisions relied upon by the learned counsel for the appellant did not consider the necessary ingredients of an offence of robbery which in turn is a necessary Ingredient of an offence punishable under Section 397 IPC.”

14. In view of the foregoing discussion and considering that the offence of robbery has been committed by the appellant/*Vicky* using a deadly weapon, i.e., *desi* pistol which is further substantiated by the medical and forensic evidence available on record, I find no infirmity in the judgment on conviction of the appellant/*Vicky* by the Trial Court and the same is upheld.

15. Insofar as the conviction of appellant/*Aryan @ Maxi* is concerned, it is noted that the complainant at the time of recording of his deposition failed to identify the appellant/*Aryan @ Maxi*. Apparently, at that point of time, the Trial court adopted a strange procedure when it asked the complainant to identify the appellant of the two persons who were present in court on that

¹ 2022 SCC OnLine Del 270



day, one of whom was the appellant/*Aryan*. The complainant pointed towards the appellant/*Aryan* and stated that the third boy was having a similar stature as him, and deposed as under:-

“Jaise hi teen ladke bike par aaye un me se isi stature ka ladka tha. Usne helmet nahi pehna tha. Usko maine theek se nahi pehchana tha lekin isi built-up aur stature ka tha. 85 % yehi stature tha.”

During his cross-examination, the complainant has categorically stated that he was seeing appellant/*Aryan* for the first time in Court itself and he had not got any sketch prepared. The appellant's identity is not further established by any other prosecution witness. Furthermore, both the appellants refused to participate in the TIP proceedings by stating that their photographs had been taken in the police station which had been shown to other persons.

16. Therefore, analysing complainant's testimony, though he stated that the accused who had run away at time of incident had similar body structure but that by itself cannot be held to conclusively identifying the appellant as the accused person.

17. This Court is of the considered opinion that in view of the abovesaid facts and the considering that in absence of any other incriminating evidence against the appellant/*Aryan* @ *Maxi* to connect him with the commission of offence, his conviction under sections 392 and 394 IPC cannot be sustained and therefore, the appellant is acquitted for the commission of said offences.

18. Resultantly, while CRL.A.1195/2016 preferred by appellant/*Aryan* @ *Maxi* is allowed, CRL.A.1026/2017 preferred by appellant/ *Vicky* @ *Vikas* @ *Ganja* stands dismissed. As per the nominal roll dated 30.07.2025, received from the Jail Superintendent, Central Jail No.10, Rohini, it is



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revealed that the appellant/*Vicky* was granted interim bail on 05.10.2015 till 27.10.2015, however, subsequently, he failed to surrender. Bailable/ Non bailable warrants have also been issued by this court. Considering the same, it is directed that the appellant/*Vicky* shall be taken into custody, as and when arrested, to serve the remaining sentence.

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

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 04, 2025
ry-rj