

were chargesheeted for the commission of offences punishable under Sections 392/397/411/34 IPC.

CASE OF THE PROSECUTION:

2. The case of the prosecution is that on 20.04.2015 at about 4:30 p.m., the complainant Sh. Sanjeev Panwar, who was posted as Constable in Delhi Police, had boarded the bus plying on route No. 165 from Loni Gole Chakkar for Anand Vihar and when the bus reached at Apsara Border, Dilshad Garden, Delhi, four boys started jostling with him and one of them snatched the mobile phone from the hand of the complainant. On being resisted by the complainant, one of the boys pointed a knife towards the complainant and threatened to stab him if he did not back off. Thereafter, the said four boys got off the bus at Apsara Border and started running. The complainant also alighted the bus and chased them by shouting 'pakdo pakdo'. Upon hearing the same, Constable Amit, who was deputed at the picket near Dilshad Garden Gole Chakkar, also chased the said boys. The complainant managed to catch hold of one of the boys with the help of Constable Amit and recovered his Samsung S-3 white colour mobile phone from the said boy, whose name was revealed as Ashraf @ Munna. The complainant and Constable Amit took the accused Ashraf to PS Seemapuri, where the statement of the complainant was recorded by SI Islamuddin.

3. On the basis of the statement of the complainant, SI Islamuddin prepared the rukka and got the FIR registered under Sections 392/397/411/34 IPC. During the course of investigation, IO SI Islamuddin seized the mobile phone of the complainant and deposited it in the malkhana. Disclosure statement of accused Ashraf was recorded, wherein he divulged the names of the co-accused persons as Mohd. Mumtaz, Shakil and Chhotu. The accused Ashraf was arrested and his personal search was conducted in the presence of the complainant and Constable Amit. IO prepared the site plan of the spot at the instance of the complainant and recorded the statement of Constable Amit under Section 161 CrPC. On 21.04.2015, the accused Ashraf was produced before the concerned Ld. MM and his police custody for one day was obtained.
4. During the police custody remand of the accused Ashraf, the co-accused Mohd. Mumtaz @ Sukki was apprehended on 22.04.2015 from Old Seemapuri Gole Chakkar on the identification of the accused Ashraf. The disclosure statement of accused Mohd. Mumtaz was recorded, wherein he confessed his involvement in the commission of robbery. He was arrested and his personal search was conducted. Both the accused persons were produced before the Court on 22.04.2015 and were sent to judicial custody.
5. On 28.05.2016, the co-accused Shakil was apprehended from

Jama Masjid, Old Seemapuri at the instance of a secret informer. He also confessed his involvement in the commission of offence with the co-accused persons and disclosed that during the incident, he had used the knife to threaten the complainant and had thrown it while fleeing. He was arrested and produced before the Court on 29.05.2016 and was sent to judicial custody. An application for conducting the test identification parade of the accused Shakil was moved by the IO but the accused refused to participate in the same.

6. Efforts were made to trace the co-accused Chhotu but he could not be apprehended. After the completion of investigation, the chargesheet was filed against the accused Ashraf, Mohd. Mumtaz and Shakil before the Ld. MM on 11.10.2019.
7. Cognizance of the offences was taken on 27.10.2020. After the compliance of the provisions of Section 207 CrPC, the chargesheet was committed to the Sessions Court on 22.07.2023.

CHARGE:

8. On 05.09.2023, charge for the commission of offence punishable under Section 392/34 IPC was framed against all the three accused persons. Accused Shakil and Ashraf were additionally charged for the commission of offence punishable under Section 397 IPC and Section 411 IPC respectively. The accused persons pleaded not

guilty to the charges framed against them and claimed trial.

PROSECUTION EVIDENCE:

9. In support of its case, the prosecution examined seven witnesses.
10. PW1 HC Amit deposed that on 20.04.2015 at about 5:00 p.m., when he was on duty at the picket of Apsara Border, he heard the noise 'pakdo pakdo' and saw that the complainant was chasing 2-3 boys. He also started chasing the said boys and managed to apprehend one of the boys. From the possession of the said boy, the mobile phone of the complainant was recovered and his name was revealed as Ashraf @ Munna. He along with the complainant took the accused Ashraf to PS Seemapuri. After the registration of the case, IO SI Islamuddin recorded the disclosure statement of accused Ashraf, arrested him, conducted his personal search and seized the mobile phone of the complainant. He proved the arrest memo, personal search memo and the disclosure statement of accused Ashraf as Ex. PW1/A to Ex. PW1/C. He also proved the seizure memo of the mobile phone of the complainant as Ex. PW1/D.
11. PW2 HC Sanjeev Panwar is the complainant. He proved the statement made by him to the police on 20.04.2015 as Ex. PW2/A; the site plan of the spot prepared at his instance as Ex. PW2/B; the supurdginama furnished by him for the release of his mobile

phone as Ex. PW2/C; the copy of invoice of his mobile phone as Mark PW2/D and the copy of NCR got lodged by him in respect of the loss of his mobile phone as Ex. PW2/E.

12. PW3 Sh. Deepak Kumar deposed that on 22.04.2015, when he was posted as Constable at PS Seemapuri, he had joined the investigation with IO SI Islamuddin and the IO had arrested the accused Mohd. Mumtaz at the Gole Chakkar of Old Seemapuri on the pointing of accused Ashraf. He proved the arrest memo, personal search memo and the disclosure statement of accused Mohd. Mumtaz as Ex. PW3/A to Ex. PW3/C.
13. PW4 SI Yashpal Singh is the Duty Officer. He proved the copy of the FIR as Ex. PW4/A, the endorsement made by him on the rukka as Ex. PW4/B and the certificate issued by him under Section 65B of the Evidence Act as Ex. PW4/C.
14. PW5 HC Dheeraj Singh deposed that on 28.05.2016, he had joined the investigation with the IO SI Islamuddin and the accused Shakil was arrested by the IO near Jama Masjid, Old Seemapuri on the pointing of a secret informer. He proved the arrest memo and personal search memo of accused Shakil as Ex. PW5/A and Ex. PW5/B respectively.
15. PW6 Retd. SI Islamuddin is the IO of the case. He proved the rukka as Ex. PW6/A; the disclosure statement of the accused

Shakil as Ex. PW6/B and the TIP proceedings of the said accused as Ex. PW6/C.

16. PW7 HC Rakesh is the MHC(M). He proved the relevant entry of Register No. 19 in respect of the deposit of the robbed mobile phone as Ex. PW7/A.

STATEMENT OF THE ACCUSED:

17. The statement of the accused persons under Section 313 CrPC were recorded on 25.09.2025. All the incriminating material available on record was put to them to which their stand was of general denial and they stated that they are innocent and had been falsely implicated in the case. However, they chose not to lead any evidence in their defence.
18. I have heard the Ld. Chief PP for the State as well as the Ld. Counsel for the accused persons. Material on record has also been perused.

ARGUMENTS ADVANCED:

19. Ld. Chief PP for the State has submitted that on the date of incident, the accused persons, in furtherance of their common intention with their associate Chhotu, robbed the complainant Sh. Sanjeev Panwar of his mobile phone at the point of knife and while trying to flee after committing robbery, the accused Ashraf

was apprehended by the complainant with the help of Constable Amit and the mobile phone was recovered from him. He has submitted that the complainant (PW2) and Constable Amit (PW1) have supported the case of the prosecution and the accused persons have failed to shake their testimonies. He has submitted that out of the three accused persons who had managed to flee, accused Mohd. Mumtaz and Shakil were arrested during the course of investigation and both the said co-accused persons have been identified by the complainant in dock. He has submitted that though the mobile phone could not be produced during the trial but the non-production thereof does not affect the case of the prosecution as sufficient evidence is available on record to show that it had been released on superdari to the complainant pursuant to the order of the Court and had been lost by the complainant. He has argued that since the prosecution has succeeded in proving its case beyond reasonable doubt, the accused persons are liable to be convicted for the charges against them.

20. On the other hand, Ld. Counsel for the accused persons has contended that the accused persons have been falsely implicated in the case by the police officials of PS Seemapuri in connivance with the complainant, who is also a police official. He has submitted that neither the alleged incident of robbery took place nor the accused Ashraf was apprehended in the manner stated by the complainant and Constable Amit and that the alleged recovery of the mobile phone has been planted on the said accused. He has

submitted that there are contradictions in the testimonies of the complainant and Constable Amit, which bring to the fore the falsity of the case of the prosecution. He has argued that except the disclosure statement of the accused Ashraf, no evidence has been brought on record by the prosecution to connect the accused Mohd. Mumtaz and Shakil with the offence in question. He has contended that as per the case of the prosecution, all the three accused persons were apprehended from public places on different dates but not a single public person was joined in the investigation at the time of their apprehension, which casts a serious doubt on the case set up by the prosecution. He has argued that the non-production of the mobile phone by the complainant and the failure of the investigating agency to recover the weapon of offence i.e. knife goes to show that the prosecution has miserably failed to prove its case against the accused persons and therefore, they are liable to be acquitted.

LEGAL PROVISIONS INVOLVED:

21. Section 392 IPC prescribes punishment for the offence of robbery. The offence of robbery has been defined in Section 390 IPC, which reads as under:

“390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any

person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.”

22. Section 397 IPC does not create any offence but merely regulates the punishment already provided for robbery. It fixes a minimum term of punishment of imprisonment when the commission of robbery has been attended with certain aggravating circumstances including the use of a deadly weapon. In the construction of the said section, the application of the principle of constructive or vicarious liability as provided in Section 34 IPC has no application. Only the individual act of the accused is relevant.

23. Section 411 IPC prescribes punishment for dishonestly receiving any stolen property. It provides thus:

“411. Dishonestly receiving stolen property.—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.”

24. Section 34 IPC essentially involves vicarious liability. It provides that 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.

ANALYSIS AND REASONING:

25. It is the case of the prosecution that on 20.04.2015 at about 4:30 p.m., the complainant Sh. Sanjeev Panwar boarded a bus from Loni Gole Chakkar and when the bus reached at Apsara Border, Dilshad Garden, four boys robbed him of his mobile phone at the point of knife and started fleeing after getting off the bus. The complainant chased the said boys and succeeded in catching hold of one of the boys with the help of Constable Amit, who was on duty at the picket of Apsara Border. However, the remaining three boys managed to flee. The name of the boy apprehended by the complainant and Constable Amit was revealed as Ashraf @ Munna.
26. The case of the prosecution hinges on the testimony of the complainant, who has been examined as PW2. In his deposition, the complainant has reiterated the above case of the prosecution and has identified the accused Ashraf as the boy who had snatched the mobile phone from his right hand. The prosecution has also examined HC Amit (the then Constable) as PW1. He has deposed that when he heard the noise of 'pakdo pakdo' and saw the complainant chasing the boys, he also joined the chase and apprehended one of the boys and the other boys managed to run away. PW1 has deposed that upon enquiry, the apprehended boy revealed his name as Ashraf @ Munna. He has also identified the said accused in dock. PW1 HC Amit and the complainant have

deposed that after his apprehension, the mobile phone of the complainant had been recovered from the possession of the accused Ashraf and that they had taken the said accused to PS Seemapuri, where the FIR was got registered and the said accused was arrested by the police. Both the above witnesses were extensively cross-examined but the accused failed to dent their testimonies and elicit anything material. The version of the complainant in respect of the commission of robbery has remained consistent from the very beginning i.e. his initial statement (Ex. PW2/A) till his deposition in the Court. His version is corroborated by the testimony of PW1 HC Amit regarding the apprehension of accused Ashraf and the recovery of the robbed mobile phone of the complainant from him. The only defence raised during the cross-examination of the said witnesses is that the accused Ashraf had been falsely implicated by them. Since the said accused was not previously known to both the witnesses, one fails to understand as to why they would falsely implicate him in the case.

27. Ld. Defence Counsel has argued that there are contradictions in the testimonies of the complainant (PW2) and HC Amit (PW1), which make their version unreliable. He has submitted that though in his examination-in-chief, the complainant stated that the offenders had stepped onto the bus from the front gate, however, in his cross-examination conducted on behalf of the accused persons, he expressed his inability to state as to from which gate

the accused persons had boarded the bus. The above contradiction pointed out by the Ld. Defence Counsel is with regard to the peripheral aspect and does not affect the veracity of the testimony of the complainant.

28. Ld. Defence Counsel has further submitted that the version of PW1 HC Amit regarding the number of the boys chased by him and the complainant on the date of incident is inconsistent. He has submitted that in his examination-in-chief, PW1 had deposed that he had seen the complainant chasing 2-3 boys, whereas in his cross-examination, he deposed that 3-4 persons were chased by him and the complainant. In this regard, it is pertinent to observe that the incident of robbery had taken place in the bus and without having knowledge of the said incident, the PW1 had joined the chase to nab the boys upon hearing the noise 'pakdo pakdo' made by the complainant. In such circumstances, the inability of PW1 to specify the exact number of boys is quite natural.

29. Ld. Defence Counsel has next argued that the failure of the complainant to produce the mobile phone in question during the course of trial casts a serious doubt on the case of the prosecution and the non-production of the case property must enure to the benefit of the accused Ashraf. The Court is unable to agree. After the seizure of the mobile phone of the complainant, the same had been deposited in the malkhana and the relevant entry of Register No. 19 in that regard has been duly proved by PW7 HC Rakesh as

Ex. PW7/A. It is a matter of record that pursuant to the order dated 27.04.2015 passed by the Ld. MM, the said mobile phone had been released to the complainant on superdari. The supurdginama furnished by the complainant has been proved on record as Ex. PW2/C. From all the above documents, the factum of recovery and seizure of the mobile phone of the complainant stands proved. The complainant could not produce the said mobile phone during trial as it had been misplaced by him. To substantiate the same, he has placed on record the copy of NCR lodged by him in respect of the loss of the mobile phone as Ex. PW2/E. The Court finds no reason to disbelieve the version of the complainant regarding the loss of the mobile phone. Thus, the non-production of the robbed mobile phone during the course of trial is of no consequence.

30. From the unshattered testimony of the complainant and HC Amit coupled with the documents proved on record, the prosecution has succeeded in proving that the accused Ashraf had robbed the complainant of his mobile phone on the date of incident. In view thereof, the charge for the offence under Section 411 IPC for dishonestly receiving the stolen property against the accused Ashraf becomes superfluous and is not required to be gone into.

31. As far as the co-accused Mohd. Mumtaz and Shakil are concerned, admittedly, they were not apprehended from the spot on the date of incident. Since they were strangers to the complainant, their identification was of utmost importance to connect them with the

offence in question. In his initial statement (Ex. PW2/A) recorded on the date of incident, the complainant had not given any description of the physical appearance/attributes of the above co-accused persons. In **Malkhan Singh v. State of M. P.**, JT 2003 (5) SC 323, the Hon'ble Supreme Court has held that the testimony of a witness, who does not know an accused from before and identifies him for the first time in the Court without holding a previous identification parade is from its very nature inherently of a weak character. Though the substantive evidence of a witness is the statement made in the Court but where the accused are strangers to the witness, it is a safe rule of prudence to look for corroboration of the sworn testimony of such witness in Court as to the identity of the accused in the form of earlier identification proceedings. The purpose of a prior test identification parade, therefore, is to test and strengthen the trustworthiness of that evidence. In the case on hand, in his testimony, the complainant (PW2) had identified the co-accused Mohd. Mumtaz as an associate of accused Ashraf and the co-accused Shakil as the boy who had pointed knife at him. However, prior test identification parade of the co-accused Mohd. Mumtaz was not conducted and the co-accused Shakil had declined to participate in identification parade.

32. It is the case of the prosecution that the names of the co-accused Mohd. Mumtaz and Shakil had been divulged by the accused Ashraf in his disclosure statement made to the police and they

were apprehended during the course of investigation.

33. Accused Mohd. Mumtaz is stated to have been apprehended on 22.04.2015. IO SI Islamuddin (PW6) has deposed that during his police custody remand, the accused Ashraf took him, Constable Deepak and the complainant to Seemapuri Gole Chakkar at about 10–11 p.m. and on the pointing of the accused Ashraf, the co-accused Mohd. Mumtaz was apprehended. He further deposed that the complainant had also identified the co-accused Mohd. Mumtaz. Contrary to the version of PW6 SI Islamuddin, PW3 Constable Deepak has not deposed anything regarding the presence of the complainant at the time of apprehension and arrest of co-accused Mohd. Mumtaz. In his testimony, PW3 Constable Deepak has stated that on 22.04.2015, he along with SI Islamuddin and accused Ashraf had left the police station in search of co-accused persons and that on the pointing of accused Ashraf, co-accused Mohd. Mumtaz was apprehended from the Gole Chakkar of Old Seemapuri. He deposed that after the said co-accused accepted his involvement, SI Islamuddin arrested him in the instant case. In view of the above contradiction in the testimonies of PW6 SI Islamuddin and PW3 Constable Deepak, a suspicion arises regarding the presence of the complainant at the time of apprehension of the co-accused Mohd. Mumtaz. From the record, it is seen that a supplementary statement of the complainant was recorded on 22.04.2015, wherein he had stated that on the said day, when he was going in connection with some

personal work, he saw that SI Islamuddin, Constable Deepak and the accused Ashraf were present at Gole Chakkar of Old Seemapuri and that the co-accused Mohd. Mumtaz was in the custody of SI Islamuddin. From the said statement of the complainant, it is clear that the co-accused Mohd. Mumtaz had not been apprehended on the identification of the complainant. The presence of the complainant at the place of the apprehension of the co-accused Mohd. Mumtaz purportedly by chance, during late night hours around 10–11 p.m., does not inspire confidence. Had the complainant joined the investigation in the night of 22.04.2015, PW3 Constable Deepak would have certainly deposed about his presence at the time of arrest of the co-accused Mohd. Mumtaz. Since the said co-accused was a stranger to the complainant, it was incumbent upon the IO SI Islamuddin to arrange the test identification parade of the said co-accused as the main object of holding an identification parade is to test the memory of the witness regarding the identity of the accused. The identification of the accused during such parade can be used to corroborate the statement of the witness in the Court. It appears that to cover up his lapse to organize the test identification parade of the co-accused Mohd. Mumtaz, IO SI Islamuddin manipulated the investigation and produced the ante dated supplementary statement of the complainant.

34. Similarly, the identification of co-accused Shakil by the complainant is also ridden with suspicion. The said co-accused

was arrested on 28.05.2016 i.e. after a lapse of more than one year of the incident. He is stated to have been arrested from Jama Masjid, Old Seemapuri at the instance of a secret informer. After the arrest of the said co-accused, IO SI Islamuddin moved an application for holding his test identification parade before the Court of Ld. MM on 29.05.2016. On his production before the Court on 04.06.2016, the co-accused Shakil refused to participate in the test identification parade. The refusal of an accused to participate in the test identification parade is considered as an adverse circumstance against him unless such refusal is found to be justified. In the instant case, the co-accused Shakil had declined to join the test identification parade for the reason that he had been shown to the complainant. It has to be borne in mind that it is impossible for an accused to prove by positive evidence that he had been shown to a witness prior to the identification parade but if suspicion can be raised by the defence that this could have happened, no adverse inference can be drawn against the accused in such a case. From the record, it is seen that a supplementary statement dated 04.06.2016 of the complainant forms part of the chargesheet, wherein he had stated that on the said day, he had come to the Karkardooma Court Complex in connection with some personal work and had identified the co-accused Shakil, who was in custody. The said statement of the complainant clearly raises a suspicion that the co-accused Shakil had been shown to him prior to the holding of test identification parade and thus justifies the refusal of the said co-accused to participate in the said

parade. In the absence of the test identification parade, the identification of the said co-accused by the complainant in the Court has remained uncorroborated. Further, the recovery of the alleged weapon of offence could not be effected at the instance of the said co-accused to connect him with the offence in question.

35. The Court can not lose sight of the fact that the incident had taken place on 20.04.2015 and the complainant had identified the co-accused Mohd. Mumtaz and Shakil in the Court on 04.10.2024 i.e. after the lapse of about 9 ½ years of the incident. As per the complainant (PW2), after stepping onto the bus, the offenders had immediately snatched his mobile phone and deboarded the bus. Considering the short period in which the incident occurred, the possibility that the complainant did not get sufficient opportunity to form impression of the physical attributes of the co-accused Mohd. Mumtaz and Shakil can not be ruled out. As observed earlier, the said co-accused persons had not been apprehended on the identification of the complainant. In view thereof, not much reliance can be placed on the identification of co-accused Mohd. Mumtaz and Shakil by the complainant in the Court. Moreover, the manner in which the said co-accused persons had been apprehended and the investigation qua them was manipulated by the IO, a serious doubt is cast on their involvement in the commission of offence. Accordingly, the benefit of doubt deserves to be given to the said co-accused persons.

CONCLUSION:

36. In the light of the above discussion, the accused Mohd. Mumtaz and Shakil are acquitted of the charges against them. Since the prosecution has succeeded in proving its case beyond reasonable doubt against the accused Ashraf @ Munna, he is convicted for the commission of offence punishable under Section 392 IPC.
37. Copy of the judgment be supplied to both the sides free of cost.
38. The convict Ashraf @ Munna shall now be heard on the point of sentence.

Pronounced in the open court
on 24.03.2026

(SANJAY GARG-II)
Principal District & Sessions Judge,
Shahdara, Karkardooma Courts, Delhi