



2025:DHC:7090



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

% Decided on : 06.08.2025

+ **CRL.A. 177/2020**

FAHIM @ CHIKNAAppellant

Through: Mr. Kartickay Mathur, Advocate
(DHCLSC)

versus

STATERespondent

Through: Mr.Pradeep Gahalot, APP for State with
ASI Deepak and SI Amit Beniwal

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 09.10.2019 vide which he has been convicted for offences punishable under Sections 392 IPC and Section 411 IPC and order on sentence dated 10.10.2019 vide which he has been directed to undergo rigorous imprisonment for a period of 5 years for the offence punishable under Section 392 IPC alongwith payment of fine of Rs.5,000/-, in default whereof he was directed to further undergo simple imprisonment for a period of 1 month and undergo rigorous imprisonment for a period of 1 year for the offence punishable under Sections 411 IPC. Benefit of Section 428 CrPC has been provided to the appellant and all the sentences were directed to run concurrently.

2. The brief facts of the case, is that on 16.07.2017, DD No.44B came to be recorded at P.S. MS Park, Delhi with the information that one boy had entered a parlour at *D-401, Gali No.5, Hardev Puri* at about 6:25 P.M and



has robbed one gold chain in the parlour shop. HC Mahesh Pal reached at the spot and recorded statement of the complainant. Initially, the FIR came to be registered under Sections 392/34 IPC read with Section 27/54/59 Arms Act. During the investigation, the appellant came to be identified by the complainant after photographs of various criminals were shown and he was arrested in the present FIR. He disclosed that the robbed gold chain was sold to one jeweller and on his disclosure, the robbed chain was recovered from the shop of the aforesaid jeweller. The chargesheet came to be filed under Section 392/397/411/34 IPC and Section 27 Arms Act.

3. The Trial Court framed charges vide order dated 29.11.2017 under sections 392/397/411 IPC read with section 34 IPC against the appellant, to which he pleaded not guilty and claimed trial. The prosecution examined total of 9 witnesses to prove its case. The complainant was examined as PW3. *Sh. Ganga Charan*, the jeweller to whom the robbed gold chain was sold, was examined as PW7. The remaining witnesses were formal in nature and deposed in relation to various aspects of the investigation. On the other hand, the appellant, in his statement recorded under section 313 Cr.P.C., claimed innocence and false implication. He did not lead any witness in his defence.

4. The appellant denied the prosecution case and claimed that before identification in the TIP, he was already shown to the complainant. He further claimed that the robbery in fact had taken place somewhere else and with the connivance of the complainant, the spot of incident was shown by the I.O. to be the beauty parlour. Though the appellant was charged under Section 392/397/411/34 IPC and Section 27 Arms Act, however, The Trial Court, noting that there was no recovery of pistol during investigation,



convicted the appellant for the offence punishable under Section 392 and Section 411 IPC.

5. Learned counsel for the appellant while assailing the impugned judgment has raised multiple contentions. Firstly, that the appellant's identification on 25.07.2017 by the complainant is improbable for the reason that the appellant was arrested in FIR No.313/2017 registered under Section 25 Arms Act at P.S. Jafrabad, the said FIR being registered in the late hours. Secondly, the complainant has claimed that at the time of incident, her daughter and another female employee were present, however, neither the daughter nor the female employee were cited as prosecution witnesses. It was next contended that though the prosecution has alleged that the gold chain was sold to one jeweller, the said jeweller during his testimony has neither identified the gold chain nor the appellant. Lastly, it is contended that the ingredients under Section 392 IPC have not been met as the complainant having not stated that she was under any fear.

6. Learned APP for the State has opposed the present appeal and refuted the aforesaid contentions. It is submitted that the complainant during her testimony not only identified the appellant but also the robbed chain that was recovered at the instance of the appellant from the jeweller. The said jeweller was also examined. Learned APP further invited the attention of the Court to the fact that the appellant stands involved in multiple cases of similar nature.

7. Firstly, on the aspect of identification, a perusal of the records would show that the appellant came to be identified in judicial TIP conducted on 01.08.2017. During trial, the complainant while appearing as PW-3, once again identified him as the person who had entered the shop and robbed her



of gold chain. Insofar as the appellant's contentions that it was improbable for the complainant to identify the appellant on the basis of photograph on 25.07.2017, considering the appellant having been arrested in late hours in aforesaid FIR being FIR No.313/2017, the same ought to have been put to the I.O. ASI Deepak Kumar(PW9) when he was examined. The testimony of the I.O., however, shows that no such question was put to him who would have been in the best position to explain the same. Even otherwise, in terms of the identification of the appellant in judicial TIP and at the time of recording of the complainant's testimony, the Court finds no merit in the contention.

8. Coming next to the aspect of alleged non-identification of the robbed gold chain, as noted above, the complainant had identified the appellant as well as the gold chain (Ex. PW3/P1) to be the one which was robbed on the date of the incident by the appellant. Though *Ganga Charan*, PW-7, the jeweller to whom the appellant had allegedly sold the robbed gold chain initially did not identify the appellant, however, on cross-examination by the learned APP, he identified the appellant as the one who had sold the robbed gold chain to him. As if this was not enough, in cross-examination, the witness was confronted with the estimate of the gold chain, exhibited as Ex.PW-7/D-1, that was filed alongwith the chargesheet. The witness identified his handwriting on the said estimate.

9. Learned APP contends that the estimate would show that the same is with respect to the robbed gold chain as it carries the name of not only the witness but also the appellant. It is also stated that the date of the said estimate is 19.07.2017 i.e., 3 days after the incident in question. Be that as it may, the gold chain having been identified by the complainant and



recovered on the disclosure of the appellant from the shop of the jeweller, no doubt is cast on it being the gold chain that was robbed from the complainant.

10. Lastly, coming to the contention that the ingredients of the offence are not made out, it is noted that the complainant in her testimony had stated that the appellant had shown her pistol after which he snatched the gold chain she was wearing. The appellant thereafter asked her to keep quiet and also threatened to kill her. Pertinently, in the cross-examination, the witness further stated that on asking as to why the appellant had entered a ladies beauty parlour, he abused her and pointed the weapon at her. On being given a suggestion as to why she had not run after the accused, she answered that she did not chase as she was threatened. Though the appellant was acquitted for the charge under Section 397 IPC primarily on the ground that the weapon of offence i.e., pistol was not recovered, in light of the facts that State has not assailed the said acquittal, in the considered opinion of this Court, a plain reading of Section 390 IPC would show that the ingredients of offence under Section 392 IPC are clearly made out.

11. In view of the above, I find no ground to interfere with the impugned judgment. Accordingly, the judgment of conviction as well as the order on sentence is upheld as a necessary sequitur. The present appeal is dismissed. The appellant's bail bonds are cancelled and surety stands discharged.

12. A copy of this judgment be communicated to the concerned trial court as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 06, 2025/na
[corrected & released on 20.08.2025]