



2025:DHC:6574



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

% Date of Decision: 25.07.2025

+ **CRL.A. 697/2023 and CRL.M.(BAIL) 1428/2025**

GOVINDA @ BHURA

.....Appellant

Through: Ms. Gayatri Nandwani, Advocate
(Through V.C.).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Nitin Kumar, P.S. Farsh Bazar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CRL.M.(BAIL) 1428/2025

1. By way of the present application, the applicant/appellant seeks suspension of sentence till the pendency of the appeal.
2. With the consent of the parties, the appeal is taken up for hearing.
3. In view of the above, this application is disposed of, as infructuous.

CRL.A. 697/2023

1. The present appeal has been instituted under section 374 (2) r/w section 383 Cr.P.C. seeking to assail the judgment of conviction dated 15.03.2023, wherein the appellant has been convicted under sections 392/397/411/34 IPC in SC No. 62/2022 arising out of FIR No. 756/2021 registered under Sections 392/397/201/411 IPC at P.S. Farsh Bazar.



Vide the order on sentence dated 17.04.2023, the appellant was directed to undergo rigorous imprisonment for a period of 4 years for the offence punishable under Section 392 IPC, along with payment of a fine of Rs.1,000, in default of payment, he was directed to undergo simple imprisonment for a period of 15 days. He was further sentenced to undergo rigorous imprisonment for a period of 7 years for the offence punishable under Section 397 IPC, with a fine of Rs. 500, in default thereof, to undergo simple imprisonment for 7 days. Additionally, for the offence punishable under Section 411 IPC, he was sentenced to rigorous imprisonment for 1 year along with a fine of Rs. 500, in default of payment, to undergo simple imprisonment for 7 days. The benefit of Section 428 CrPC was provided to the appellant. All the sentences have been directed to run concurrently.

2. The facts in a nutshell, are that one *Prabhas Kumar* (complainant herein), examined as PW1, stated that, on 07.11.2021, while he was going to market from his home and reached *Hans Apartment, Hedgewar Hospital*, the appellant came there and asked for his mobile phone to make a phone call. , Upon refusal to do the same, the appellant took out a knife and put the same on the complainant's abdomen. The complainant, due to fear, handed over the mobile phone to the appellant. Though the complainant requested the return of his mobile phone, the appellant took a stone and threw it at the complainant and ran away.

On receipt of the complaint, investigation was carried out. The appellant was arrested, and the mobile phone of the complainant was recovered from appellant's house. On completion of investigation, charge sheet came to be filed and charges were framed against the appellant under Sections 392/397/201/411IPC.



3. Prosecution examined a total of 8 witnesses, including the complainant (PW1) as well as his wife (PW2). Complainant reiterated his version made during the investigation on the aspect of robbery of mobile phone under threat of knife. He further testified that since he did not have a bank account, the subject mobile phone was purchased in the name of one *Satnam Singh*, who was examined as PW6. Against the said purchase, the complainant had regularly deposited the EMIs in the account of *Satnam Singh*. The mobile phone bill (Mark PW1/A) was also produced. The witness further testified that during the judicial TIP conducted on 07.12.2021, he identified the appellant as the one who had robbed him of his mobile phone.

In the cross-examination, the witness admitted to the suggestion that he had earlier seen the appellant roaming around in the area on a few occasions, however, denied the suggestion that at any point of time, he had interacted with him. The complainant's wife, *Anjali Devi* appeared as PW2. She stated that on 07.11.2021 when the complainant had returned home, he informed her that his mobile phone had been robbed by someone. The complainant had made a phone call to the police from her mobile phone.

Prosecution also examined one *Akansh Jain* as PW4, who deposed that he was the Manager of 'The Future Mobile Shop' and had issued the tax invoice in the name of *Satnam Singh* who had purchased the mobile phone, make REDMI 9/128 of Sky Blue colour. This witness was not cross-examined.

Satnam Singh was examined as PW6. He deposed that complainant was living in the neighbourhood. On his request, the witness agreed to purchase a mobile phone for him in his name for which the complainant



agreed to pay EMIs , as the complainant did not have a bank account.

SI Vijay, the IO was examined as PW8. He stated that on 18.11.2021, on receipt of secret information, he arrested the appellant from his house and also recovered the stolen mobile phone from his house.

4. Ms. Gayatri, learned Counsel for the appellant has raised threefold contentions. *Firstly*, the weapon of offence i.e. the knife was not been recovered and as such, the conviction of appellant under Section 397 is not made out. *Secondly*, the complainant admitted that he had seen the appellant prior to the day of the incident and as such neither revealed the same in his initial statement nor gave any particulars thereof and the same would cast a shadow of doubt on the credibility of the witness. *Lastly*, it is contended that despite the incident occurring on a road, no public witnesses were examined.

5. The appellant's contentions are refuted by the learned APP for the State, who submits that there is no inconsistency in the statement of the complainant made during the investigation and as well as in Court. The mobile phone was recovered from the appellant's house and its purchase was duly proved through the testimony of PW6.

6. A perusal of the initial complaint would show that complainant has given specific details of the incident as well as complete description of the mobile phone including its make, IMEI number and colour. The complaint also mentions the details of the SIM card. Insofar as, identify of the appellant is concerned, though the complainant admitted that he had seen the appellant on a few occasions prior to the incident however, in the same breath, he also categorically stated that he never interacted with the accused and as such there is no occasion for the complainant to know the details of



appellant's name and his residence. Pertinently, not only in the TIP proceedings but also during the trial, the appellant was duly identified by the complainant and the mobile phone. The identity of the said mobile phone is further corroborated by the testimony of PW8, the investigation officer who seized the mobile phone vide seizure memo, Ex.PW8/A and in the said testimony it is categorically recorded that the counsel for the accused did not dispute the identity of the mobile phone, exhibited as P1 in the statement of PW1. Furthermore, the contention with respect to the non-recovery of the knife and the ingredients of Section 397 IPC is concerned, it is noted that the said argument is misplaced and does not hold any merit.

7. The question, whether non-recovery of the weapon of offence i.e. knife would be fatal to the charge under Section 397 IPC is settled long back through the decisions of this Court in Rajiv @ Sonu & Anr., v. State Govt. of NCT of Delhi, 2024 SCC OnLine Del 8112, and Aas Mohd. & Ashu v. State, 2021 SCC OnLine Del 5493. Pertinently, the ingredients of Section 397 IPC are satisfied, if at the time of commission of robbery, the accused is armed with a deadly weapon which is visible to the victim and puts him under threat. The testimony of the complainant is consistent that when he refused to hand over the mobile, the appellant put a knife at his abdomen and under that threat, the mobile phone was snatched away. Insofar as contention with regard to public witness is concerned, examination of the testimony of the complainant is found to be trustworthy and reliable and therefore, mere non-examination of public witness will not cast doubt on the case of prosecution.

8. Considering the aforesaid and after going through the evidence on record as well as the impugned judgment, this Court is of the considered



2025:DHC:6574



view that there is no infirmity in the judgment of conviction passed by the learned Trial Court.

9. As per the nominal roll dated 17.07.2025, the appellant is also involved in another offence of similar nature in FIR No. 285/2019 registered under Sections 392/34 IPC at P.S. Farsh Bazar and notably, the appellant has undergone 03 years 07 months and 28 days, as on 16.07.2025 and the offence under Section 397 IPC provides for minimum sentence of 7 years.

10. In view of the above discussion, the present appeal is dismissed and impugned judgment as well as order on sentence are upheld.

11. Copy of the order be sent to the Trial Court as well as concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

JULY 25, 2025

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(corrected and released on 07.08.2025)