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

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*Reserved on: April 22, 2025
Pronounced on: 30th June, 2025*

+ **CRL.A. 217/2025 & CRL.M.(BAIL) 363/2025**

RIZWAN

.....Appellant

Through: Mr. Rohan J. Alva, Advocate on the
panel of Delhi High Court Legal
Services Committee & Mr. Anant
Sanghi, Advocate

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, Additional Public
Prosecutor for Respondent-State

+ **CRL.A. 219/2025 & CRL.M.(BAIL) 368/2025**

NADEEM

.....Appellant

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

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, Additional Public
Prosecutor for Respondent-State

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. Criminal Appeal under Section 415(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as*



'B.N.S.S.') has been filed on behalf of the Appellant-Rizwan and Appellant-Nadeem against the Judgment dated 26.11.2024 *vide* which they has been convicted under Sections 392/397/411/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*), and Order on Sentence and 29.01.2025.

2. ***Appellant Rizwan has been sentenced*** to undergo Rigorous Imprisonment for a period of seven years for offence under Section 397 of the IPC and four years for the offence under Section 392/34 IPC along with fine of Rs.5,000/-, in case FIR No.438/2016 dated 27.09.2016, registered at Police Station Gandhi Nagar, Delhi.

3. ***Appellant-Nadeem has been sentenced*** to undergo Rigorous Imprisonment of 4 years with fine of Rs.5,000/- for offence under Section 392/34 IPC and in default, to undergo Simple Imprisonment of 3 months. Besides he has been directed to pay fine of Rs.3,000/- for offence under Section 411 IPC and in default of payment of fine, he shall undergo Simple Imprisonment of 15 days.

4. All the sentences have been directed to run concurrently.

5. Both the appeals arise out of Judgment and Order on Sentence dated 26.11.2024 and 29.01.2025, and therefore, these Appeals are heard together and are being disposed of by this common judgment.

6. ***The case of the prosecution*** is that on 27.09.2016 at about 12:15 AM, information was received that two boys had robbed a purse after showing knife, at Adesh Jewellers, Gali no. 4, Raghubar Pura-II, Gandhi Nagar, Delhi, which was recorded vide DD No. 5A EX PW4/A.

7. Investigations were carried out by SI Nishant, who along with PW-2 Constable Pramod went to the spot where they met the complainant PW-5 Anil Sharma, who had apprehended the two Appellants. Head Constable



Satpal handed over the seized knife along with the purse and mobile snatched from the Complainant, Anil Sharma. On the statement of the Complainant Sh. Anil Sharma, FIR No. 0438/2016 dated 27.09.2016 under Sections 392/397/411/34 IPC, was registered. The Appellants were arrested. On completion of investigation, Chargesheet was filed on 24.01.2017 against the two Appellants Rizwan and Nadeem under Section 392/397/411/34 IPC.

8. ***Charge was framed*** on 16.03.2017 under Sections 392/34 IPC against both the Appellants. Appellant-Rizwan was additionally charged under Section 397 IPC and Appellant- Nadeem was charged under Section 411 IPC.

9. The ***statements of the two Appellants were recorded*** separately under Section 313. Cr.P.C. on 22.05.2024, wherein Appellant Rizwan stated that he was picked up by the Police from his house and was falsely implicated in this case as Complainant, Anil Sharma had to make payment to him for labour work. His thumb impressions were taken on several blank papers, which have been converted into several memos. He further stated that he works as a labour to unload building material with the Complainant, Anil Sharma and on the issue of labour charges, some arguments took place and the Complainant, Anil Sharma falsely implicated him in this case. ***Appellant-Nadeem in his statement under Section 313 Cr.P.C.*** denied the entire incriminating evidence and took the similar defence of being implicated falsely on account of labour charges.

10. The Ld. ASJ considered the evidence of the Prosecution in detail and concluded that the Complainant, Anil Sharma had been able to prove beyond reasonable doubt that the testimony of the Complainant, Anil



Sharma coupled with the Police witnesses PW-1 HC Satpal and PW-3 Ct. Vinod Kumar had apprehended the Appellants, Rizwan and Nadeem on the spot and the recovery of the stolen items was made from them and the knife Ex.P-1 used for commission of offence was recovered from the Appellant-Rizwan. ***Both the accused were convicted Vide Impugned Judgment dated 26.11.2024 as noted hereinabove.***

11. *Appellant-Rizwan was accordingly sentenced under Sections 392/34 IPC to imprisonment for 04 years with the fine of Rs.5,000/- in default SI for a period of 03 months. He was also sentenced under Section 397 IPC for a period of 07 years.*

12. **Appellant-Nadeem** was sentenced for 04 years with the fine of Rs.5,000/- in default 03 months SI for the offence under ***Sections 392/34 IPC***. He was also sentenced under ***Section 411 IPC*** with the fine of Rs.2,000/- in default 15 days SI.

Aggrieved by the said conviction and the sentence, the present Appeals have been preferred on behalf of the two Appellants, Rizwan and Nadeem.

The grounds of challenge, taken by both the Appellants, Rizwan and Nadeem in their respective Appeals, are that as per DD No. 5A, the first informant had made the PCR call in respect of robbing of his purse, but when he gave his Complaint, he alleged that he has also been robbed of his mobile phone, which has not been proved. Moreover, neither complaint of the robbed mobile phone is mentioned in the Complaint nor its IMEI number is mentioned and also no ownership of alleged phone is proved by the prosecution. Also, the Complainant, Anil Sharma had called the PCR while chasing the two accused, which is highly improbable.

The alleged purse and mobile recovered from the two Appellants,



were not sealed in a *pulanda* before being deposited in *malkhana*. Furthermore, according to Seizure memo, the purse contained Rs.500 and one copy of voter I-card of the Complainant, Anil Sharma. However, during trial, purse was found to be containing four notes of Rs.100 denomination and ten notes of Rs.10 denomination. It clearly makes the recovery of the purse from the Appellants, Rizwan and Nadeem, doubtful.

13. It is further contended that the recovery of the alleged mobile phone and purse has not been proved beyond reasonable doubt, but it being planted on co-accused Nadeem, cannot be ruled out.

14. It is also contended that while this alleged recovery of purse and mobile was shown recovered from Appellant, Nadeem but no such recovery has been affected in the Personal Search Memo of the Appellants, which again demolishes the entire case of the prosecution, as has been spelt out in the case of Anwar @ Bhugra vs. State of Haryana 2023 SCC OnLine SC 354.

15. Furthermore, PW-2 Ct. Pramod, PW-3 Ct. Vinod Kumar and PW-5 Anil Sharma deposed that no public witness was present at the time incident, while PW-6 SI Nishant had stated that due to odd hours not many persons were present and only one or two public persons were present, who were asked to join but they refused to join. There is material contradiction in this regard as well.

16. It is further contended that the Complaint on which *rukka* was prepared, as well as the site plan which was prepared on the spot, based on which the FIR 0438/2016 dated 27.09.2016 was registered. It is evident that the FIR 0438/2016 was recorded subsequent to the preparation of the *rukka*. Thus, it is contended that there are material contradictions in the prosecution



case making the entire case not believable.

17. It is further contended on behalf of Appellant-Nadeem that at best, the case made out against him is under Section 397 IPC and by no interpretation of law can they be convicted under Section 392 IPC. It is submitted that recovery of knife has not been proved beyond reasonable doubt and therefore, the offence committed at best can be said to have been committed under Section 397 IPC.

18. Reliance has been placed on the judgement of this Court in Mohan Singh v. State, 1987(13) DRJ 176, wherein it was observed that *in order to bring home a charge under Section 397 the prosecution is duty bound to produce convincing evidence that the knife used by the accused in this case was a deadly weapon, it is no doubt true that knives are weapons available in various sizes and may just cause little hurt or may be a deadliest.*

19. It is further contended that the two Appellants, Rizwan and Nadeem had worked as labour for the Complainant, Anil Sharma and there was money dispute and the Complainant, Anil Sharma who had forced them to sign blank papers. Thereafter, they both were falsely implicated in the present case, which has also been stated in their statements recorded under Section 313 Cr.P.C.

20. *It is argued that they have been falsely implicated in this case and the Impugned Judgment dated 26.11.2024 and Order on Sentence and 29.01.2025, deserves to be set aside.*

21. ***Learned Additional Public Prosecutor for Respondent-State*** has submitted that the testimony of the Complainant, Anil Sharma is fully corroborated by two Constables who happened to be present at the time of incident and apprehended two appellants. Moreover, not only they were



apprehended, but also the recovery was also made there and then.

22. Ld. Additional Public Prosecutor has further argued that the testimony of recovery of money from the purse is sufficiently explained during evidence as four notes of Rs.100 and ten notes of Rs.10 was recovered, which has been rightly appreciated by the Ld. ASJ.

23. It is further argued that the robbed articles do not found part of the personal search, but are separately reflected in the Seizure Memo and therefore, the judgment relied upon, does not assist the case of the Appellants, Rizwan and Nadeem.

24. Furthermore, the defence as alleged by the Appellants, Rizwan and Nadeem in the statement under Section 313 Cr.P.C. has not been suggested to any of the Prosecution Witnesses.

25. The testimony of the Complainant, Anil Sharma is fully reliable. Though he was partly cross- examined and could not be completed on account of his demise, but the Ld. ASJ has rightly observed that non completion of cross-examination may impact the evidentiary value but it does not make such statement of the complainant, inadmissible in law.

26. *It is therefore, submitted that there is no merit in the present Appeal and it is liable to be dismissed.*

Submissions heard and record perused.

27. The star witness of the Prosecution was PW-5 Anil Sharma, the Complainant, who deposed that he was running the business of building material. On 27.09.2016 at about 12.15 AM, while he was returning from his shop after deloading the building material, when he reached near Ahinsa Jewelers, Raghubarpura, the Appellant-Rizwan came and placed a knife on his abdomen, while Appellant-Nadeem threatened that if he raised an alarm,



they would stab him in the abdomen. Appellant-Nadeem took out his purse and mobile phone from the pockets of his clothes. Thereafter, both the Appellants, Rizwan and Nadeem started running but the Complainant gave them a chase and also made a call at number 100 from his other mobile phone.

28. While the Appellants, Rizwan and Nadeem were running through Gali No. 4, Raghubarpura with Complainant, Anil Sharma chasing them, two Police officials came from the backside on the motorcycle and the Complainant told the Police officials about the Appellants having committed robbery. Both the Police officials chased the Appellants and apprehended them at some distance.

29. He further deposed that in the meanwhile, the Complainant, Anil Sharma also reached at the spot. The Appellant-Rizwan was holding the knife in his hand. On the search of Appellant-Nadeem, his purse and mobile were recovered from the right pocket of his pants. SI Nishant, IO, also reached the spot and the two Appellants along with the recovered purse and mobile phone, were handed over to him. His statement PW5/A was recorded by SI Nishant. The knife, purse and mobile phone were seized *vide* memo Ex. PW1/B and C, respectively. The site plan Ex. PW5/B was also prepared. The two Appellants were arrested. Their disclosure statements were recorded by the IO. The knife was sealed in a parcel before being seized.

30. The two Appellants, Rizwan and Nadeem were identified by him in the Court. He also identified his purse found containing Rs.500/- in the denomination of four notes of Rs.100 each and ten notes of Rs.10 each and also photocopy of his Voter ID Card Ex.P-2 and the robbed articles were identified by him. The mobile phone make Nokia of black color of the



Complainant, Anil Sharma was identified by him as Ex.P-3.

31. The Complainant was partially cross-examined by the Counsel on behalf of both the Respondents, wherein he explained that he was running the business of building material since 2011. On the date of incident, he had come to his Shopat about 11-11.30 PM on the previous night and was present for work in the shop. He explained that his shop opens at about 9.00 AM. Labour work till about 6-7 PM and thereafter, the building material gets deloaded at the site. Truck driver and Conductor left the site after deloading. Some truck drivers over-engaged in the work, were paid immediately and at times, after a few days. He did not remember if he had made the payment to the truck driver on the date of incident. He further explained that he managed and purchased the requisite material and supplied the same to the destination given by the contractor and also guide and helped the concerned truck driver to reach the destination with the direction to unload the material. For the said work, he used to get the commission from the contractor concerned.

32. The Complainant explained that he used his motorcycle for his movement but on the date of incident, his motorcycle was punctured, which had been left by him at the side of the contractor, near Indira Gali. He was going back to his house on the foot when the incident happened. He further explained that the distance between the place of incident near Ahinsa Jeweler and the destination of the contractor where the material was unloaded, was about half a kilometer. The Appellants were on foot at that time. He further stated that the entire incident may have taken 5-7 minutes.

33. The further cross-examination of the Complainant, Anil Sharma was deferred due to paucity of time. However, in the meantime, before his cross-



examination could be completed, he died.

34. The question arose whether his testimony whereby part cross-examination was deferred, could be considered as testimony on behalf of the prosecution.

35. In the case of Krishan Dayal v. Chandu Ram, 1969 SCC OnLine Del 134, Coordinate Bench of this Court, held that the examination-in-chief of a witness would not become inadmissible due to his death before the cross-examination could be completed. However, it was observed that the degree of weight to be attached, would depend upon the circumstances of the case.

36. Similar observations were made by the High Court of Judicature at Allahabad in Ahmad Ali vs. Jyoti Pershad, AIR 1944 ALL 188A and by High Court of Calcutta in Devar Park Building Ltd. vs. Smt. Madhuri Jalan, AIR 2002 Cal 281.

37. Therefore, though his cross-examination was not completed, his testimony was admissible in evidence and has been rightly relied upon by the Ld. Trial Court.

38. Moreover, his testimony got corroborated by PW-1 HC Satpal and PW-3 Vinod Kumar, who deposed that they were patrolling in the area when they found the Complainant shouting and chasing two persons, on foot. The Complainant informed them that the aforesaid persons had robbed him of his mobile and purse, on the point of a knife. They both chased and apprehended the two Appellants, Rizwan and Nadeem.

39. From Rizwan, the knife which he was holding in his right hand was recovered, the sketch of which was prepared and thereafter, sealed in a *pulanda* and seized *vide* memo Ex.PW1/B and the mobile of the Complainant, Anil Sharma was recovered, which was seized *vide* memo Ex.



PW1/C. The two witnesses were cross-examined, but nothing material could be elicited to create a doubt about their testimony.

40. The Appellants, Rizwan and Nadeem had vehemently contended that there were material contradiction in the testimony of the three material witnesses in regard to the presence of public witnesses. PW-1 HC Satpal had said that there were 2-3 persons present at the time of incident, but they refused to join the investigations. Likewise, PW-6 SI Nishant, IO stated that one or two public persons were present. PW-5, the Complainant, however, in his cross-examination had stated that there were no public witnesses present. This aspect cannot be considered of any consequence or a contradiction on material aspect. The gravamen of the testimony of the 03 witnesses, only confirmed that no public persons had joined the investigations. Beyond this, there is no contradiction in their respective testimonies, which is essentially consistent.

41. The Appellants, Rizwan and Nadeem were apprehended on the spot and the robbed articles were recovered from the possession of Nadeem. The Ld. ASJ has rightly convicted the Appellants, Rizwan and Nadeem under Sections 392/34 IPC.

42. ***However, once the conviction had been made under Section 392 IPC, further conviction under Section 411 IPC of Appellant-Nadeem was not warranted, which is hereby set aside.***

43. Insofar as Appellant-Rizwan is concerned, it is consistently proved that he had kept the knife on the abdomen of the Complainant, Anil Sharma while committing the robbery and the Appellants, Rizwan and Nadeem had threatened to stab him in case he raised an alarm.

44. In the case of Dilawar Singh vs. State of Delhi, 2007 SCC OnLine SC



1086 while interpreting Section 397 IPC, it was observed that term “offender” used in Section 397 IPC refers to only the culprit who actually uses deadly weapon. When only one has used the weapon, others cannot be awarded the minimum punishment as this Section envisages only individual liability and not constructive liability. Section 397 IPC is attracted only against the particular accused who uses the weapon or does any of the acts as mentioned in this Section. Other accused cannot be vicariously held liable for the acts of the co-accused. Similar observations had been made in the case of Phool Kumar vs. Delhi Admn., (1975) 1 SCC 797.

45. Another important aspect which emerges in Section 397 IPC is that only such offender, who “uses” the weapon. The term “use” was interpreted in the case of Phool Kumar (*supra*) wherein it was observed that the use of weapon by the offender if used for creating terror in mind of victim, is sufficient to constitute “use”. Similar observations were made in the case of Ashfaq vs. State of NCT of Delhi, AIR 2004 SC 1253. In the case of Murlidhar vs. State, 2018 SCC OnLine Del 9401, reliance was placed on the aforesaid judgments to conclude that the term “use” would include threatening and would be sufficient to constitute offence under Section 397 IPC.

46. ***Appellant-Rizwan has been rightly convicted under Section 397 IPC, which is established by the recovery of knife from him on the spot.***

47. The Appellants had taken a plea that they had a dispute over labour charges with the Complainant and they have been falsely implicated in this case. However, this defence was never suggested to any of the prosecution witnesses. Moreover, aside from raising a claim in their statements under Section 313 Cr.P.C., no independent evidence was led by the Appellants,



Rizwan and Nadeem to prove that there was any dispute in regard to payment of the labour charges or that they had been implicated falsely in this Case.

Conclusion:

48. The Complainant, Anil Sharma had categorically deposed that the knife was put on his abdomen and he was threatened against raising an alarm or else he would be stabbed. The testimony of the Complainant, Anil Sharma corroborated by two Police Officials who apprehended the Appellants on the spot and recovered the robbed articles, has proved the case of the prosecution beyond doubt. The Appellants have been rightly convicted and sentenced.

49. There is no merit in the present Appeals, which are hereby dismissed along with the pending Applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 30, 2025

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