

**IN THE COURT OF MS. VANDANA:**  
**ADDL. SESSIONS JUDGE-02(NORTH):**  
**ROHINI DISTRICT COURTS : DELHI**

In the matter of:-

**(Sessions Case No. 470/2025)**

<b>FIR No.</b>	315/2025
<b>Police Station</b>	Bawana
<b>Charge sheet filed Under Section</b>	309(4)/311/317(2)3(5) BNS
<b>Charge framed Under Section</b>	317(2)/311/309(4)/3(5) BNS

**State V/s (1) Kalam**  
**S/o Mr.Azad**  
**R/o B-2026, JJ Colony,**  
**Bawana, Delhi.**

**(2) Md. Nizam**  
**S/o Mr. Zamil Ahmad**  
**R/o C-452, JJ Colony,**  
**Bawna, Delhi.**

**.....Accused Persons**

<b>Date of institution</b>	09.07.2025
<b>Arguments concluded on</b>	18.03.2026
<b>Judgment Pronounced on</b>	18.03.2026
<b>Decision</b>	<b>Both accused</b> <b>acquitted U/s 309(4)/</b> <b>311/3(5) BNS</b> <b>Accused Kalam</b> <b>Convicted U/s 317(2)</b> <b>BNS</b>

## JUDGMENT

### BRIEF FACTS

1. Events which set the prosecution machinery into motion are that complainant Balram made a statement that on 20.05.2025, when he came to Sai Dharam Kanta, Sector 1, DSIIDC, Bawana, for weighing of his vehicle and parked his vehicle near Sai Dharam Kanta and went to nearby shop to purchase some edible, then two boys came from behind and one of them caught him from behind and another forcefully took out Rs.6000/- at knife point from the right pocket of lower, hence, the present FIR registered.

After recording the statement of the witnesses and on completion of the investigation, the charge sheet was filed under Section 309(4)/311/317(2)/3(5) BNS, by the IO.

### CHARGE

2. On committal of the case to the Court of Sessions, vide order dated 15.09.2025 charge under Section 309(4)/3(5) BNS was found to be made out against both accused persons. In addition, charge under Section 311 BNS was found to be made out against accused Nizam and charge under Section 317(2) BNS was made out against accused Kalam. The formal charges as above were framed against the accused persons on the said date to which they pleaded not guilty and claimed trial.

**PROSECUTION EVIDENCE**

3. Thereafter, prosecution in support of its case have examined 02 witnesses in all.

Sl. No.	Prosecution witness No.	Name of witness	Description
1.	PW1	Sh. Balram	Complainant
2.	PW2	SI Sumit	Investigating Officer

**PW1 Sh.Balram is the complainant,** whose deposition is as under:

*“ On 20.05.2025, at around 9.00 a.m., I was going to to Sai Dharamkanta Sector 1, for the getting weighed of my vehicle. At some distance from Sai Dharamkanta, I stopped my vehicle and get down to buy something to eat. When I reached in a street near the round about of Sai Dharamkanta, two boys came from behind. One boy caught hold me from behind and the second one showed knife to me and took out Rs.6,000/- from the right pocket of my wearing pant and ran away from there. I raised alarm but both of them had already ran away from there. I could not see their faces at that time that is why I cannot identify the accused persons, if shown to me. I went to the police station and lodged my complaint, which is now **Ex.PW1/A** bearing my signature at point A. I showed the spot of incident to the police and the site plan is now **Ex.PW1/B** bearing my signature at point A.*

*I do not want to say anything else.*

He was duly cross examined by Ld. Addl. PP for the State as he is resiling from his earlier statement.

*“ At this stage, attention of the witness is drawn towards his complaint Ex.PW1/A from point X to X1. Witness stated that he never told the police that he saw the faces of accused persons and he can identify the accused persons.*

*At this stage, the attention of the witness is drawn towards his statement recorded under Section 161 Cr.P.C., which is now mark as Mark PW1/X.*

*It is wrong to suggest that on 20.05.2025, I along with IO went to search the accused persons in District Park Sector 2, DSIIDC, Bawana, Delhi, where I identified two persons who were sitting there as the same person who robbed my money by showing knife. It is wrong to suggest that IO made inquiry from the accused persons and their names revealed as Kalam and Nizam. It is wrong to suggest that IO conducted their search and 06 notes of Rs.500/-, 04 notes of Rs.100/-, 01 note of Rs.20, 01 note of Rs.10/- were recovered from the possession of accused Kalam and I told the IO that said money was mine. It is wrong to suggest that when IO conducted the search of accused Nizam, one knife was recovered from the left dub of wearing pant of accused Nizam and I identified the same, which was used by the accused to rob my money. It is wrong to suggest that I identified accused Kalam, who caught hold of me from behind. It is wrong to suggest that IO arrested the accused persons in my presence and seized the recovered case property in my presence.*

*At this stage, the attention of the witness is drawn towards the sketch of the knife, seizure memo of amount Rs.3430/-, seizure memo of knife, arrest memo of both the accused persons. Witness correctly identified his signatures on all the memos mentioned above at point A*

*respectively by saying that he did not read those documents prior to signing and he put his signatures on semi typed papers at the instance of the IO.*

*The sketch of the knife is now **Ex.PW1/C**, seizure memo of amount Rs.3430/- is now **Ex.PW1/D**, seizure memo of knife is now **Ex.PW1/E**, arrest memo of both the accused persons are now **Ex.PW1/F** and **Ex.PW1/G**.*

*At this stage, the attention of the witness is drawn towards the accused persons produced from the JC. Witness stated that he already told that he did not see the faces of the accused persons at the time of incident that is why he cannot identify the accused persons shown to him as the same person who committed offence with him.*

*It is wrong to suggest that I am deliberately hiding the truth with respect to arrest of the accused persons and recovery affected from them in my presence to save them from the present case. It is wrong to suggest that I am deliberately not identifying the accused persons. It is wrong to suggest that I have been won over by the accused persons that is why I am deposing falsely before the court today.*

*At this stage, MHC(M) has produced the case property. Same is opened with the permission of the court, same is opened, which is found containing one knife (vegetable cutting knife). Witness correctly identified the same being recovered from the possession of accused Md. Nizam. Same is already **Ex.X1**.*

*At this stage, MHC(M) has produced the case property. Same is opened with the permission of the court, same is opened, which is found containing currency notes by denomination of 06 notes of Rs.500/-, or 04 notes of Rs.100/-, 01 note of Rs.20/- and 01 note*

*of Rs.10/-. Witness correctly identified the same being recovered from the possession of accused Kalam. Same is already Ex.X2 (colly)”.*

He was not cross examined by Ld. Counsel for the accused persons despite opportunity being granted.

**PW2 is SI Sumit.** He had deposed on 20.05.2025, a PCR call was received by DO and the same was forwarded/marked to him for investigation. After receiving the same, he along with other police staff namely HC Pardeep and HC Arvind reached at the incidental spot i.e. near Sai Dharam Kanta Sector 1, Bawana. When they reached there, they met complainant Balram and he narrated him the whole incident. He further deposed that he recorded his statement Ex.PW1/A and made endorsement Ex.PW2/A on the statement of complainant and handed over the same to HC Pardeep for registration of the FIR in the PS. HC Pardeep took the tehrir to the PS for registration of the case. Thereafter, he conducted the inquiry from the complainant and meanwhile, HC Pardeep came back to the spot with the original rukka and copy of FIR and same was handed over to him. He further deposed that as per the statement of complainant, they tried to search the CCTV footage from the nearby place and to find the accused. He prepared the site plan Ex.PW1/B at the instance of the complainant. He further deposed that during the course of investigation, he along with complainant reached at Sector 2 Bawana, then, complainant Balwan pointed out towards two persons who were sitting in the park and stated that they are the same person who had robbed

him. He along with the other police staff inquired from those two persons regarding the incident and their name was revealed as Kalam and Md. Nizam. He further deposed that both the accused persons admitted their involvement in the present offence. He along with other police staff searched the accused persons and from accused Md. Nizam one knife was recovered from left dub of his wearing lower and Rs.3430/- was recovered from the possession of accused Kalam. He along with other police staff apprehended both the accused persons and took them to the police station. He prepared the sketch of the knife Ex.PW1/C, which was recovered from the possession of accused Md. Nizam. He prepared the seizure memo of the cash Ex.PW1/D and seizure memo of knife Ex.PW1/E. He further deposed that he arrested the accused Kalam vide arrest memo Ex.PW1/F and arrested accused Md. Nizam vide arrest memo Ex.PW1/G. He conducted the personal search of accused Mohd. Kalam and Md. Nizam through HC Pardeep and HC Arvind, vide memos Ex.PW2/B and Ex.PW2/C. He also recorded the disclosure statement of accused Kalam Ex.PW2/D and that of accused Md. Nizam Ex.PW2/E. He further deposed that after the arrest of both the accused persons, both of them were sent to MV Hospital for their medical examination through HC Pardeep and HC Arvind. After their medical examination, they were brought back to PS and HC Arvind and HC Pradeep handed over their MLC to him. After that accused persons put behind the bars and on the next day, they were produced before the court of concerned court and from

there they were sent to JC. He recorded the statement of witnesses U/s 180 BNSS in the present case, prepared the charge sheet and filed the same in the court.

He identified the one knife Ex.X1 (vegetable cutting knife) being recovered from the possession of accused Md. Nizam and currency notes by denomination of 06 notes of Rs.500/-, or 04 notes of Rs.100/-, 01 note of Rs.20/- and 01 note of Rs.10/- Ex.X2 (colly), being recovered from the possession of accused Kalam.

**Documents produced on behalf of prosecution**

Ex.PW1/A	Complaint of the complainant
Ex.PW1/B	Site plan
Ex.PW1/C	Sketch of the knife
Ex.PW1/D	Seizure memo of the amount of Rs.3430/-
Ex.PW1/E	Seizure memo of the knife
Ex.PW1/F	Arrest memo of accused Kalam
Ex.PW1/G	Arrest memo of accused Md. Nizam
Ex.PW2/A	Endorsement on rukka
Ex.PW2/B	Personal search memo of accused Kalam
Ex.PW2/C	Personal search memo of accused Md. Nizam
Ex.PW2/D	Disclosure statement of accused Kalam
Ex.PW2/E	Disclosure statement of accused Md. Nizam

**List of Material Objects**

Ex.X1	Knife (vegetable cutting knife)
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Ex.X2 (colly)	Currency notes by denomination of 06 notes of Rs.500/-, 04 notes of Rs.100/-, 01 note of Rs.20/- and 01 note of Rs.10/-.
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**STATEMENT RECORDED UNDER SECTION 294 CR.P.C.**

**(NOW UNDER SECTION 330 BNSS)**

4. Vide their separate joint statement, accused persons admitted copy of the FIR Ex.A1, certificate under Section 65B Indian Evidence Act Ex.A2, Endorsement on rukka Ex.A3, DD No. 0033A dated 20.05.2025 Ex.A4 and PCR Form No. 11189799 dated 20.05.2025 Ex.A5, under Section 294 Cr.P.C. (now under Section 330 BNSS).

**STATEMENT UNDER SECTION 313 CR.P.C. (NOW 351 BNSS)**

5. After closure of PE, the statement of both the accused was recorded u/s 313 Cr.P.C. (now under Section 351 BNSS) on 16.03.2026 wherein they denied all the evidence put to them and stated that they have been falsely implicated in the present case by the police officials.

Accused persons opted not to lead any defence evidence.

6. Thereafter, matter was fixed for final arguments.

7. I have heard Dr. Sarita Rani, Ld. Addl. PP for the State and Sh.Mayank Chauhan, ld. Counsel for both accused

persons.

**ARGUMENTS ADVANCED BY LD. ADDL. PP FOR THE STATE**

8. It was argued by **Ld. Addl. PP for State** that the allegations levelled against the accused persons are of serious nature and the prosecution has proved its case vide the testimony of the prosecution witnesses.

It was further argued that all the Investigating Officer has clearly proved the chain and the manner of investigation and merely because the witness is police official his testimony cannot be disbelieved.

**ARGUMENTS ADVANCED BY LD. COUNSEL FOR ACCUSED.**

9. On the other hand, **Ld. Counsel for accused** has argued that accused has been falsely implicated. It is further argued that prime prosecution witness have not supported the case of the prosecution and denied all the allegations levelled against the accused persons. It was further argued that no recovery has been effected from accused persons. It was further argued that there is no incriminating evidence against the accused persons and the prosecution has failed to prove the case beyond reasonable doubt. Accordingly, accused persons deserve acquittal.

10. I have heard the arguments at length and perused the entire record.

### **FINDINGS**

11. Both accused persons had been charged for the offence punishable under Section 309(4)/3(5) BNS. In addition, charge under Section 311 BNS was also framed against accused Md. Nijam and charge under Section 317(2) was also framed against accused Kalam.

12. The relevant Sections are reproduced as under :

### **SECTION 309 (4) BNS**

*“Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years”.*

### **SECTION 311 BNS**

*“Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”.*

### **SECTION 317(2) BNS**

*“Whoever dishonestly receives or retains any stolen property, knowing*

*or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

### **SECTION 3(5) BNS**

*“When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone”.*

### **PRESUMPTION OF INNOCENCE**

13. It is a settled law of criminal jurisprudence that a person is believed to be innocent till the guilt is proved against him. This principle is called **The Presumption of Innocence**. In another words, the accused is entitled to take advantage of reasonable doubt in respect of his crime. The principle finds its genesis in the *Declaration of Human Rights* under Article 11 Section 1 incorporated by the United Nations in 1948. It is also mentioned in the European **Convention for the Protection of Human Rights** in Article 6 Section 2 and United Nations International Covenant on Civil and Political Rights under Article 14, Section 2.

*Presumption of Innocence* is a re-statement of the rule that in criminal matters the prosecution has the burden of proving guilt of the accused in order to be convicted of the crime of which he is charged.

**In Chandrashekhar Vs. State of Himachal Pradesh**

decided on 06.07.2018 relying on judgment of Data Ram Singh Vs. State of UP passed by the Hon'ble Supreme Court on 06.02.2018, it was held that:

*“the freedom of an individual is utmost important and cannot be curtailed specially when guilt if any, is yet to be proved. It is settled law that till such time guilt of a person is proved, he is deemed to be innocent..... A fundamental postulate of criminal juris prudence is a presumption of innocence meaning thereby that a person is believed to be innocent until found guilty.....”*

Thus, the inference which is culled out from the above is that it is for the prosecution to prove the guilt of the accused beyond reasonable doubt.

14. In this backdrop, I proceed to delve upon the evidence adduced on behalf of the prosecution.

15. The prosecution has heavily relied upon the testimony of **PW1/complainant Balram**, however, he has not supported the case of the prosecution.

Despite a lengthy cross examination by the Ld. Additional PP for the State, nothing incriminating could be culled out as the said witness resiled from his earlier statement. He completely turned hostile on the point of identification of accused persons, though he admitted the incident but denied that he had seen the accused persons on the day of incident or robbed him. The relevant portion of his evidence vide which he was

cross examined by Ld. Addl. PP for the State, is as under:

*‘At this stage, the attention of the witness is drawn towards the accused persons produced from the JC. Witness stated that he already told that he did not see the faces of the accused persons at the time of incident that is why he cannot identify the accused persons shown to him as the same person who committed offence with him’*

There is settled law as stated in **Abdul Sayad Vs. State of M.P.** 2010 AIR SCW 5701 and also in **State of U.P. Vs. Naresh and Ors.** (2011) 4SCC 324 *the testimony of injured witness as his own relevancy and efficacy as he has sustained injuries at the time of incident and it is unlikely that he would spare the actual assailants in order to falsely implicate someone else.* However, in the present case the complainant himself who was the prime prosecution witness has denied that it was the accused persons who robbed him and has not supported the case of the prosecution.

16. In the case in hand, the other witness was police official/investigating officer, who deposed regarding the manner of investigation but the material/star prosecution witnesses i.e. PW1 Balram himself have not supported the case of the prosecution and there are material contradictions in his testimony. There is no digital evidence or any other incriminating evidence found against the accused persons. Hence, no offence under section 309(4)/311 BNS is made out against both accused persons.

17. Further, accused Kalam was also charged for the offence under section 317(2) BNS, having been found in possession of amount of Rs.3430/-, which belonged to the complainant.

It is relevant to mention here that in the testimony of PW2 that he had identified one knife (vegetable cutting knife) Ex.X1. being recovered from the possession of accused Md. Nizam and currency notes Ex.X2 (colly) by denomination of 06 notes of Rs.500/-, or 04 notes of Rs.100/-, 01 note of Rs.20/- and 01 note of Rs.10/- being recovered from the possession of accused Kalam. PW1 Balram also identified the knife Ex.P1 and the said amount as Ex.P2 (colly).

With respect to knife Ex.P1, during his testimony PW1 correctly identified one knife recovered from accused Nizam and he deposed that the knife (vegetable cutting knife) was recovered from the possession of accused Mohd. Nizam, which is Ex.X1 but point to consider here is that the star witness/PW1 failed to identify the accused persons and on being shown the faces of the accused persons to him, he testified that he cannot identify the accused person as he had not seen the faces of the accused persons at the time of incident, though in the complaint, Ex.PW1/A, he has categorically stated that he can identify the accused persons on being shown to him. Surprisingly, despite the abovesaid fact, no TIP of the accused persons was conducted by the Investigating Officer. As stated above, PW1/ complainant, in the court as well failed to identify

the accused persons, therefore, his testimony is that one knife was recovered from accused Nijam can't be relied upon safely.

Regarding recovery of amount, nothing was stated in the statement by the accused regarding the recovery of amount from him when specific question was put to him in this regard. Neither any evidence was led by accused Kalam to show that he was carrying the abovesaid amount of Rs.3430/- himself and it belonged to him only. Further, the seizure memo Ex. PW1/D is with respect to recovery of the said amount also bears the signautre of PW Balram .

Apropos the present discourse, this Court deems it further apposite to note that that superior courts have persistently impressed upon that for culpability under [Section 317\(2\) BNS](#) to attract, it is not necessary that an accused receives any stolen property with a culpable intention, knowledge or reason to believe, rather, even in the instance of retention of such stolen property with such mens rea or upon the failure of the accused to make enough inquires to comprehend the nature of good(s) procured by him, is sufficient. Reliance in this regard is placed upon **Pyare Lal v. State, MANU/SC/0152/ 1962: AIR 1963 SC 1094.**

Further, reference in this regard, is made to the decision of the Hon'ble Supreme Court in [Shiv Kumar v. State of M.P., \(2022\) 9 SCC 676](#), in respect to the aforesaid, wherein the Hon'ble Court inter alia observed as under;

*"16. To establish that a person is dealing with stolen property, the*

*"believe" factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable."*

Accordingly, there are sufficient material on record, to prove the offence under Section 317(2) BNS IPC qua accused Kalam.

### **CONCLUSION**

18. Since the prime witness of the prosecution case namely PW1 Balram, who is the victim/complainant have not supported the case of the prosecution on the point of identification of the accused persons and there is no technical evidence on record in the form of any CCTV Footage and considering the overall evidence on record, especially the testimony of complainant Balram who was examined as PW-1, I have no hesitation in holding that the incident has been duly proved on record beyond any reasonable doubt, however, there is no evidence on record to connect both the accused persons to the commission of the reported offence of robbery as the victim Balram has failed to identify them as assailants and there is no technical evidence on record to establish their identity as the

assailant of the reported incident. Accordingly, accused Kalam and Md. Nijam are **acquitted** of the offence **under Section 309(4)/311/3(5) BNS**. However, accused Kalam is **convicted under Section 317(2) BNS** as there are sufficient material available against him for the said offence.

Put up for order on sentence on 19.03.2026.

**Dictated and announced  
in the open Court on 18.03.2026  
(running into 18 pages)**

**(VANDANA)  
Addl. Session Judge-02  
(North), Rohini Courts/Delhi**