



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

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*Reserved on: 24th November, 2025
Pronounced on: 09th February, 2026*

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CRL.A. 1640/2025

STATE

Govt of NCT of Delhi

Through Standing Counsel (Crl.),

Delhi Police, Delhi.

....Appellant

Through: Mr. Utkarsh, APP for the State with
Inspector Proshun, ATP/PS Ananad
Vihar Railway Station.

versus

AMIT KUMAR

S/o Sh. Inder Pal,

R/o Village Jalalabad,

District Ghaziabad, UP

....Respondent

Through: Mr. Biswajit Kumar Patra, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*), has been filed on behalf of the **Appellant/State** against the **Judgment dated 04.10.2016** whereby the Respondent, Amit Kumar has been **acquitted** by the learned ASJ, Delhi, for the offence under Section **394/397/411/34 of the Indian Penal Code, 1860** (*hereinafter referred to as 'IPC'*) in FIR No. 08/2014 dated 01.02.2014, Police Station Anand Vihar Railway Station.



2. The **brief facts** are that on 31.01.2014 at about 08:00 p.m., the Complainant, Mr. Tej Singh Bhati Singh was going to old Railway Station Anand Vihar from the side of Platform No. 1, when three boys confronted him enroute and tried to snatch his bag. A physical altercation took place between them and the Complainant was pushed to the ground and beaten with a stone, resulting in the injuries on his nose, hand and head. The assailants took away his Samsung Mobile Phone, as well as the purse containing several cards, documents and Rs.9,000/- in cash.
3. The Complainant went to GRP from where he was taken to LBS Hospital in Ambulance and thereafter, shifted to Max Hospital, Patparganj, Delhi. He was treated in the hospital till 03.02.2014.
4. The Statement of the Complainant was recorded on 01.02.2014, on the basis of which, FIR No. 08/2014 under Sections 394/34 IPC, was registered. The Investigating Officer/SI Joy Kumar, during the investigations, collected the MLC wherein the injuries suffered by the Complainant, were certified as *grievous in nature*.
5. The IO made the analysis of CDR of the Mobile Number and IMEI number of stolen mobile and traced it to the Accused, Amit Kumar. He was arrested on the basis of secret information and was found to be in possession of robbed Mobile, without any SIM Card. The TIP proceedings were conducted in which he was identified by the Complainant. The **Charge-Sheet** under Section 394/411/34 IPC thereafter was filed in the Court on 19.05.2014.
6. On 01.07.2014, **Charges** under *Section 394/411 IPC* were framed against the Respondent, to which he pleaded not guilty.



7. On 31.07.2014, a **Supplementary Charge-Sheet** under **Section 397 IPC** was filed by the Investigating Officer. *The Charges under Section 397/411 IPC were framed against the Respondent on 02.01.2015, to which he pleaded not guilty.*
8. The Prosecution in support of its case, examined **13** Prosecution witnesses.
9. **PW-2** is the **Complainant**, who proved his Complaint, Ex.PW-2/A.
10. **PW-3, Head Constable Devender Singh** registered the FIR, Ex.PW-3/B.
11. **PW-13, ASI Surender Singh**, the Investigating Officer, who was accompanied by **PW-4, Head Constable Maharaj Singh** to the hospital from where the MLC of the injured, was collected.
12. The medical record of the injured were proved by **PW-1, Dr. Virender Kumar** and **PW-5, Dr. Harjinder Singh Bhatoe**, who had examined the Complainant in the Emergency in the Max Hospital. The summary of treatment is Ex.PW-5/A and the copy of Discharge Summary is Ex.PW-5/B.
13. **PW-8**, Pawan Singh Nodal Officer, Idea Cellular, proved the cell ID Chart of Mobile No. 9540721499, which had been obtained on the I-card of Smt. Sushma as Ex.PW-8/D.
14. **PW-9, the learned Metropolitan Magistrate** proved the TIP proceedings of the Respondent as Ex.PW-9/A and Ex.PW-9/B.
15. **PW-13, ASI Surender Singh, the first IO**, conducted the initial investigations and got the FIR registered.



16. **PW-12, Retired SI, Joy Kutty** was the second Investigating Officer, who was joined by **PW-6, Constable Nitin** in conducting the further investigations. He filed the Charge-Sheets against the Respondent.
17. **PW-11, Harsh Bhargava**, brought copy of Statement of Account of the Complainant, Ex.PW-11/B.
18. **PW-7, Smt. Anuradha Malik**, In-charge/Head of Primary School, gave a certificate regarding DOB of the Respondent, Ex.PW-7/A.
19. The Statement under **Section 313 CrPC of the Accused**, was recorded wherein he denied the entire evidence. He admitted that SIM No.9540721499, obtained in the name of his mother, was being used in the Samsung Mobile Phone. He stated that he had purchased the said Mobile for Rs.1,000/- from one passenger, who did not have the money to pay the auto fare. At that time, he was working as a conductor in a shared auto plying between Anand Vihar Bus Stand and Mohan Nagar, Ghaziabad. He used his SIM card on that Mobile Phone for about 30-40 days and thereafter, sold this Mobile Phone to one *Dhoban* because his vehicle had met with an accident.
20. The Respondent denied knowing any Kamal Khan, but admitted that he was arrested from Anand Vihar Railway Station. He denied the recovery of Samsung Mobile Phone from his possession at the time of his arrest. During his interrogation, he informed the Police about selling of this Mobile Phone to one *Dhoban*, who met them and Police brought *Dhoban* along with the Mobile Phone to the Police Station. While *dhoban* left, he was implicated falsely in this case. He admitted that the TIP was conducted in



Tihar Jail but was not aware of his identification in the TIP proceedings, by the Complainant.

21. The **learned ASJ**, on appreciation of evidence, found that before the TIP of the Respondent was conducted, he was taken on Police Custody remand for two days. Though, the Respondent admitted that he was kept in a muffled face on the day of arrest, but he was produced before the learned Metropolitan Magistrate on 23.03.2014 when the Police remand was granted for three days. There was no mention of his face being muffled, in the remand papers.

22. Furthermore, from the testimony of PW-6 and PW-12, it emerged that though allegedly a phone was recovered from the Respondent on 22.03.2014 when he was apprehended, but it was produced in the Court in a stapled envelope, thereby establishing that the phone had not been kept in a sealed cover. Moreover, this Mobile Phone was never identified by the Complainant; rather the Complainant in its testimony had deposed that he had visited the Police Station on 29.03.2014, where he identified his Mobile Phone. He was unable to tell the exact date of his visit to the Police Station, for such identification. The Mobile Phone was recovered on 22.03.2014 i.e. a week prior to the TIP of the Accused. PW-2 could have identified his Mobile Phone on any date between 22.03.2014 to 29.03.2014 but it was not so done. Furthermore, there was no evidence to show that there was sufficient light at the time of commission of offence, for the Complainant to have identified the Respondent. ***Therefore, benefit of doubt was given to the Respondent, who was acquitted of all the offences.***



23. *The State aggrieved by the acquittal, has filed the present Appeal wherein the Judgment of acquittal has been challenged on the **grounds** that the evidence especially of the Complainant, PW-2, has not been considered in the right perspective.*

24. The Respondent himself had admitted in his Statement under Section 313 CrPC that his face was duly covered, which fact has been overlooked by the learned ASJ. The Complainant had correctly identified the Respondent in the TIP proceedings. It has been erroneously presumed that there was no source of light at the time of commission of offence, for the Complainant to have identified the Respondent. It has also been wrongly presumed that no robber would use the robbed mobile phone himself. It all clearly reflects that the conclusions are conjectural and based on presumptions. The entire case of the Prosecution stood established by the testimony of the witnesses examined by the Prosecution.

25. *Hence, a prayer was made that the Impugned Judgment be set-aside.*

Submissions heard and the record perused.

26. The case of the Prosecution is that on 31.01.2014 at about 08:00 p.m., the Complainant, Mr. Tej Singh Bhati was robbed by the Respondent, Amit Kumar along with two other persons, and was given severe beatings. On his Statement, the FIR Ex.PW-3/B was registered. On completion of investigations, the Charge-Sheet under **Section 394/411/34 IPC**, was filed. A Supplementary Charge-Sheet for the offence under **Section 397/411 IPC** was filed.



27. The Charges were framed under Section 394/411 and under 397 IPC on 01.07.2014 and 31.07.2014, respectively, to which the Respondent pleaded not guilty.

28. **The first main aspect for consideration is about the manner of the recovery of stolen Mobile phone of the complainant.** According to the Complainant, his purse and mobile were stolen and he was beaten by the assailants. He suffered serious injuries, and was taken to the hospital, while the assailants escaped.

29. According to **PW-13, ASI Surender Singh, IO**, he made an Application dated 07.02.2014 to DCP Railway for obtaining the CDR and CAF of Mobile No.8826992658 *vide* Application, Ex.PW-13/C. Pertinently, though this CDR and CAF was the main starting point for the tracing of the Respondent, but the same has neither been summoned nor proved on record.

30. On analysis of the CDR and CAF, he found that the Mobile phone was used with the SIM No.9540721499, which was admittedly of the mother of the Respondent/Accused.

31. The investigations in between, were taken over by **PW-12, Retd. SI Joy Kutty**, who was joined in the investigations by PW-6, Constable Nitin. PW-12 deposed that from the analysis of the call details of Mobile No. 9540721499, **Ex.PW-8/A**, several calls were made by him to the phone numbers, to which the call had been made from this number. On 22.03.2014, he along with the PW-6, Constable Nitin, had gone to the parking of Anand Vihar Railway Station, where he made a phone call to a person, who disclosed his name as Kamal Khan. He called him to the taxi stand and on



enquiry, he told that this number was being used by one *Amit Kumar* (the accused/Respondent).

32. Here, it is pertinent to note that **PW-6, Constable Nitin**, who had joined investigations with **PW-12, Retd. SI Joy Kutty**, had given the name of the person, to whom the call was made and who was called, as Qamrool. *There is discrepancy about the person, to whom the call was made by the Investigating Officer and who came to the Railway Station.*

33. Pertinently, according to both, PW-12, SI Joy Kutty and PW-6, Constable Nitin, such person disclosed that the Mobile was being used by one **Amit Kumar**, resident of Ghaziabad and that he used to run a TSR. Thereafter, they went to the main gate of Railway Station and started checking the TSRs at the entry of Railway Station. Interestingly, they met one secret informer who pointed out to a person, who was apprehend and his name was found to be Amit Kumar i.e. the Respondent. A search was made from him and one White Colour Samsung Mobile was recovered from his right pocket. *Interestingly, they both deposed that the Mobile Phone was without the SIM card.*

34. In this context, it is significant to refer to the defence of the Appellant, who claimed that he had sold this Mobile Phone to one *Dhoban* and the Police had called this *Dhoban* to the Police Station, who handed over the Mobile Phone. It was claimed by him that the recovery of Mobile Phone, has been planted by him.

35. This defence seems plausible because according to *PW-13, ASI Surender Singh*, as well as, *PW-12, SI Joy Kutty*, the tracing of the Mobile Phone was done through the CDR and CAF records of the Mobile Phone



through the SIM Card No. 9540721499. Had the Respondent been using this Mobile Phone, then there is no reason why the SIM Card would not have been found in the Mobile Phone. The very fact that the SIM Card was missing from the Mobile Phone when it was recovered from the Respondent clearly, lends credence to the explanation given by the Respondent about the Phone having been sold by him to *Dhoban*, who was called to the Police Station and he handed over the Mobile Phone, seems plausible.

36. The Respondent had admitted that he had purchased this Mobile Phone for Rs.1,000/- from one passenger, who could not pay the Auto fare and after using it for about 30-35 days, he had sold it to another person, namely *Dhoban*. *The defence taken by the Respondent/Accused, therefore, is plausible from the manner of recovery of Mobile Phone and also it having been recovered without a SIM Card.*

37. The next aspect, which needs discussion, is about the identity of the Appellant.

38. According to **PW-12, Joy Kutty** after being arrested on 22.03.2014, his Police remand was taken for two days. He was then produced in the Court on 25.03.2014. The Investigating Officer had deposed that he was produced in muffled face before the learned Metropolitan Magistrate. However, it has been observed by the learned Trial Court in the impugned Judgment, that *the remand papers did not reflect that the Appellant/Respondent had been produced in muffled face.*

39. The **next significant aspect** is that the complainant, PW-2 had deposed that after **the recovery of Mobile Phone** was made, he was called to the Police Station where he identified his Mobile Phone. It has been noted



by the learned ASJ that while this Complainant remembered all the dates of incident and of TIP, *he interestingly did not remember the date on which he went to the Police Station, for identifying his Mobile Phone.*

40. The possibility of the Complainant having gone to the Police Station while the Accused was in the custody of the Police, therefore, cannot be ruled out. This aspect assumes significance as the incident took place on 31.01.2014, but the TIP was conducted on 29.03.2014, when he identified the Respondent. The chances of him having been shown to the Complainant, cannot be over-looked.

41. It is difficult to believe that the Complainant, who got traumatized by the incident of robbery, would have such clear photographic memory to have been able to identify the Respondent on 29.03.2014 i.e. after almost two months. No specific features of identification have been disclosed by the Complainant. In the Complaint as well, there was no description given of the assailants. *The identification of the Respondent in the TIP proceedings, is thus, not beyond reasonable doubt.*

42. **In the end,** it may be observed that though, it was an undisputed fact that the Mobile Phone had come into the possession of the Respondent at some point of time which, he had used for about 30-45 days on a SIM Card, obtained in the name of his mother, but such circumstances by itself, are insufficient to conclusively establish either his involvement in the commission of the robbery or his conscious possession of stolen property with knowledge of its illicit origin.

43. The recovery of the mobile phone without a SIM card, the lack of unimpeachable evidence regarding its seizure, the gaps in the chain of



custody, the doubtful circumstances surrounding the identification of the Respondent - all collectively create serious infirmities in case of the Prosecution.

44. Thus, the benefit of doubt, has been rightly extended to the Respondent by the learned ASJ while acquitting him under Section 394/397/411/34 IPC.

45. There is no merit in the present Appeal, which is hereby **dismissed**. The pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 09, 2026/RS