

IN THE COURT OF MR. HARGURVARINDER SINGH JAGGI,
ADDL. SESSIONS JUDGE (FTC– 01), SOUTH DISTRICT, SAKET
COURTS, NEW DELHI

SC No.: 406/2017

CNR No.: DLST010061192017

FIR No.: 88/2017

Police Station: Mehrauli

u/Section: 392, 397, 411, 34



IN THE MATTER:

1. STATE)

... Complainant

Through – Mr. Santosh Kumar, Additional
Public Prosecutor for the State.

v.

1. CHARAN SINGH CHIRIYA [Deceased]¹)
S/o Prabhati Lal)
R/o House No. 9, Gali No. 2)
Saidulajab, New Delhi)

... Accused No. 1

2. SHIVA)
S/o Khacheru Lal)
R/o House No. 16 – B, Gali No. 2)
Saidulajab, New Delhi)

... Accused No. 2

¹ Proceedings against Charan Singh Chirya abated *vide* order dated 23.01.2025

Through – Mr. Javed Hussain, Legal-Aid
Counsel

Date of offence:	06.02.2017
Date of FIR:	06.02.2017
Date of chargesheet:	04.04.2017
Date of framing of charge(s):	24.10.2017
Date of commencement of trial:	28.03.2018
Date of judgment reserved:	25.04.2026
Date of pronouncement of judgment:	16.05.2026
Date of sentencing order, if any:	TBA²

J U D G M E N T

16.05.2026

1. The accused, Charan Singh alias Chiriya and Shiva, faced trial before this Court arising out of FIR No. 88/2017 registered at police station Mehrauli for the commission of offences punishable under Sections 392 read with Section 397/34 and Section 411 of the Indian Penal Code, 1860 (IPC).

2. The co-accused, Charan Singh alias Chiriya, died during the pendency of the trial, and the proceedings against him stand abated *vide* order dated 23.01.2025.

Facts

3. The genesis of the prosecution case is that on 06.02.2017 at about 1 PM, the complainant, Akash Gupta, an electrician student, was

² TBA – To Be Announced

present in Indian Park, Saidulajab, MB Road, New Delhi, having his lunch. The prosecution alleges that when the complainant went to the bushes to attend the call of nature, three boys arrived, and one of them requested his mobile phone to make a call.

4. All of a sudden, one boy put a broken glass bottle of a cold drink on his neck, while another slapped him, and they forcibly robbed his mobile phone (MI-Note 3 of silver gold colour) and his wallet containing ₹400.

Investigation by Police & Charge Sheet

5. The investigation was set in motion when the complainant borrowed a phone from a passerby and informed his friend Arif (PW-2), who arrived at the spot and made a 100 number call to the police.

6. HC Deshraj (PW-4) and Ct. Chanchal, who were on picket duty at Western Marg, spotted the two accused boys coming from Indian Park under suspicious circumstances and apprehended them. The complainant, Akash Gupta, who had met IO ASI Shyamvir Singh (PW-5) at the corner of Indian Park, identified the two boys as Charan Singh and Shiva.

7. Upon search, ₹400 in denominations of ₹100 each were recovered from accused Charan Singh's shirt pocket, and the stolen MI Note 3 mobile phone was recovered from the right pocket of accused Shiva's pants. The accused also led the police to the bushes and pointed out the broken glass bottle used in the crime.

Charge & Points of Determination

8. On 24.10.2017, charges were framed against the accused persons. Accused Shiva was charged under Section 392 read with Section 397/34 IPC for committing robbery at the point of a broken glass bottle, and under Section 411 IPC for dishonestly retaining the stolen mobile phone. Both pleaded not guilty and claimed trial.

9. Now, the questions posed to the Court for determination are as under:

- (i) *Whether the accused Shiva on 06.02.2017 at about 01:00P.M. at Indian Park, Saidullajab, M.B.Road, New Delhi, within the jurisdiction of PS Mehrauli robbed Akash Gupta of his mobile phone and ₹400/- at the point of broken glass bottle of cold drink and thereby, committed an offence punishable under Section 392 read with Section 397, 34 IPC?*
- (ii) *Whether the accused Shiva on 06.02.2017 near Indian Park, Saidullajab, M.B.Road, New Delhi, within the jurisdiction of PS Mehrauli was found in possession of robbed mobile phone of Akash Gupta, which was retained by him knowingly or had reasons to believe the same to be stolen property and thereby, committed an offence punishable under Section 411 IPC?*

Prosecution's Evidence

10. To prove the guilt of the accused, the prosecution examined eight witnesses:

- 10.1. **PW-1, Akash Gupta (Complainant):** Deposed that he was robbed at Indian Park by the accused. He identified Shiva as the person who took his mobile phone. He also

confirmed that his MI Note 3 mobile phone was recovered from accused Shiva. Though he temporarily turned hostile during cross-examination out of confusion and fear, claiming he could not identify the accused or the broken bottle, he clarified during re-examination that he had seen their faces and his initial identification on 28.03.2018 was correct. Crucially, PW-1 failed to identify the broken Thums Up glass bottle in court.

- 10.2. **PW-2, Arif:** Testified that his friend Akash called him after the robbery, and he dialed the 100 number PCR call.
- 10.3. **PW-3, SI Naresh Kumar:** Duty Officer who registered FIR No. 88/17 based on the rukka.
- 10.4. **PW-4, HC Deshraj:** Testified about apprehending the accused on suspicion near the picket. He deposed that he recovered the stolen MI Note 3 mobile phone from accused Shiva's pocket and ₹400/- cash from accused Charan Singh in the presence of the complainant.
- 10.5. **PW-5, ASI Shyamvir Singh (IO):** Recorded the complainant's statement (Ex. PW1/A), prepared the rukka, seized the recovered mobile phone and cash, and recovered the broken glass bottle at the instance of the accused.

- 10.6. **PW-6, Ct. Rajender:** Accompanied the IO to the spot and corroborated the apprehension of the accused and recovery of the stolen phone from Shiva.
- 10.7. **PW-7, Anupam Kumar:** Vice Principal who proved that accused Shiva's date of birth was 03.06.1998, establishing he was a major at the time of the offence.
- 10.8. **PW-8, ASI Harindra:** MHC(M) who proved the deposit of the case property in the malkhana.

Statement of Accused under Section 313 CrPC

11. In his statement under Section 313 CrPC, accused Shiva denied the incriminating evidence. He claimed he was falsely implicated by the police who stopped him when he was coming in a drunken condition.

Defence Evidence

12. The accused chose not to lead any defence evidence.

Legal Provision & Legal Principles

13. The relevant legal provisions for the proper adjudication of the case are Section 392, 397, 34 and 411, IPC.
14. Section 390, IPC defines robbery as an aggravated form of theft or extortion involving immediate violence or the threat of immediate violence.
15. Under Section 390 IPC, “in all robbery there is either theft or extortion.” Theft becomes robbery if, in order to commit the theft, or

while committing it, or while carrying away/attempting to carry away the stolen property, the offender does any of the following for that end:

15.1. voluntarily causes or attempts to cause death, hurt, or wrongful restraint, or

15.2. causes fear of instant death, instant hurt, or instant wrongful restraint.

16. Extortion that becomes robbery if:

16.1. the offender, at the time of committing extortion, is in the presence of the person put in fear, and

16.2. commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint (to that person or some other person), and

16.3. by so putting in fear, induces the person to deliver the thing extorted then and there.

17. The explanation to Section 390 states that an offender is said to be present if he is sufficiently near to put the other person in fear of instant death/hurt/wrongful restraint.

18. To establish an offence under Section 392, the prosecution must prove that the accused committed robbery as defined in Section 390, IPC. The commission of robbery is 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.

19. On the other hand, Section 397, IPC provides enhanced punishment where, at the time of committing robbery or dacoity, the offender uses a deadly weapon, or causes grievous hurt, or attempts to cause death or grievous hurt; in such cases, the imprisonment shall not be less than seven years. Section 397 is an aggravated form of robbery/dacoity, focusing on the manner of commission (weapon use or serious violence/attempt) and mandates a minimum sentence. The core consequences i.e., the punishment under Section 397, IPC is an imprisonment not less than seven years. The essential key ingredients of Section 397, IPC are as follows:

- 19.1. Robbery or dacoity is committed.
- 19.2. The aggravating act occurs at the time of committing the robbery/dacoity.
- 19.3. The offender, at that time, does any one of the following i.e., uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person.

20. Sections 392 and 394 of the IPC penalize the act of robbery and causing hurt while committing robbery. Section 397 IPC states that if, at the time of committing robbery, the offender uses any deadly weapon, the imprisonment shall not be less than seven years.

21. The term “uses” under Section 397 IPC has been extensively interpreted by the Hon’ble Supreme Court in ***Phool Kumar v. Delhi Administration***.³ It was held that –

“When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery.”

22. Thus, the settled position in law is that actual cutting or stabbing is not the sole criterion, brandishing it to induce fear is sufficient.

23. Section 34, IPC reads as under:

“34. Acts done by several persons in furtherance of common intention.—*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.”*

24. The ingredients of Section 34 are that the accused persons had acted in furtherance of their common intention is required to be proved specifically or by inference – ***See Hamlet alias Sasi & Ors. v. State of Kerala***.⁴

25. Section 34 IPC carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he has the “common intention” to commit the offence. The phrase “common

³ 1975 INSC 68

⁴ (2003) 10 SCC 108

intention” implies a pre-arranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there prior to the commission of the offence in point of time. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances existing thereto. The common intention under Section 34 IPC is to be understood in a different sense from the “same intention” or “similar intention” or “common object”. The persons having similar intention which is not the result of the pre-arranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC – *See Mohan Singh & Anr. v. State of Punjab*.⁵

Analysis & Findings

26. The Court has carefully scrutinized the testimony of the prosecution witnesses and the exhibited documents. The case urged by the prosecution against the accused Shiva is that he along with co-accused Charan Singh Chiriya⁶ on 06.02.2017 rounded up the complainant/victim, Akash Gupta at Indian Park, Saidullajab, Mehrauli – Badarpur Road, Delhi, who had gone there to relieve himself by answering nature’s call. Charan Singh Chiriya got behind Akash, put a broken cold drink bottle on his neck, threatened him, forcibly took his mobile phone and ₹400/- cash, and fled from the scene.

27. Shortly after the incident, Beat Officers HC Deshraj and Ct. Chanchal arrived at the scene with two individuals they had found

⁵ AIR 1963 SC 174

⁶ Proceedings against Charan Singh Chiriya abated *vide* order dated 23.01.2025

wandering suspiciously outside the park. The complainant immediately identified them as the perpetrators. The individuals were identified as Charan Singh @ Chidiya and Shiva. Upon a cursory search, the stolen MI Note 3 mobile phone was recovered from Shiva's pants pocket, and the four ₹100 notes were recovered from Charan Singh's shirt pocket. The broken glass (Thums-Up) bottle used in the crime was also recovered from the bushes where the accused had thrown it.

28. The prosecution has firmly established the offence of robbery. PW-1 (Akash Gupta) gave a natural and reliable account of the incident. His presence at the spot and the subsequent prompt PCR call are corroborated by PW-2 (Arif). Despite a brief period of hostility during cross-examination where he claimed he could not identify the accused, PW-1 later clarified in his re-examination statement dated 04.09.2025 that he was under fear and reaffirmed his identification of accused Shiva. The immediate apprehension of the accused near the spot by PW-4 (HC Deshraj) bolsters the prosecution's case. Therefore, the charge of robbery under Section 392 IPC is proved beyond reasonable doubt against accused Shiva.

29. To attract the enhanced minimum punishment under Section 397 IPC, the prosecution must conclusively prove the use of a "deadly weapon" at the time of the robbery. While the FIR states a broken glass bottle was put on the complainant's neck, the Court finds that a critical infirmity arose during the trial. When the broken Thums Up bottle (Ex. PW5/P1) was produced in Court, the complainant (PW-1)

unequivocally **failed to identify** the said broken bottle as the one used in the commission of the offence. Due to this failure in the identification of the weapon of offence, it cannot be safely held that the recovered object was the deadly weapon used. Giving the benefit of the doubt to the accused, the charge under Section 397 IPC must fail.

30. The recovery of the stolen MI Note 3 mobile phone squarely incriminates accused Shiva. PW-4 (HC Deshraj) and PW-5 (ASI Shyamvir) consistently deposed that the stolen mobile phone was recovered from the right pocket of accused Shiva's pants mere moments after the robbery. The mobile phone was properly identified by the complainant at the spot and also in Court (Ex.PW4/P2). The accused offered no plausible explanation under Section 313 CrPC for possessing the complainant's stolen mobile phone, except a bald claim of false implication. Thus, the Court safely arrives at a finding that the charge against accused Shiva under Section 411 IPC is thus proved.

Decision

31. In view of the above observations and findings, the final decision of the Court is as below:

31.1. The proceedings against accused No. 1, Charan Singh alias Chiriya, stand abated due to his death *vide* order dated 23.01.2025.

- 31.2. The accused, Shiva, is **acquitted** of the charge under **Section 397 IPC**, extending him the benefit of the doubt regarding the weapon of offence.
- 31.3. The accused, Shiva, is **convicted** for the offence of robbery, punishable under **Section 392 IPC**.
- 31.4. The accused, Shiva, is **convicted** for dishonestly retaining stolen property, punishable under **Section 411 IPC**.
32. All pending interim applications are dismissed.
33. Let a copy of the judgment be provided to accused Shiva free of cost.
34. Now, to come up on **23.05.2026** for hearing the accused, Shiva on the quantum of sentence. The nominal roll of accused Shiva is received from the Office of concerned Jail Superintendent.

**Pronounced in the open Court
on May 16, 2026**

**(Hargurvarinder Singh Jaggi)
Addl. Sessions Judge (FTC-01)
South District
Saket Courts, New Delhi**

Note: This judgment comprises **13** pages in total. The electronic signature certificate (digital signature) of the Presiding Officer has been appended on page No. **13** of the electronic or digital copy (PDF) of this document.

Appendix

Form-B

S.No.	Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences Charged	Whether Acquitted or Convicted	Sentence Imposed	Period of detention undergone during Trial for purpose of Section 428 CrPC :: 468 BNSS
i.	A1	Charan Singh Chiriya	06.02.2017	28.03.2017 ⁷	392, 397, 411	Abated ⁸		
ii.	A2	Shiva	06.02.2017	23.02.2017 ⁹	392, 397, 411	Convicted		

⁷ See order dated 28.03.2017 passed by the Ld. Metropolitan Magistrate – 05, South, Saket, New Delhi

⁸ Proceedings against Charan Singh Chiriya abated *vide* order dated 23.01.2025

⁹ See order dated 23.02.2017 passed by the Ld. Addl. Sessions Judge – 03, South, Saket, New Delhi in Bail Application No. 245/2017

Form-C

List of Prosecution / Defence / Court Witnesses

A. Prosecution

Rank	Name of Witness	Nature of Evidence
PW-1	Akash Gupta	Complainant and victim of the robbery. He identified the accused persons and the recovered mobile phone.
PW-2	Arif	Friend of the complainant and the PCR caller who informed the police about the incident.
PW-3	SI Naresh Kumar	Duty Officer who registered the FIR (Ex. PW3/A) and issued the certificate u/s 65-B of the Evidence Act.
PW-4	HC Deshraj	Beat Officer who apprehended the two suspected persons and recovered the robbed cash (₹400) from accused Charan Singh.
PW-5	ASI Shyamvir Singh	Investigating Officer (IO) who recorded statements, prepared the site plan, and conducted the formal arrests and seizures.
PW-6	HC Rajender	Accompanied the IO to the spot, assisted in the investigation, and took the rukka to the police station for FIR registration.
PW-7	Anupam Kumar	Vice Principal of Govt. Boys Sr. Sec. School, who proved the age/date of birth records for accused Shiva.
PW-8	ASI Harindra	MHC(M) who proved the entry in the malkhana register (Register No. 19) regarding the deposit and release of case property.

Note: While **Ct. Chanchal** was listed as a witness who assisted in apprehending the accused, the prosecution list indicates that testimony was “dropped” or identical to PW-4.

B. Defence Witnesses, if any

Nil

C. Court Witnesses, if any

Nil

List of Prosecution / Defence / Court Exhibits

A. Prosecution Exhibits

S.No.	Exhibit Number	Description of Document / Item
1	Ex.PW1/A	Statement of the complainant, Akash Gupta.
2	Ex.PW1/B	Seizure memo of the recovered MI Note 3 mobile phone and ₹400 cash.
3	Ex.PW1/C	Arrest memo of accused Charan Singh @ Chiriya.
4	Ex.PW1/D	Arrest memo of accused Shiva.
5	Ex.PW1/E	Seizure memo of the weapon of offence (broken glass bottle).
6	Ex.PW1/F	Panchnama for the release of the mobile phone to the complainant on <i>supardari</i> .
7	Ex.PW1/G	Supplementary statement of the complainant, Akash Gupta.
8	Ex.PW3/A	Computerized copy of the First Information Report (FIR) No. 88/17.
9	Ex.PW3/B	Endorsement made by the Duty Officer on the original rukka.
10	Ex.PW3/C	Certificate under Section 65-B of the Indian Evidence Act regarding the FIR.
11	Ex.PW4/A	Pointing out memo of the place of incident by accused Charan Singh.
12	Ex.PW4/B	Pointing out memo of the place of incident by accused Shiva.
13	Ex.PW4/C	Personal search memo of accused Charan Singh.
14	Ex.PW4/D	Personal search memo of accused Shiva.
15	Ex.PW4/P1	Recovered currency notes totaling ₹400 (4 notes of ₹100 denomination).
16	Ex.PW4/P2	Recovered mobile phone (MI Note 3, silver-gold colour).
17	Ex.PW5/A	Attested copy of DD No. 34A dated 06.02.2017 regarding the incident report.
18	Ex.PW5/B	Original rukka prepared by the

S.No.	Exhibit Number	Description of Document / Item
		Investigating Officer (ASI Shyamvir Singh).
19	Ex.PW5/C	Disclosure statement of accused Charan Singh.
20	Ex.PW5/D	Disclosure statement of accused Shiva.
21	Ex.PW5/E	Site plan of the place of occurrence prepared by the IO.
22	Ex.PW5/F	Attested copy of the invoice/bill for the robbed MI Note 3 mobile phone.
23	Ex.PW5/G	Age and admission verification record of accused Shiva from his school.
24	Ex.PW5/H	Attested copy of DD No. 15B regarding the departure of police staff.
25	Ex.PW5/I	Attested copy of DD No. 93B regarding the arrival of the police and arrest.
26	Ex.PW5/P1	Case property: Broken glass bottle of Thums Up used in the robbery.
27	Ex.PW7/A	Attested copy of the school admission register for accused Shiva.
28	Ex.PW7/B	Attested copy of the School Leaving Certificate (SLC) of accused Shiva.
29	Ex.PW7/C	Original application for admission of accused Shiva.
30	Ex.PW8/A	Copy of the Malkhana Register No. 19 entry (Serial No. 2945/19).
31	Ex.PW8/B	Endorsement in the Malkhana register regarding the release of the mobile phone.

B. Defence Exhibits

Nil

C. Court Exhibits

Nil

D. Material Objects

S.No.	Material Number	Object	Description
1.	Ex.PW5/P1		One half-broken glass bottle of Thums Up (weapon of offence), allegedly used by the assailants to threaten the complainant.
2.	Ex.PW4/P1		Recovered cash totaling ₹400 (consisting of four currency notes of ₹100 denomination each) found in the possession of accused Charan Singh.
3.	Ex.PW4/P2		One MI Note 3 mobile phone (silver-gold colour) recovered from accused Shiva, which was later released to the complainant on <i>supardari</i> .
