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

% Date of Decision: 09.10.2025

\+ **CRL.A. 376/2018**

THE STATE (GNCT OF DELHI) .....Appellant

Through: Mr. Pradeep Gahalot, APP for State

versus

MANDEEP & ANR .....Respondents

Through: Mr. Krishan Kumar and Ms. Shivam Bedi, Advocates with respondent through V.C.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been preferred by the appellant/State under Section 378(1) Cr.P.C. against the judgment dated 27.04.2015 passed by the learned ASJ-03, Patiala House Courts, Delhi, in Sessions Case No. 131/2014 arising out of FIR No. 346/2014 registered at P.S. Vasant Kunj (North). Notably, the leave to appeal was granted by way of order dated 20.03.2018.

Vide the impugned judgment, the respondents were acquitted of the offences under Sections 392/397/34 IPC and convicted under Section 411 IPC. The consequent order on sentence dated 11.05.2015 sentenced the respondents to the period already undergone by them during the course of the trial for the offence punishable under Section 411 IPC, and directed them to pay a fine of Rs.5,000/- each, in default whereof they would undergo 3 months simple imprisonment each.

2. The case of the prosecution, in brief, as noted by the Trial Court, is as

follows:-

> *"Briefly facts of the case are that on 09.05.14 at about 07:30 P.M. at Arawali Biodivercity Park behind Ambition Mall, Vasant Kunj (North) both the accused persons Mandeep and Lakhan along with their juvenile associate [in JJB] in furtherance of their common intention robbed the complainant, Samarth Yadav and committed robbery of Rs.300/-, one black colour blackberry phone, one hublot watch on the point of knife and thereby were booked for the commission of offences punishable u/s 392/411/397/34 IPC"*

3. The prosecution examined 8 witnesses in support of its case, the key among them being the complainant *Samarth Yadav* (PW-2), and his friend, the eyewitness *Akrishti Soni* (PW-3). Learned MM *Jasjeet Kaur* was examined as PW-6 and deposed that the respondents refused to participate in TIP proceedings. Learned MM *Satvir Singh Lamba* was examined as PW-7 and deposed that he had conducted the TIP of the Hublot wristwatch recovered during investigation, in which the complainant correctly identified the same. The remaining witnesses, including the I.O., SI *Sandeep Maan* (PW-8), were police officials who deposed as to various aspects of the investigation.

4. The complainant/PW-2 deposed that he, along with his friend PW-3/*Akrishti*, had gone to a park on 09.05.2014 in her car to take photographs. When he got down from the car to talk on the phone, leaving his friend inside, the respondents along with their associate (later discovered to be a juvenile) came out from the bushes in the park and started threatening him to hand over his phone and other belongings. He further stated that the accused persons were armed with a meat-cutting chopper and small knives and were also wearing knuckles on their fists. Consequent to their threats, the complainant gave his mobile phone to them, the SIM card of which was returned to him by the accused; they then took out Rs.300/- from his wallet

and returned the wallet to him, and also snatched his ceramic-gold-coloured Hublot watch. As soon as the accused persons left the spot, the complainant went back to the car where his friend *Akrishti* was sitting, borrowed her phone, and made a call to the police at 100 number. The police arrived at the spot and thereafter recorded his statement (Ex. PW-2/A) and prepared the site plan (Ex. PW-2/B). The complainant identified both the respondents in Court and also identified the case property, namely the BlackBerry mobile phone and the Hublot wristwatch, upon their production in Court. In cross-examination, he stated that he had purchased his watch in Bangkok and the same cost about Rs.4,00,000/-.

5. The eyewitness/PW-3 deposed along similar lines as her friend, the complainant, on the background facts; however, as regards the incident and the sequence of events thereafter, she stated that she had seen the accused persons running towards her and that they had banged on and shaken her car. She stated that she became frightened and that the complainant then came running towards her. She was thereafter informed by the complainant that those persons had robbed him of his money, mobile, and watch. She further stated that, on the asking of the complainant, she made a call to the police at 100 number, and subsequently the police arrived and recorded her statement. Notably, she did not depose that the assailants were carrying any weapons in their hands.

6. During investigation, both the respondents herein, as well as the third assailant (who was discovered to be a juvenile and therefore tried separately), were arrested. The BlackBerry mobile phone of the complainant was recovered at the instance of respondent no. 1, and his Hublot wristwatch was recovered at the instance of respondent no. 2. Both articles were

produced in Court and correctly identified by PW-2. Judicial TIP for the complainant's watch was also conducted, and he correctly identified his watch in the same (Ex. PW-7/A). Notably, no weapon of offence was recovered.

7. The State has preferred the present appeal assailing the acquittal of the respondents under Sections 392/397/34 IPC. The learned APP for the State contends that the non-recovery of the weapons of offence is not fatal to the prosecution case, as the stolen property was recovered at the instance of the respondents, and the testimonies of PW-2 and PW-3 are, barring minor contradictions that do not affect the substratum of the case, otherwise credible, and consistent.

8. Learned counsel for the respondents, on the other hand, supported the findings of the Trial Court on the point of acquittal, contending that there are clear contradictions between the versions of PW-2 and PW-3, not only on the point of who made the PCR call but also on the sequence of events. He submitted that the allegation regarding the use of weapons remains wholly unsubstantiated, and in view of the prosecution's failure to prove its case beyond reasonable doubt, the Trial Court rightly acquitted the respondents of the charges under Sections 392/397/34 IPC.

9. The Trial Court, upon analysing the testimonies of the key witnesses, observed that there was a material contradiction between PW-2 and PW-3 regarding who had made the PCR call, which went to the root of the prosecution case. It was further noted that while PW-2 deposed that the assailants were armed with a meat-cutting chopper and knives, no such weapon was ever recovered, and the eyewitness PW-3 did not depose that the accused persons were carrying any weapons in their hands. In the

absence of such corroboration or recovery, the Trial Court held that the ingredients of Sections 392/397/34 IPC were not established beyond reasonable doubt.

Insofar as the charge under Section 411 IPC was concerned, the Trial Court found that the articles recovered at the instance of the respondents were proved to belong to the complainant and that the respondents had failed to furnish any satisfactory explanation for their possession. The respondents were accordingly convicted under Section 411 IPC.

10. On a perusal of the record, this Court is of the considered view that the conviction of the respondents under Section 411 IPC stands on firm footing. The mobile phone and wristwatch recovered during investigation were duly identified by the complainant as his belongings, and the respondents failed to offer any credible explanation for their possession of the same.

11. As regards the charge under Section 397 IPC, the alleged use of a knife or any other weapon as stated by the complainant finds no corroboration from the evidence on record. Rather, the eyewitness PW-3 did not depose that the persons who ran towards her car and banged on it were carrying any weapons in their hands. In these circumstances, especially in view of the double presumption of innocence operating in favour of the respondents (Ref: Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, and Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**), the acquittal of the respondents under Section 397 IPC is upheld.

12. While it is settled law that an appellate court must be slow to interfere in an appeal against acquittal, the double presumption of innocence cannot shield an acquittal that disregards credible evidence or rests on

misappreciation of material testimony. In the present case, the testimony of the complainant/PW-2 is cogent, consistent, and inspires confidence. He duly identified both respondents in Court and his account of being threatened and robbed of his mobile phone, wristwatch, and cash by the respondents is clear and remained unshaken in cross-examination. The recovery of his stolen articles at the instance of the respondents provides further corroboration to his version. The respondents have failed to set up a credible defence against the same.

13. The inconsistency between the testimonies of PW-2 and PW-3 as to who made the PCR call does not, in the opinion of this Court, go to the root of the matter. The other discrepancies between their versions are minor in nature and do not affect the overall credibility of the complainant's testimony. The only major inconsistency relates to the use of weapons, which has already been addressed while upholding the acquittal under Section 397 IPC. The testimony of the complainant on the aspect of being robbed of his mobile phone and wrist watch by the respondents, however, has remained unshaken. The respondents have been identified and the robbed articles also stand recovered.

14. In view of the aforesaid discussion, the respondents' conviction under Section 411 IPC and their acquittal under Section 397 IPC are upheld. The prosecution, however, has succeeded in proving the charge under Section 392/34 IPC beyond reasonable doubt, and their acquittal under the said provision is set aside. Now the matter turns to the question of sentencing.

15. The learned APP for the State has handed over fresh nominal rolls for both the respondents, and the same are taken on record. It is reflected that respondent no. 1/*Mandeep*, and respondent no. 2/*Lakhan Singh*, have

already undergone about 12 and 8 months of incarceration respectively. Both are stated to have no other criminal antecedents and have already paid the fine of Rs.5,000/- each imposed upon them by the Trial Court against their conviction under Section 411 IPC.

16. It is submitted that both respondents were very young at the time of the offence, *Lakhan* being about 18 years old and *Mandeep* about 20 years, and that they have faced the ordeal of a protracted trial since 2014. They are stated to belong to the poorer strata of society and are the sole earning members of their respective families.

17. Considering all of the aforesaid, this Court is of the view that the ends of justice would be met by sentencing the respondents to the respective periods already undergone by them, for the offence punishable under Section 392/34 IPC. However, they shall each pay an additional fine of Rs.5,000/-, in default whereof they shall undergo simple imprisonment for a period of 3 months. The fine shall be deposited to the satisfaction of the Trial Court within a period of 6 weeks and the receipt thereof shall be deposited with the concerned Investigating Officer.

18. The present appeal is partly allowed in the above terms.

19. Subject to deposit of the additional fine of Rs.5,000/- each as directed above, the bonds furnished by the respondents stand cancelled and their sureties are discharged.

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

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 09, 2025/*nb*
(corrected & released on 16.10.2025)