



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

% Reserved on : 03.09.2025
Pronounced on : 04.09.2025

+ **CRL.A. 410/2022**

FURKAN@FAIZANAppellant
Through: Mr. Priyal Bhardwaj and Mr. Chetan
Bhardwaj, Advocates.

versus

STATERespondent
Through: Mr Pradeep Gahalot, APP for State
with SI Ashish Panwar PS Ghazipur,
Delhi.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374(2) Cr.P.C. whereby the appellant seeks setting aside of the judgment of conviction dated 27.04.2022 and order on sentence dated 04.07.2022 passed in Sessions Case No. 2187/2016 arising out of FIR No. 958/2015 registered under Sections 393/397/34 IPC and Sections 25/27 Arms Act at P.S. Ghazipur, Delhi.
2. The incident came to light on 11.10.2015 at 16:37 hours, when a PCR call was received. It was recorded therein that, in front of EDM Mall, Anand Vihar – "*Pulsar 220 Yellow colour ki bike per 2 ladke Jo TSR Jisne Family per Goli Chalai Hai Injured Ka Namalum Bike Wale Gaziabad Ki Taraf Bhage Hai.*" The said information was recorded vide DD No. 27-A and the



same was assigned to SI *Kiran Pal*/PW-19, who, along with HC *Sachin Singh*/PW-13 reached the spot and found an empty shell/cartridge lying on the spot. As the injured had been taken to LBS Hospital, the aforesaid police officials reached the said hospital and recorded the statement of the complainant/*Vivek Singh*, as well as collected the MLC of the minor, Ms. 'M', who was being treated.

3. The prosecution examined as many as 22 witnesses, with the primary ones being the complainant/*Vivek Singh*, examined as PW-4; his mother, *Smt. Manju*, as PW-5; his minor brother, 'P', as PW-7A; and the injured minor child/'M' as PW-8.

4. The appellant came to be arrested on 13.10.2015 in relation to another FIR bearing No. 715/2015 registered at P.S. Sunlight Colony and one pistol, along with four live cartridges and one extra magazine were recovered from his rented premises at Ghaziabad on 15.10.2015 (Mark 'D').

5. Upon completion of investigation, the chargesheet came to be filed, and then the appellant was charged under Sections 393/34 read with Section 398 IPC, as well as under Sections 394/34 IPC by the Trial Court. An additional charge under Section 27 Arms Act was also framed subsequently.

6. Learned counsel for the appellant states that the prosecution's case contains gaping holes and that the Trial Court erred in ignoring the same. It is contended that the identification of the appellant is itself in doubt, there is no allegation of robbery, and no robbed article was recovered. It is further stated that the appellant was arrested by the police in connection with another case and has been falsely implicated in the present matter, without there being any concrete evidence against him.

7. Learned APP for the State, on the other hand, submits that the



appellant refused TIP and that he was not only identified by the complainant but also stands connected through further incriminating evidence in the form of the ballistic report. It is submitted that the empty cartridge seized from the spot, along with the pistol recovered at the instance of the appellant in connection to another case, was sent to the FSL, which concluded that the bullet that hit the injured was fired from the said pistol.

8. Insofar as the occurrence of the incident on the aforesaid date is concerned, all the eye-witnesses have stated that the incident occurred while they were travelling from South Extension Part-II to Anand Vihar in an auto-rickshaw. They deposed that the incident occurred when the pillion rider on a motorcycle attempted to snatch the chain of the complainant's mother; upon failing to do so, he brandished a pistol, and when his hand was struck by the complainant's mother, it resulted in the firing of a gunshot which hit the injured minor. The driver of the motorcycle was declared a proclaimed offender, and the prosecution alleged that the appellant herein was the pillion rider.

9. In his examination-in-chief, the complainant did not state whether the driver or the pillion driver was wearing a helmet. However, in cross-examination, on a suggestion being put to him, he stated that he could not remember the colour or make of the helmet.

The testimony of another key witness, namely the complainant's mother, from whom the appellant had allegedly attempted to snatch the chain and to whom he had shown the pistol, does not identify the appellant. She stated that the pillion rider was wearing a helmet with the visor tilted down, and therefore she could not see his face. When pointed out, she stated that the appellant appeared to be the same person who had tried to snatch the



chain and had fired at her minor daughter. In cross-examination, she further stated that she neither noticed the number of the motorcycle nor could she identify the colour or make of the helmet worn by the accused.

To a similar extent is the testimony of the minor injured, who also stated that both occupants of the motorcycle were wearing helmets and, therefore, she could not identify their faces.

10. Concededly, the I.O. neither cited the auto driver as a prosecution witness nor made any effort to trace the motorcycle involved in the incident. Thus, the only connection between the offence and the offender/appellant is the seizure of the pistol in connection to FIR No. 715/2015 and the consequent ballistic report. The I.O. also made no attempt to ascertain the appellant's location through any CDR analysis or by any other means.

11. Learned counsel for the appellant has drawn the attention of the Court to the seizure memo of the pistol, which is on record. He states that as per the said memo, the pistol was recovered on 14.10.2015, whereas SI *Sanjeev Kumar*, the I.O. in FIR No. 715/2015, who was examined as PW-16 in the present case, stated that the pistol was recovered on 15.10.2015. As such, there also exists variance with respect to the date on which the said pistol came to be recovered. The appellant explained his non-joining of the TIP by claiming that his photographs had been clicked by the I.O. when he was produced in Court and the same might have been shown to the witnesses.

12. The sum and substance of the aforesaid discussion is that, in the absence of positive identification of the appellant as pillion rider on the motorcycle, the only incriminating evidence that remains is the ballistic report, with a doubt having been created regarding the seizure of the pistol itself.



13. The learned APP has also argued that the appellant's past conduct should be taken into consideration, as he is stated to be involved in multiple cases of a similar nature, including cases under Section 307 IPC. In this regard, a status report has been placed on record, which reflects that the appellant has been acquitted in several involvements and released on bail in others.

14. This Court is of the considered opinion that the appellant's conviction cannot be upheld merely because of his stated involvement in other cases. The prosecution is duty-bound to prove the facts of the present case. In the absence of any other incriminating evidence and in the peculiar facts of the present case, the appellant's conviction for the said offences cannot be upheld on the basis of just the ballistic report by itself.

15. Consequently, the present appeal succeeds and the appellant is acquitted of all the charges. He is directed to be set free henceforth, if not required in any other case.

16. The appeal is disposed of in the aforesaid terms.

17. A copy of this judgment be communicated to the Trial Court.

18. A copy of this judgment be communicated to the concerned Jail Superintendent for information and necessary compliance.

**MANOJ KUMAR OHRI
(JUDGE)**

SEPTEMBER 04, 2025

pmc