

**IN THE COURT OF SH. PREM KUMAR BARTHWAL
PRINCIPAL DISTRICT & SESSIONS JUDGE
NORTH DISTRICT: ROHINI COURTS: DELHI**

In the matter of:-

CNR No. DLNT01-002259-2024

Sessions Case No. 104/2024

FIR No. 241/2023

Police Station : Bhalswa Dairy

U/s 392/397/34 IPC

State

V/s

Azeem

S/o Mr. Ajmat Ali

R/o Khasra No. 548, Main Road Rajiv Nagar

Bhalswa Dairy, Delhi-110042

.... Accused

Date of committal to this court	15.02.2024
Final arguments concluded on	27.03.2026
Date of Judgment	30.03.2026

Appearance : Sh. Girish Giri, Ld. Addl. PP for the State.
Sh. R.K. Mishra, Ld. Counsel for accused.

JUDGMENT

1. Accused Azeem has been charge-sheeted by the police of Police Station Bhalswa Dairy for the offence punishable under section 392/397/34 Indian Penal Code (hereinafter referred to as “IPC”).

2. The facts, in brief, as borne out from the charge sheet, are that on 11.02.2023 at about 6:30 pm when complainant Jitender

S/o Sh. Ashok was coming out of the playground, Bhalswa, Delhi, after playing cricket then accused came there along with his two associates and started arguing with the aforesaid complainant and the accused first took complainant's mobile phone and broke it and he also forcibly took Rs.300/- - Rs.400/- from the complainant's pant pocket by showing a big knife. He also complained that his Aadhar card was also lying between the robbed cash. The complainant went to his house and did not call police due to the threats and told his family members who encouraged him to make police complaint. Accordingly, the matter was reported to the police by the complainant on the same night and Police recorded statement Ex. PW1/A of the complainant/victim Jitender, on the basis of which the present case FIR was registered.

3. Upon completion of the investigation, chargesheet was filed against the accused. After compliance of provisions of Section 207 Cr.PC, since the offence u/s 392/397/34 IPC is exclusively triable by the Court of Sessions, the Court of Ld. MM concerned committed the present case to the Court of Sessions, under provisions of Section 209 Cr.PC for trial.

CHARGE

4. On 29.02.2024, accused Azeem was charged for having committed offences punishable u/s 392/34 IPC and u/s 397 IPC, to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

5. To substantiate its case, the prosecution has examined

following six witnesses in all.

Chart of Witnesses Examined

Prosecution Witness No.	Name of Witness	Description
PW-1	Mr. Jitender	Victim/Injured.
PW-2	ASI Sita Ram Bhagat	Duty Officer
PW-3	HC Jitender	Duty Officer
PW-4	HC Bhim Singh	To prove statement u/s 161 Cr.PC
PW-5	SI Mahender Koli	To prove statement u/s 161 Cr.PC
PW-6	ASI Narender Singh	IO

Chart of Exhibited Documents

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Ex. PW1/A	Statement of complainant/Jitender	PW1/Jitender
Ex. PW1/B	Site Plan	PW1/Jitender
Ex. PW2/A	GD/DD No. 9A	PW2/ASI Sita Ram Bhagat
Ex. PW3/A	FIR	PW3/HC Jitender
Ex. PW3/B	Endorsement on rukka	PW3/HC Jitender
Ex. PW3/C	Certificate u/s 65B of Evidence Act	PW3/HC Jitender
Ex. PW4/A	Disclosure statement of accused Tipu Sultan	PW4
Ex. PW6/A	Rukka	PW6/ASI

		Narender Singh
Ex. PW6/B	TIP proceedings application of accused Tipu Sultan	-do-
Ex. PW6/C	Notice issued to the complainant for TIP proceedings	-do-
Ex. PW6/D	Application for cancellation of TIP proceedings	-do-
Ex. PW6/E	Copy of order dated 12.04.2023 releasing co-accused Tipu Sultan @ Rizwan	-do-
Ex. PW6/F	Arrest Memo of accused Azeem	-do-
Ex. PW6/G	Interrogation report in respect of accused Azeem	-do-
Ex. PW6/H	Disclosure statement of accused Azeem	-do-
Ex. PW6/A-1	Arrest memo of co-accused Tipu Sultan	-do-
Ex. PW6/A-2	Disclosure statement of co-accused Tipu Sultan	-do-

6. PW1 Jitender is the complainant/victim and rest of the witnesses are formal witnesses i.e police officials.

7. It is a settled law that in a criminal trial, burden to prove the guilt of the accused beyond reasonable doubt always lies upon the prosecution and the same never shifts. PW-1/complainant Jitender has deposed before court that on 11.02.2023 at about 06.30 pm when he came out of the playground, Bhalswa Dairy, after playing cricket there, accused Azeem along

with his two associates met him and started abusing him. He further deposed that he had also abused the accused and thereafter the accused had grappled with him and started beating him. He further deposed that he had fallen down and, due to fall, his mobile phone which was in his pocket had broken and the upper pocket of his shirt was also torn during the scuffle and Rs.200 or 300/- and his aadhar card had also dropped there. He further deposed that thereafter he had gone to his house and when he became normal in the night, he had informed the police and police recorded his statement/complaint Ex.PW1/A. He further deposed that he had shown the place of incident to the police and the site plan Ex.PW1/B was prepared by the IO. During his deposition before the Court, PW1/complainant correctly identified accused Azeem who was present in the Court.

8. Since PW1 i.e. complainant/victim Jitender resiled from his earlier statement made to the police, he was permitted to be cross-examined by Ld. Addl. PP for the State on his request, during which, he admitted that in his statement Ex.PW1/A he had stated that accused Azeem had first taken his phone and had broken the same. However, he could neither admit nor deny whether he had told the police that accused Azeem had shown a big knife to him or that the accused had forcibly taken Rs.300-400/- cash and his aadhar card from the pocket of his pant. He has also deposed that he was very much disturbed at that time due to his family condition. He further admitted that he had discussed the matter with his family members and had called to the police in the night on the advise of his family members. He further admitted that the

accused is his neighbour and that they have settled the dispute amicably with the intervention of common friends and respectable persons of their locality and due to this reason, he had also helped accused at the time of his anticipatory bail in the present case.

9. During his cross-examination conducted by the Ld. Counsel for the accused, PW1 has deposed that he had started playing cricket when the accused had completed his game of cricket and that they both used to play cricket together. He denied the suggestion that the number of persons were present there and they all were quarreling with each other. He further denied that someone else had quarreled with him and had broken his mobile phone or that the said persons were unknown to him and hence, he had named Azeem who was known to him earlier. He further denied that no knife was used by the accused in the present incident. He voluntarily added that at that time he was very much disturbed and perplexed due to the loss of his mobile phone, that is why he could not recollect the facts exactly.

10. PW2/ASI Sita Ram Bhagat/Duty Officer deposed that on 12.02.2023, at about 01.28 AM, he had recorded GD/DD No. 9A vide Ex.PW2/A, on receiving a call in the CCTNS in the computer from PCR with regard that "*Play ground Bhalswa Dairy incident Description : Caller se 3 Ladko ne maarpit karke Chaku Dikhakar paise chin liye sham 7 baje kea as paas*". PW2 further deposed that he informed PW6/ASI Narender through phone about the said call to whom the said call was assigned and thereafter he departed for the spot with HC Prateek.

11. PW3/HC Jitender is also Duty Officer and he deposed that on 12.02.2023 at about 11.55 PM, ASI Narender produced a *Tehrir* before him for registration of FIR and he/PW3 registered the FIR vide FIR No. 241/2023 under section 392/34 IPC, Ex.PW3/A and that he/PW3 had also made an endorsement on it vide Ex.PW3/B and also issued a certificate under section 65B Evidence Act vide Ex.PW3/C. PW3 further deposed that after registration of the case, he handed over the copy of FIR to ASI Narender for further investigation.

12. PW-4 HC Bhim Singh deposed that on 30.03.2023, he alongwith SI Mahender Koli and HC Teenu apprehended and arrested Tipu Sultan @ Rizwan (since discharged in the present case) in case FIR No. 213/2023 PS Bhalswa Dairy, who made disclosure statement with regard to the present case disclosing the name of the accused Azeem and in the incident of the present case. PW-4 further deposed that IO informed the Duty Officer and handed over the documents pertaining to abovementioned case and the concerned documents of the case including the disclosure statement of Tipu Sultan, Ex.PW4/A (Colly). During his cross-examination, PW-4 denied the suggestion that Tipu Sultan had not made any disclosure statement or had not disclosed the name of accused Azeem or involvement of any friend of the accused.

13. PW-5 SI Mahendra Koli deposed that on 30.03.2023, he with the help of HC Teenu and HC Bhim apprehended Tipu Sultan @ Rizwan (since released) from near Jhanda Chowk, Bhalswa Dairy and arrested him in a case bearing FIR No. 213/2023 PS Bhalswa Dairy and that the said Tipu Sultan admitted

his guilt in the present case as well and about the involvement of accused Azeem and one of the friends of Azeem in the present case and he made his disclosure statement. PW-5 further deposed that he informed the Duty Officer and handed over the relevant documents, Ex.PW4/A (Colly), of the case to the IO ASI Narender who recorded his statement.

14. PW6/ASI Narender Singh who is Investigating Officer deposed that on receipt of DD No. 9A, Ex.PW2/A at about 1:30 am, he along with HC Prateek reached at the spot i.e. play ground Bhalswa Dairy and contacted the complainant who stated that he would come to the police station to make his statement. He further deposed that on 12.02.2023 itself at about 11 pm, complainant Jitender came to the police station and made his statement Ex. PW1/A and he (PW6) made endorsement on the said statement, prepared the rukka Ex. PW6/A and handed over the same to the Duty Officer and got the present case registered u/s 392/34 IPC. He further deposed that thereafter he prepared the site plan Ex. PW1/B at the instance of the complainant and searched for the CCTV camera, but could not find any CCTV.

15. PW6 further deposed that on 31.03.2023, SI Mahendra Koli informed about the arrest of Tipu Sultan @ Rizwan in case bearing FIR No. 213/2023 PS Bhalswa Dairy and about his involvement in the present case along with accused Azeem and produced relevant documents Ex. PW4/A (colly) of case FIR No. 213/2023 PS Bhalswa Dairy including the disclosure statement of accused Tipu Sultan. He further deposed that Tipu Sultan was arrested in the present case vide arrest memo Ex. PW6/A-1 and

made his disclosure statement Ex. PW6/A-2. He further deposed that Tipu Sultan was kept in muffled face and his TIP proceedings application Ex. PW6/B was moved and TIP proceedings of Tipu Sultan was fixed for 12.04.2023. However, the complainant gave in writing Ex. PW6/C to the effect that he could identify only accused Azeem and could not identify the other two associates involved in the incident. He further deposed that he moved an application Ex. PW6/D for cancellation of the TIP proceedings. He further deposed that Tipu Sultan @ Rizwan was released in the present case vide order dated 12.04.2023 Ex. PW6/E due to no incriminating evidence i.e. neither any recovery nor his identity had been fixed in the case.

16. PW6 further deposed that on 05.06.2023, complainant Jitender had identified accused Azeem in the police station. Accused Azeem was arrested in the present case vide arrest memo Ex. PW6/F. PW6 also proved on record the interrogation report as Ex. PW6/G. During his deposition before the Court, PW6 also correctly identified accused Azeem who was present in the Court.

17. During his cross examination conducted by the Ld. Counsel for the accused, PW6 denied the suggestion that accused Azeem was not identified by complainant Jitender on 05.06.2023 in the present case or that the signatures of the accused were obtained on various blank papers and same were turned into various memos prepared in the present case. He further denied that accused Azeem has been falsely implicated in the present case or that he has not conducted the investigation of the present case in a fair and impartial manner.

18. After conclusion of prosecution evidence, the same was put to the accused with a view to have his version of the events and explanation with regard to the evidence coming on record. The statement u/s 313 Cr.PC of the accused was recorded in which he denied the allegations leveled against him and claimed that he has been falsely implicated in the present case by the complainant in connivance with the police. He further stated that he had not gone to play cricket to the place of alleged incident on the day of incident and that nothing has been recovered from his possession. He opted not to lead any evidence in his support.

19. I have considered the submissions made by both the sides and have gone through the entire record carefully and written arguments filed on behalf of the accused.

20. Ld. Addl. Public Prosecutor for the State has argued that the prosecution has proved its case beyond reasonable doubt against the accused Jitender and the complainant and other witnesses have supported the prosecution case.

21. On the other hand, Ld. Counsel for the accused has argued that the accused has been falsely implicated in the present case and prosecution has failed to prove its case beyond reasonable doubt against the accused. It has been argued that the testimony of main witness/PW1 suffers from material inconsistencies, improvements and cannot be relied upon. It is further argued that the charges have not been proved beyond reasonable doubt and the accused is entitled for acquittal.

22. The cardinal principle of the criminal law is that the

accused is presumed to be innocent till he is proved guilty beyond any reasonable doubt. The burden of proving guilt of the accused exclusively lies on the prosecution. The benefit of doubt, if any, must go in favour of the accused. In this context, it is relevant here to mention the judgment of the Hon'ble Supreme Court in ***Ashish Batham Vs. State of M.P., (2002) 7 Supreme Court Cases 317***, where it has been observed as under:-

“Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”

23. It has also been held in State of ***U.P. Vs. Naresh : (2011) 4 SCC 324***, as under :

“In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do

not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.”

24. It has been observed by the Hon'ble Supreme Court in **1995 SCC (Crl.) 160**, as under :

“8. As a general rule, a court can and may act on the testimony of a single witness though uncorroborated provided the testimony of that single witness is found out entirely reliable. In that case, there will be no legal impediment for recording a conviction. But if the evidence is open to doubt or suspicion, the court will require sufficient corroboration. In this connection, reference may be made to a decision of this Court in Vadivelu Thevar V. State of Madras wherein this Court has classified the testimony of a witness into three categories viz. (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable and observed that although in the first two categories of classification, there may not be any difficulty in coming to a conclusion either accepting or rejecting the testimony, it is in the third category of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony either direct or circumstantial.”

25. Now coming to the facts of the present case, Mr. Jitender (PW-1), who is the complainant/injured, is the star witness and the most material witness of the prosecution. Testimony of the said witness/PW-1 recorded on 09.08.2024 reveals that he had claimed that the accused had abused him and he had also abused the accused thereafter they grappled and he had fallen down. He further deposed that due to the fall, his mobile phone which was in his pocket had broken and the upper pocket of his shirt was also torn during the scuffle and Rs.220/- to Rs.300/- and aadhar card also dropped there. The Ld. APP for the State had sought permission to cross-examine the witness as he was resiling from his previous statement and the said request was allowed. In judgment reported

as *Suraj Mal versus The State (Delhi Admn.), AIR 1979 S.C. 1408*, Hon'ble Apex Court has observed as under:

“Where witness make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witness.”

26. Similar view was also taken in the judgment reported as *Madari @ Dhiraj & Ors. v. State of Chhattisgarh, 2004(1) C.C. Cases 487*. In the judgment reported as *Namdeo Daulata Dhayagude and others v. State of Maharashtra, AIR 1977 SC 381*, it was held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused.

27. In the light of the law laid down in the aforesaid judgments, this Court has to appreciate the evidence of the prosecution witnesses. Any victim/injured would be most keen to ensure that the real culprit does not go scot free. PW1 Jitender is the complainant/victim and so he is the most material witness of the prosecution case. The complainant/PW1 has deposed before court during his examination-in-chief that he had fallen down and due to fall, his mobile, which was in his pocket had broken and Rs.200/- or Rs.300/- and his aadhar card had also dropped at the place of incident. On the other hand, in his complaint to the police on 12.02.2023, he had claimed that accused Azeem had broken his

phone and the accused had shown a big knife and forcibly taken Rs.300/- to Rs.400/- and aadhar card from his pant pocket. During his cross-examination by the Ld. Addl. PP for the State, he deposed that he could neither admit nor deny whether he had told the police that accused Azeem had shown a big knife to him or that the accused had forcibly taken Rs.300-400/- cash and his aadhar card from the pocket of his pant. These variations in the testimony of PW-1/complainant are not minor contradictions or trivial improvements but are material inconsistencies rendering his testimony to be lacking credibility and coherence. Thus, the testimony of PW1 Jitender is found to be inconsistent and the same is not of the sterling quality to base conviction only on testimony of said witness. Even otherwise, no recovery of any knife has been effected in the present case and, in fact the IO PW6/ASI Narender Singh has not even deposed about any efforts made to recover the said knife i.e. the alleged weapon of offence. The refusal of the complainant to take part in the TIP proceedings of another person namely Tipu Sultan @ Rizwan, who was subsequently released by the Ld. MM vide order dated 12.04.2023, Ex.PW6/E also render the prosecution case doubtful. The alleged incident is stated to have taken place near playground Bhalswa Dairy, from where the complainant claimed to be coming out of the play ground after playing cricket but still no public witness or even the persons with whom complainant was playing cricket have been examined. There is no medical document regarding any injury suffered by the complainant due to the alleged beatings given to him. The prosecution has also not brought on record any reason/motive for the scuffle between the parties and even the family member/s of

the complainant who are stated to have encouraged the complainant to lodge the complaint have been interrogated by the police to explain the delay in lodging the FIR. Accordingly, this court is of the considered opinion that prosecution has failed to prove the charges against accused Azeem beyond reasonable doubt.

28. Having considered the submissions of rival sides and material on record including the documents as well the statements of the witnesses, this Court is of the considered opinion that the case of the prosecution has miserably failed and the prosecution has failed to prove the charge against the accused Azeem beyond reasonable doubt and accused is entitled for benefit of doubt. Accordingly, accused Azeem is hereby acquitted for the offence punishable u/s 392/34 IPC and u/s 397 IPC.

29. Accused Azeem is directed to furnish bail bond in the sum of Rs.20,000/-, with one surety in the like amount, under provisions of Section 437-A Cr.PC. File be consigned to record room.

*Announced in the open court
today i.e. 30.03.2026 (NSR)*

(PREM KUMAR BARTHWAL)
Principal District & Sessions Judge (North)
Rohini Courts, Delhi.