



2025:DHC:10640



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

% Reserved on : 23.09.2025
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+ **CRL.A. 1117/2024**

PAWAN SONIAppellant
Through: Mr. Rohan J. Alva, Advocate
(DHCLSC) with Mr. Anant Sanghi,
Advocate.
versus

STATE (NCT OF DELHI)Respondent
Through: Ms.Shubhi Gupta, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Being convicted and sentenced for the offence punishable under Sections 392/394/397/34 IPC, the appellant has preferred the present appeal seeking setting aside of the judgment dated 06.06.2024 and the order on sentence dated 30.08.2024 passed by Ld. ASJ-03, South-East District, Saket Courts, Delhi.

The appellant has been sentenced in the following manner: -

Penal Section	Sentence	Imprisonment in default of fine
Sections 392/34	10 years RI with fine of	Three months SI



IPC	Rs.15,000/-	
Sections 394/34 IPC	10 years RI with fine of Rs.30,000/-	Three months SI
Section 397 IPC	7 years RI	-

The benefit of section 428 CrPC was given to the appellant. Sentences were directed to run concurrently.

2. Facts as per case of the prosecution are that the complainant *Dilip Kumar*, along with ASI *Kumher Singh* from PS P. Prahlad Pur, arrived at P.S. Badarpur on 23.06.2019 at 3.10 A.M., as recorded in DD No. 17B. They handed over a written complaint (Ex.PW3/A), as per which, around 02:30 am on that night, the complainant, while waiting for some conveyance at Jaitpur Mor, Badarpur took lift from an Eeco Van which was claimed by the occupants to be going in the same direction. He took a seat in the front of the said van where the driver was seated to his right and another passenger to his left. There were two more persons sitting in the rear seats. After covering some distance, the driver and the person seated to his left asked him to empty his pockets. On refusal, the complainant was slapped by the boy sitting in the rear seat. The driver thereafter forcibly removed his mobile phone and wallet and the boy on his left removed cash from his left trouser pocket. They also removed the two gold rings he was wearing in his right hand at knifepoint. The driver and the person on his left were referring to each other as *Pawan* and *Kailash*, the one who was slapped was called *Sunny* and he did not know the name of the fourth one. He was then dropped by them near Kaya Maya Hospital, MB Road. He noted the number of the van as DL 1 LV 3478 and of white colour. His purse containing Rs 7,000-8,000 and some documents was robbed. After the incident, he went to his



home and proceeded towards PS Pul Prahlad Pur on his motorcycle. On the way, he found a PCR Van and told them about the robbery and details of the Eeco Van. The said van was intercepted by the officials of Police Post Okhla. The complainant proceeded there and identified the van along with the two boys as persons who were sitting on the rear seat of the van at the time of commission of robbery, *Sunny* and 'V'. They gave the details of the appellant and *Kailash*, who had escaped.

On 29.06.2019, vide DD No.22B, information was received from PS Badarpur regarding arrest of the appellant in relation to E.FIR No. 021799/19, disclosing his involvement in the present case. He was arrested in the present case on 18.07.2019. Judicial TIP was conducted on 20.07.2019 (Ex. PW3/C) wherein the complainant failed to identify the appellant and rather identified someone else as the offender.

3. The appellant and the co-accused *Sunny* were tried together. The charge was framed against the appellant under Section 392/394/34 and 397 IPC, to which he pleaded not guilty and claimed trial.

4. Prosecution examined ten witnesses to substantiate its case. The most material of them being the complainant victim *Dilip Kumar*, who was examined as PW-3. SI *Kumher Singh*, who recorded the complaint and took the complainant to PS Badarpur was examined as PW2. ASI *Rakesh Kumar*, who apprehended co-accused *Sunny* and JCL 'V' along with the stolen van, was examined as PW8. SI (Retd) *Ashok Kumar* was the IO, who was examined as PW10.

5. In his statement under Section 313 CrPC, the appellant claimed false implication. He did not lead any evidence in his defence.

6. Learned counsel for the appellant submits that the appellant is



innocent and falsely implicated in the present case. The complainant failed to identify the appellant in the TIP proceedings. As per the chargesheet, he was identified by the complainant for the first-time outside Courtroom. It is submitted that this negates the identification of the appellant in Court. Reliance in this regard is placed on the decisions of Supreme Court in Jafar v. State of Kerala¹, and Gireesan Nair v. State of Kerala.² The complainant was also prone to improvements, due to which the Trial Court did not believe his testimony qua the co-accused. However, the Trial Court erred in convicting the appellant despite the improvements. It is further submitted that no recovery of robbed articles or weapon of offence was effected from him. Moreover, there is no allegation of the appellant committing assault on the complainant and with co-accused acquitted, he cannot be convicted under Section 392/394/34 IPC. Reliance is placed on Sunil Kumar v. State³, Moreover, no finding was given that the offence occurred on highway, thus the enhanced sentence under Section 394 IPC was not made out either.

7. Learned APP for the State submits that the impugned judgement rightly convicted the appellant as the complainant has remained consistent *qua* the appellant's role. Recovery of weapon is not essential to establish the offence under Section 397 IPC. The complainant could not identify the appellant initially due to nervousness.

8. The complainant was examined as PW3. He deposed that on 22.06.2019, he had gone to Agra for some work. After completion of the same, he boarded a bus for Delhi at about 9:15 p.m. and alighted at *Jaitpur Mod, Badarpur* around 2-2:30 a.m. When he was waiting for some

¹ 2024 SCC OnLine SC 310

² (2023) 1 SCC 180



conveyance to reach home, an Eeco van stopped near him and the occupants asked him where he wanted to go. The complainant told the driver that he had to go to Khanpur, and on the assurance of the driver that they were going in the same direction, he sat in the van. He stated that he was asked to sit in between the driver and the other passenger on the front seat. Additionally, there were two persons in the rear seat of the van. After crossing the Okhla red light, he was asked to hand over his belongings by the driver and the person sitting behind him. When he resisted, he was slapped and threatened to be killed by the person sitting on the rear seat. Thereafter, his 'Samsung J6' mobile phone and purse were taken forcefully by the driver. The front occupants also took the cash from his pocket which was around Rs.7,000-8,000/-. The two gold rings were taken from his right-hand fingers at the instance of a knife. He further stated that the persons on the front seat were referring to each other as *Pawan* and *Kailash* while the one on the rear seat who had slapped him was called *Sunny*. He was dropped near *Kaya Maya* Hospital after the incident. The complainant provided the particulars of the van and features of the accused persons. He, thereafter, left for PS Prahlad Pur on motorcycle after keeping his bag at home. He asked from the officials of PCR van parked at Okhla *Mod* about the Eeco van, who informed him that it has been apprehended at Okhla Police Post. He further states that he went to the PS Okhla Phase-III where he identified the van and two boys. He was informed that the other two boys had fled. He went to PS Prahlad Pur and got his statement recorded.

The complainant stated that on 20.07.2019, he failed to identify the accused in Rohini jail as he was nervous. However, he identified the accused

³ 2020 SCC OnLine Del 3584



persons *Sunny* and *Pawan* before the Court on 30.08.2022. He stated that Appellant/ *Pawan* was the one who had threatened him with the knife at the time of incident. He produced his mobile phone, released to him on *superdari*. He identified the appellant as the one who had shown the knife to him and the other accused *Sunny* robbed purse and mobile.

In his cross-examination, improving on his initial complaint, he stated that *Sunny* had snatched his purse, mobile and ring and also showed him knife. He admitted not giving description of the accused persons in his complaint. He admitted not seeing the faces of the persons on the back seat. He denied the suggestion of false implication.

9. SI *Kumher Singh* was examined as PW2. He deposed to the complainant coming to PS Pul Prahlad and him recording his statement on 23.06.2019 and then taking him to PS Badarpur.

10. ASI Rakesh Kumar was examined as PW8. He deposed that on 22/23.06.2019, one E FIR No. 021799/19 under Sections 379 IPC by one *Kamruddin* about the theft of his Eeco van which had GPS installed. The complainant *Kamruddin* along with PCR officials managed to track the van. 2 persons fled from the spot and 2 were apprehended, co-accused *Sunny* and the CCL. Mobile of the complainant was recovered from *Sunny*. The apprehended accused were presented before PW8 by the complainant and PCR officials at the police post and they told him the facts. On interrogation, *Sunny* disclosed the involvement of the appellant.

In cross examination, he stated that *Sunny* was not arrested in his presence.

11. SI (Retd.) Ashok Kumar was examined as PW10. He deposed as to the complainant coming to PS Badarpur, visiting place of incident and



preparing site plan, arrest of both the accused and their judicial TIP. He deposed that the complainant failed to identify the appellant in the TIP proceedings. The same were exhibited as Ex. PW3/C. The complainant told him that he had gone to Tihar Jail for the first time to attend such proceedings and he had got scared.

In cross examination, he admitted that neither the mobile nor the vehicle was recovered by him. No recovery was effected from the appellant. The other co-accused could not be arrested.

12. The present is not a case where the appellant was apprehended at the spot. He was already in police custody in another case, and he came to arrested in the present case on 18.07.2019, as reflected from his arrest memo (Ex. PW10/G), almost a month after the incident. There was no recovery made from him. As per the prosecution case, the appellant was sitting right beside the complainant. Yet, when the judicial TIP proceedings came to be conducted on 20.07.2019 (Ex. PW3/C), the complainant failed to identify the appellant, rather he identified someone else. Surprisingly, in his Court deposition, he identified appellant as the one who had shown knife to him. He deposed that he was nervous at the time of TIP. The purpose of the TIP is that the witness, who claimed to have seen the culprit at the time of occurrence of the incident, is able to identify them in the midst of other people. The Supreme Court in Gireesan Nair (Supra) has held as follows: -

“28. We may, at the outset, note that the eyewitnesses questioned by the prosecution did not give out the names or identities of the accused participating in the riot and involved in the destruction of public property. Therefore, the IO (PW 84) had to necessarily conduct a TIP. The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. Second, to satisfy the investigating authorities that the suspect is the real person whom the



witnesses had seen in connection with the said occurrence. Third, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (*Mulla v. State of U.P.* [*Mulla v. State of U.P.*, (2010) 3 SCC 508, paras 44, 45 & 55 : (2010) 2 SCC (Cri) 1150]).

29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (*Matru v. State of U.P.* [*Matru v. State of U.P.*, (1971) 2 SCC 75, para 17 : 1971 SCC (Cri) 391] ; *Mulla v. State of U.P.* [*Mulla v. State of U.P.*, (2010) 3 SCC 508, paras 41 & 43 : (2010) 2 SCC (Cri) 1150] and *C. Muniappan v. State of T.N.* [*C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]). The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (*State of H.P. v. Lekh Raj* [*State of H.P. v. Lekh Raj*, (2000) 1 SCC 247, para 3 : 2000 SCC (Cri) 147] and *C. Muniappan v. State of T.N.* [*C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]).”

Dock identification, in a case where the accused is not previously known to the appellant, especially when it takes place when a long time has passed between the incident and the identification in Court, is a weak piece of evidence. Reference may be made to the decision of Supreme Court in Jayan v. State of Kerala⁴, wherein it was held as under: -

“18. It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy. ..”

⁴ (2021) 20 SCC 38



Recently, in Nazim v. State of Uttarakhand⁵, the prevailing position in law on the above was further expounded in the following manner:-

“41. Both PW-3 and PW-4 thus identified the Appellants for the first time in court. No TIP was conducted, even though PW-3 admitted he had never known the accused earlier. It is well settled that dock identification without a prior TIP has little evidentiary value where the witness had no prior familiarity with the accused. In P. Sasikumar v. State³, this Court acquitted the accused on precisely this ground...

42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The following paragraph of P. Sasikumar (supra) is indicative of the same:

“21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial.

23. [...] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness.

24. [...] We are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused.”

13. The dock identification of the appellant in Court on 30.08.2022, after more than 3 years of the incident casts a shadow of doubt on the whole case against the appellant. Though the chargesheet records that the appellant was seen by the complainant in Court complex on 27.07.2019, neither the complainant, nor any other PW, have deposed in Court to this effect. The case of the prosecution stands on an even worse footing than the above cited

⁵ 2025 SCC OnLine SC 2117



decisions because it is not that no TIP was conducted, but rather, in the TIP the complainant not only failed to identify the appellant, but rather identified some other person.

The identification by the complainant has to also be seen in light of his other improvements. He identified the co-accused *Sunny* who was sitting behind, but also stated that due to darkness he had not seen the faces of the persons sitting in the back. Furthermore, the complaint only recorded the allegation of slapping qua *Sunny*, however the complainant attributed much more to him, such as robbing his mobile, wallet and also showing him a knife. In fact, the Trial Court, noting his tendency to improvise, had given the benefit of doubt and acquitted the co-accused.

14. Considering the entire facts and circumstances, this Court finds that serious doubts have been raised about the appellant's identification and his involvement in the incident which go to the root of the prosecution case. The complainant, having consistently improvised, is also not a reliable witness. The case against the appellant has not been proven beyond reasonable doubt, and as such, the benefit must go to the appellant.

15. Consequently, the appeal is allowed. The appellant is held to be acquitted. The impugned judgement and the order on sentence are accordingly set aside.

16. The appellant be released forthwith, unless wanted in any other case.

17. A copy of this judgment be communicated to the Trial Court as well as concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 28, 2025/ry