



2025:DHC:6983



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

% Reserved on : 14.08.2025  
Pronounced on : 18.08.2025

+ **CRL.A. 1181/2024**

MD. MUKHTAR ALIAS CHIDDI .....Appellant

Through: Mr. Shiv Chopra, Mr. Shravan Pandey  
and Ms. Surbhi Arora, Advocates

Versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Pradeep Gahalot, APP for State with  
SI Amit Kumar

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The present appeal has been instituted under Section 415 read with Section 528 of BNSS, 2023 setting aside of the judgment of conviction dated 20.07.2024 and order on sentence dated 17.08.2024 passed by the Sessions Court in SC No. 307/2022 arising out of FIR No. 146/2021 registered under Section 392 IPC at P.S. Moti Nagar, Delhi.

Vide the impugned judgement and order on sentence, the appellant has been convicted for offences punishable under Section 392/397/411 IPC and directed to undergo rigorous imprisonment for a period of 7 years for the offence punishable under Section 392 IPC read with Section 397 IPC alongwith payment of fine of Rs.10,000/-, in default whereof he was directed to further undergo simple imprisonment for a period of 2 months and rigorous imprisonment for a period of 2 years for the offence punishable under Section 411 IPC alongwith payment of fine of Rs.3,000/-, in default



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whereof he was directed to further undergo simple imprisonment for a period of 1 month. The benefit of Section 428 Cr.P.C. has also been provided to the appellant and all the sentences were directed to run concurrently.

2. The investigation commenced with the recording of GD No.83A on 07.04.2021 at 9:54 P.M. wherein a lady caller informed that at Jakhira Railway Crossing, Moti Nagar one person had snatched her phone. The case was assigned to SI Mahendra Kumar (PW-6), who met the complainant and recorded the statement to the extent that her blue colour phone of make Infinix Hot 10 was robbed by showing her a knife. He recorded the complainant's statement and got the FIR registered. Two days later i.e., on 09.04.2021, the appellant came to be arrested and one button actuated knife and two mobile phones, Infinix Hot 10 of blue colour and MI of golden colour were recovered from his person. On account of the recovery of knife from the appellant, a separate FIR under Arms Act being FIR No.151/2021 under Sections 25/54/59 of Arms Act at PS Moti Nagar came to be registered. The appellant allegedly disclosed his involvement in present case and was arrested.

On conclusion of the investigation, the chargesheet came to be filed and charges were framed under Sections 392, 397 and 411 IPC. The prosecution examined the complainant, Ms. Archana as PW-2. The other witnesses related to various aspects of investigation and arrest of the appellant and seizure of the case property. In his statement under Section 313 CrPC, the appellant denied the prosecution case and claimed that he was falsely implicated and arrested from his house. However, he did not lead any evidence in his defence.

3. Learned counsel for the appellant has assailed the impugned judgment



by contending that the complainant's version of incident is unbelievable as the same is in variance with the information of events as stated by the police witnesses. Elaborating further, learned counsel contended that the complainant has claimed that the incident had occurred at about 8:30 P.M., when, on showing knife, the accused had taken away her phone. She further claimed that on reaching home, she informed the police. However, the first information was registered only at 9:54 P.M i.e., near after 1 ½ hours of the incident. While the complainant stated that the police had stayed at the spot for about 20 minutes, the testimony of HC Virender (PW-3) would show that when the police had reached the spot, the complainant was not present, and they remained at spot for about 2 hours. It is next contended that the prosecution has claimed that on arrest of the appellant, a knife and two mobile phones were recovered, however, the recovered knife was neither produced and nor shown to the complainant for identification. Additionally, though the clothes statedly worn by the appellant at the time of incident were also seized, the same were also not shown to the complainant for identification. Learned counsel next contended that despite mention of a knife by the complainant in her statement recorded under Section 161 CrPC, Section 397 IPC was not added in the arrest memo or the remand application, which would indicate that the statement of the complainant recorded under Section 161 CrPC was antedated. The mode and manner of the arrest is also challenged as though the complainant had not provided any description of the appellant, on what basis the appellant came to be arrested, also remains shrouded in doubt.

4. The contentions are refuted by learned APP for the State, who contended that the complainant had provided details of the clothes worn by the appellant at the time of the incident. The complainant identified the



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appellant as well as mobile phone recovered at his instance in the judicial TIP proceedings. The mobile phone was released to the complainant on *superdari*. The complainant duly identified the appellant at the time of recording of her deposition.

5. The complainant in her deposition stated that on 07.04.2021 at about 8:30 PM, when she had reached *Rakhi Mandi* after crossing railway line, suddenly one boy came from behind, he caught hold her hair and pushed her on the ground and after showing the knife, took her mobile phone and fled away. She proved the TIP proceedings (Ex.PW2/C) in which the appellant was identified and further the robbed mobile phone was also identified by the complainant and was released on *superdari*. In the cross-examination, suggestions were given that prior to identification in the TIP proceedings, she had seen the appellant in the police station and his photograph was shown to her, which were denied. It was also suggested that the introduction of knife at a later time was an afterthought, however the suggestion was categorically denied.

6. The deposition of SI Mahendra Kumar, the arresting officer who was examined by the prosecution as PW6, pertains to the aspect of registration of the case and arrest of the appellant. He deposed that on 09.04.2021, he alongwith Const. Birbal were on patrolling duty. On a suspicion, they chased the appellant and apprehended him and on his search one button actuated knife was recovered from the left side pocket of his pant and two mobile phones of make Infinix Hot 10 of blue colour and MI of golden colour, were recovered from the right side pocket of his pant. On checking IMEI numbers, the Infinix mobile was discovered to be wanted in the present FIR. The seizure memo of the mobile phone make Infinix Hot 10 was exhibited as Ex.PW4/A. He deposed that on recovery of the knife, a



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separate case being the aforesaid FIR No.151/2021 was registered. He also stated that at the time of the arrest, the appellant was wearing the same clothes of which description was given by the complainant in her supplementary statement. The clothes were seized through seizure memo (Ex.PW4/B). The TIP of the appellant was conducted at Tihar jail on 17.04.2021 where he was duly identified by the complainant. The mobile phone recovered and taken on *superdari* was produced by the complainant, which was also correctly identified (Ex.PW6/C) by PW6. During the cross-examination, he denied the suggestion that there were any shops/kiosks near the spot. He stated that in the initial statement neither any description of the appellant nor about his clothes was given, however, the description of the clothes was provided in the supplementary statement, which was recorded on the same day. The witness denied the suggestion relating to false implication or that no recovery was effected at the instance of the present appellant.

7. Constable Birbal Singh, who had accompanied SI Mahendra Kumar on 09.04.2021, was examined as PW-4. His testimony is cumulative to the testimony of SI Mahendra Kumar. HC Virender, who had accompanied SI Mahendra Kumar on 07.04.2021, was examined as PW-3. He stated that on receipt of GD 83A, when they reached the spot, the complainant came alongwith the box of mobile phone.

8. It is contention of the appellant that there is gap of about 1:30 hours in occurrence and reporting of the incident which remains unexplained, and thus the complainant is not trust worthy. The complainant has stated that in the incident, her mobile phone was taken away by the appellant. After commission of incident, the complainant had gone to her house from where she informed the police. On the very same day, the complainant had



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provided make and details of her mobile phone with its IMEI number. Though in the first statement the details of the incident were given, in the supplementary statement recorded on the very same day, she had given description of the person committing the robbery. It was stated that the appellant was aged about 20-21 years. He was wearing grey colour pant which was torn at knee and blue colour shirt on which something was written with white colour. It is further stated that first finger of his left hand had some sign of Leprosy. The appellant, who fit these details, was arrested on 09.04.2021. The appellant was found wearing same clothes which were seized. The robbed mobile phone was also recovered from the appellant, which was duly identified by the complainant as well as SI Mahendra Kumar, who had recovered the same. In view of the above, the delay, if any, in reporting the incident is of not much significance.

9. Coming to the next contention relating to recovery of knife, it is pertinent to note that the use of knife was not stated in the first information (GD 83A) that itself was given after one and half hours by the complainant, though the knife was stated to be recovered, however, the same was not produced in the present proceedings. Even though the recovery of knife is not a *sine qua non* for conviction under Section 397 IPC (Ref: Ashfaq v State<sup>1</sup>, Seetal v. State (NCT of Delhi)<sup>2</sup>), however, since its use itself was stated after some delay, in the peculiar facts of the present case, while upholding the conviction under Section 392 IPC, the conviction under Section 397 IPC is set aside. The appeal is partly allowed.

12. As per the nominal roll, the appellant has undergone almost 2 years, and 6 months of sentence as on 09.03.2025, including remission. The

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<sup>1</sup> (2004) 3 SCC 116



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sentence of the appellant was suspended by this Court vide order dated 05.05.2025. A status report has been handed over by learned APP for the state, which is taken on record. As per the same, the appellant has been acquitted in the case arising out of FIR No. 651/2020 registered under Sections 356/379/34 IPC at P.S. Moti Nagar, and apart from the case registered under Arms Act due to the recovery of knife as discussed above, the appellant is stated to be not involved in any other case.

13. Considering that the conviction under Section 397 IPC is set aside, the appellant's sentence for the offence under Section 392 IPC is modified to the period already undergone. The sentence of fine of Rs.10,000/- is reduced to Rs.5,000/- failing which, the appellant would further undergo the default sentence of one month. The appellant has already undergone the sentence imposed under Section 411 IPC, however, the sentence of fine of Rs.3,000/- and the default sentence is maintained.

14. The appeal is partly allowed to the aforementioned extent.

15. A copy of this judgment be communicated to the concerned trial court as well as the concerned Jail Superintendent for information and necessary compliance.

**MANOJ KUMAR OHRI  
(JUDGE)**

**AUGUST 18, 2025/na**

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<sup>2</sup> (2014) 215 DLT 60