



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

% *Reserved on: 04th December, 2025*

Pronounced on: 18th February, 2026

+ **CRL.L.P. 380/2017, CRL.M.A. 10819/2017**

THE STATE GOVT. OF NCT OF DELHIPetitioner

Through: Mr. Utkarsh, APP for the State

versus

1. **HITESH KUMAR**
Son of Hemant Kumar,
R/o 7/6345, Dev Nagar,
Padam Singh Road,
Karol Bagh, New Delhi-110005.

2. **PRAMOD TYAGI**
Son of Vijay Pal Tyagi,
R/o 25/3872, Raggerpura,
Karol Bagh, New Delhi-110005.

3. **AMIT KUMAR**
Son of Jawahar Lal,
R/o House No.10816, Call No.4,
10-A Block, W.E.A. Karol Bagh,
New Delhi-110005.

4. **ALOK HANDA @ KUKKI**
S/o Vinay Handa,
R/o F-196, Mansarover Garden,
Near Water Tank,
Delhi-110015.

.....Respondents

Through: Mr. Rakesh Malhotra (through VC),
Ms. Gayatri Bhatia and Mr. Tanuj,
Advocates for R-1 & R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.L.P. 380/2017

1. Criminal Leave Petition under Section 378(1) of the Code of Criminal Procedure, 1973 has been filed on behalf of the Petitioner, against the Judgment and Order dated 30.05.2016 passed by the Learned ASJ whereby the Accused in the Complaint filed by the Petitioner, has been **acquitted** for the Offences under Section 395/397/427/412/34 IPC, in FIR No. 0087/2010, P.S. Mandir Marg.
2. The Leave to Appeal is sought on the grounds that the Impugned Judgment is contrary to the material evidence on record and suffers from illegality, arbitrariness and misappreciation of evidence, resulting in miscarriage of justice.
3. The Ld. Trial Court erred in holding that the Offence under Section 395 IPC was not made out merely because Respondent No. 5 had earlier been discharged, ignoring the direct ocular Testimony that five persons conjointly committed the Robbery and that the robbed vehicle was recovered from a Co-Accused; the Ld. Trial Court also failed to exercise its power under Section 319 CrPC to summon the said Respondent despite Evidence on record.
4. The finding regarding non-use of a deadly weapon is perverse, as minor variations in description do not discredit the consistent Testimony that the Accused assaulted the Victim with weapons during the commission of Robbery and minor inconsistencies in Witness Testimonies were wrongly



treated as material contradictions, contrary to settled principles that trivial discrepancies do not demolish an otherwise reliable Prosecution Case.

5. The Impugned Judgment is unsustainable in law and on facts and therefore liable to be set aside.

6. For the reasons stated in the Leave Petition and the submissions made, the same is allowed and disposed of accordingly.

CRL.A./2026 (to be numbered):

7. The Appeal has been preferred by the State against the Judgment dated 30.05.2016 whereby the Respondent has been **Acquitted** for the offences under Sections 395/397/325/427/412/34 IPC in FIR No. 0087/2010, P.S. Mandir Marg.

8. **Brief facts** are that on 26.05.2010 at about 10:30 PM, the Complainant, who is a Nayak in the Indian Army and employed at Engineers Store Depot at Nangal Cantt., was driving his Maruti Zen Car, bearing No. AP 23F 3003 from Ramprasth Ghaziabad side towards Udyan Marg, Gol Market. When he reached near RML Hospital, the Respondents who were travelling in SX4 Car bearing No. DL 1CL 4868, followed him from Bangla Saheb Gurudwara and made him stop his car by overtaking. The Respondents gave him beating with *baseball bat* and also gave fist and leg blows without any reason. The window panes of his Zen Car were broken and thereafter, his Zen Car was stolen.

9. DD No. 34A dated 26.05.2010 was recorded. SI Ajit Singh, who was on emergency duty along with Ct. Anil, reached the spot. On coming to know that the injured has been taken to RML Hospital, they reached the Emergency Department and obtained the MLC of Anoop Kumar, Complainant. The IO recorded his statement, who narrated the entire



incident. SI Ajit Singh then got the *FIR No. 0087/2010 under Section 395 IPC registered against him.*

10. The robbed vehicle was recovered at the instance of Respondent-Amit Kumar, on 27.03.2010. The keys of the car were also recovered from his Possession, which were seized *vide* Memo Ex.PW14/C. The Accused persons were thereafter, arrested and their disclosure statements were recorded. The two pieces of baseball bat were recovered at the instance of Respondent/accused Pramod Tyagi, which were seized by the IO.

11. On *completion of investigations*, Chargesheet was filed under Sections 395/397/427/412/34 IPC.

12. *The Charges were framed by the Learned Court of Sessions against the Accused persons under Sections 395/397/325/427/34 IPC. In addition, charge under Section 412 IPC was framed against Amit Kumar.*

13. The Prosecution in support of its case, **examined 21 Prosecution witnesses**. The **PW3 Anoop Kumar**, the complainant, deposed about the facts, as per the Complaint.

14. His Testimony was duly supported by **PW2 Mahesh Kumar, the Eye Witness** who deposed that he had seen five boys and narrated the entire incident. He stated that he had made the call to the Police, **but was unable to identify the Respondents**. He also denied that he had noted the number of the involved vehicles.

15. **PW12 W/Ct. Savita**, affirmed that on 26.05.2010, she received a call from the mobile number 9717297374 that some boys present in the vehicle No. DL 1CL 4868, had beaten the driver of another car with the bat. The PCR call so recorded is Ex. PW12/A.



16. **PW11 Hari Dass Sharma, brother of the injured** had gone to the Police Station on 26.05.2010 on receiving the information about the incident. He found the accused persons being interrogated by the Police. He signed their Arrest Memos, Personal Search Memos, Disclosure Statements, Pointing Out Memos and Recovery Memo of two baseball bats. He identified the four respondents as Amit Kumar, Alok Handa, Hitesh Kumar and Pramod Tyagi.
17. **PW1 Tasneemuddin Siddiqui** had conducted the inspection of Zen Car on 31.05.2010 and had submitted his Inspection Report. PW2 Mahesh Kumar was also an Eye Witness to the incident.
18. **PW6 Dr. Ankur Aggarwal** proved the MLC of the injured as Ex. PW6/A. The X-Ray Report of the injured as Ex. PW7/A was proved by **PW7 Dr. B.B. Sharma**.
19. **PW18 Geetanjali Goel, the then MM** proved the TIP of the two pieces of baseball bat, which were correctly identified by the injured Anoop.
20. **PW20 Sh. Jitender Mishra, MM** proved the TIP proceedings of all the four Respondents who refused to participate in the TIP proceedings.
21. **PW19 Insp. Madhukar Rakesh** was the second IO of the case. **PW9 SI Kedar Yadav** was the IO who on receiving the file on 23.07.2011, had prepared the Chargesheet and filed in the Court.
22. **Statements of the four Respondents were recorded under Section 313 Cr.P.C.** wherein the Respondents denied the incriminating Evidence as false and incorrect.
23. In their **defence, DW1 Amit Kumar/accused** deposed that on 26.05.2010 while he was returning after dinner and had reached near RML Hospital, he saw the driver of the Zen Car suddenly stop his car due to



which the SX4 Car and other cars collided with each other and an accident took place, after which, people gathered and there were arguments between them. He and Anoop Kumar decided that they would get their respective cars repaired, after which they left the spot. Thereafter, in the midnight and about 2:00 AM, some Police officials took them to the Police Station. On the next day, Complainant raised a demand of Rs. 6,00,000/- for the settlement, but the same was declined. It was deposed that it was a simpliciter case of accident, but the Complainant had falsely implicated the Respondents in this false case.

24. The Learned Trial Court after appreciating the evidence, concluded that the **Offences under Sections 395/397/34 IPC and Section 412 IPC could not be proved by the Prosecution beyond reasonable doubt.** However, it was held that the Offences under **Sections 325/427 IPC was proved against all the Respondents beyond reasonable doubt. Accused Amit Kumar was also Convicted under Section 411 IPC.**

25. *Vide* Order dated 09.06.2016, Hitesh Kumar, Pramod Tyagi, Amit Kumar and Alok Handa, were all directed to be released on Probation of good conduct for a period of 03 years and were also directed to pay a compensation of Rs.2 lakhs to the Victim Anoop Kumar failing which, they were directed to undergo RI for 3.5 years for the offences under Sections 325/427/34 IPC and Accused Amit Kumar for the offence under Section 411 IPC as well. It was further recorded that the compensation of Rs. 2,00,000/- was duly paid to the Victim Anoop Kumar, which was accepted by him.

26. **Aggrieved by the Acquittal of the Respondents for the offences under Sections 395/397 IPC, the State filed the present Appeal.**



27. *The grounds of challenge* are that the material evidence on record, has been overlooked. It has not been appreciated that PW3 **Anoop Kumar, the Complainant**, had identified all the Accused persons and his testimony was clear and unambiguous against all the Respondents. The Offences under Sections 395/397 IPC was proved beyond reasonable doubt. Furthermore, the minor contradictions in the testimony of the witnesses, could not have been made a Ground for Acquittal. The Acquittal of the Respondents under Sections 395/397 IPC be, therefore, be set aside and they be Convicted and Sentenced.

28. The **Respondent No. 4- Alok Handa** filed his detailed Reply wherein it was stated that the Judgement of the Learned Session Judge, did not suffer from any infirmity. The entire Evidence of the Prosecution, was considered to Acquit the Respondents, under Sections 395/397 IPC.

29. Reliance was made on cases *State v. Kaishar Ali* (2019), *Arulvelu and Another v. State* (2009) 10 SCC 206, *State of UP v. Ram Sajivan* (2010) 1 SCC 529, *Chandrappa v. State of Karnataka*, *Ghurey Lal v. State of UP* to contend that the Judgements of acquittal, should not be ordinarily interfered by the Appellate Court.

30. It is submitted that there is no merit in the present Appeal, which is liable to be dismissed.

Submissions heard and record perused.

31. Chargesheet has been filed against the Respondents under Sections 395/397/427/412/34 IPC. However, **Charges were framed against four Respondents under Sections 395/397/325/427/34 IPC**. In addition, **Charge under Section 412 IPC was framed against Accused Amit Kumar.**



32. *Vide* Impugned Judgment, while Respondents had been Convicted under Sections 325/427 IPC and Amit Kumar under Section 411 IPC and have all been accordingly, sentenced; however, **they have been acquitted under Section 395/397/34 IPC, in regard to which the present Appeal has been preferred.**

33. FIR was registered on the statement of Complainant Anoop Kumar, who had stated that on the date of incident, while he was going in his car, it was accosted by a car, in which assailants / Respondents were present. They pulled the Complainant out of his car and gave him beatings for the reasons not known to him and ran away with his car. *On his Complaint, FIR was registered under Section 395 IPC. Other Sections of IPC were added subsequently.*

34. To comprehend the case of the prosecution under Section 395 IPC, it would be pertinent to refer to Section 390 of IPC, which states that wherein it is provided that theft is robbery, where while committing theft or in an attempt of carrying away or attempting to carry away the property obtained by theft, the offender voluntarily causes or attempt to cause death or hurt or wrongful restraint to any person.

35. **Section 391 IPC** defines that where robbery is committed by five or more persons jointly, it is **an Offence of Dacoity**, which is punishable under Section 395 IPC.

36. From the bare perusal of the Sections, it emerges that Robbery or Dacoity is defined to be committed, if while committing theft or carrying away the property obtained by theft, **hurt or injury is caused.**

37. It would be pertinent to refer to **statement of PW-3 Anoop Kumar / Complainant, Ex. PW3/A**, wherein he stated as under:



“On 26.05.2010 at about 10:30 PM, I was driving Maruti Zen Car bearing no. AP 23F 3003. I was coming from Ramprasth Ghaziabad side and going towards K Type-3 Quarters, Udyan Marg, Gol Market. At that time I was employed in Engineers Store Depot at Nangal Cantt. I was near RML Hospital and some persons were following me from Bangla Saheb Gurudwara and they were travelling in vehicle SX4. The said car overtook my vehicle near RML Hospital and thereby made me stop my car.”

38. PW-3 Anoop Kumar / Complainant in his Testimony, had also deposed on similar lines and proved his Complaint as Ex.PW-3/A. He had also stated in his Complaint that assailants were addressing each other as Amit, Alok, Hitesh, Johnny and Gimmy, though they were not known to him. The complainant / PW-3 identified the assailant persons, in the Court. However, in his cross-examination, he admitted that he had seen them for the first time at the time of incident.

39. Second material witness examined by Prosecution was *PW-2 Mahesh Kumar, who was an eye-witness*. While he corroborated the happening of incident, about the Complainant who was in his Zen Car, was beaten up and his car was taken away and he had made call to PCR stating that there were four assailants, ***but he was unable to identify the five assailants***. He denied that he recognized the four assailants facing Trial, as those who had committed the Offence.

40. In this context it would also be pertinent to refer to Testimony of the **Respondent Amit Kumar**, who in his Testimony as DW1, gave a counter version of the incident. He deposed that the Complainant who was driving the Zen Car suddenly stopped the Car, because of which the SX4 which was being driven by them, collided in the Zen Car and the accident took place.



Many people gathered on the spot and an argument ensued. He and the Complainant, agreed to get their respective Cars repaired themselves and went from the spot to their respective houses. Later, at about 02:00 A.M some Police officials came and took them to the Police Station. On the next day, Anoop the Complainant made a demand of Rs. 6,00,000/- for the Settlement, which was declined by them. Consequently, the FIR got registered about Dacoity and beating, when it was simply a case of accident.

41. The Testimony of the **Respondent Amit Kumar** who had chosen to appear as a Witness, cannot be overlooked as he was as much an eye witness as the Complainant. Balancing the testimony of the PW-3 Complainant and DW1, it emerges that it was not a case of robbery of the Car, but a fight which took place because of the involvement of the Car of the Complainant and the Respondents, in a collision.

42. In this regard, it is also significant to note that the car of the Complainant, was recovered abandoned from a road side near R-Block Gurudwara, Rajender Nagar. According to the Prosecution, the vehicle was recovered at the instance of Amit Kumar and he even produced the keys of the Car.

43. In this context, it is pertinent to refer to the observations of the **Learned Sessions Judge**, who rightly held that the Recovery of the Car at the instance of Amit Kumar, is highly doubtful. The Car in fact, had been recovered abandoned. The claim of PW9 that the Car was recovered at his instance and he was carrying the keys of the Car, was absolutely unbelievable. It is difficult to believe that a person who has robbed the Car, would leave it on road side, but carry the keys in his pocket. The Recovery of the Car at the instance of Amit Kumar is not believable.



44. Rather, a comprehensive appreciation of the Evidence reflects that it was a Car which was found from a public place and the alleged recovery cannot be said at the instance of Amit Kumar, the Respondent, had the Car been actually stolen or it would not have been found standing near the Gurudwara. This further corroborates that it was not an incident of Robbery, wherein the Car of the Complainant was stolen, but it was a case of altercation on account of the hitting of the Car of the Complainant and that of the Respondents. *There is no element of Robbery proved from the Testimony of the witnesses.*

45. Before concluding, it may be noted that PW2 who had made the PCR call had stated that there were five assailants and this fact was re-affirmed by him in his Testimony. The Police may not have been able to apprehend the fifth assailant, but it cannot be said that the incident happened with the involvement of the four Accused. There was a fifth assailant, though not apprehended by the Police. On this account, it cannot be said that the offence under Section 395 IPC was not made out. **However, because the incident of Robbery is not proved, the Respondents are entitled to be Acquitted under Section 395 IPC.**

46. It may also be noted that according to the Complainant, he was beaten up by the Bat. To attract Section 397 IPC, the weapon used must be a 'deadly weapon'. Here it was a Baseball Bat; having regard to the manner it was used; it cannot be said that it was a 'deadly weapon'. Furthermore, the Complainant has deposed "*those persons abused me and beat me with baseball bat and hands and legs*". The Complainant has not named any of those Respondents specifically, as having beaten him.



47. In the circumstances, the Offence under Section 397 IPC, which is specific to the person who has used the deadly weapon, is not established. **The Respondents have been rightly acquitted under Sections 395/397/34 IPC.**

Conclusion:

48. For the reasons discussed above, it is held that there is no merit in the present Appeal, which is hereby, **dismissed**. Pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 18, 2026/N/R/VA