

**IN THE COURT OF SHRI SANJAY SHARMA-I:
PRINCIPAL DISTRICT & SESSIONS JUDGE
NORTH EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

**SC 57/2024
STATE Vs. UBAID
FIR No. 277/2018
PS (Seelampur)
Under Section 392/394/397/34 IPC
CNR No.: DLNE01-000887-2024**

State

Versus

**Ubaid
S/o Sh. Gulzar
R/o House No. 108/15, Gali No. 2,
Bajrang Bali Mohalla Maujpur, Jafrabad,
North East, Delhi.**

<i>Date of institution</i>	<i>: 28.03.2024</i>
<i>Date of reserving judgment</i>	<i>: 09.04.2026</i>
<i>Date of judgment</i>	<i>: 26.05.2026</i>

J U D G M E N T:

The present FIR was registered on the complaint of Shehzad, who stated that on 24.08.2018 at about 9.00 p.m., he along with his maternal uncle Umarshad Hussain had gone to fair (Mela) at Shastri Park. After seeing the Mela, when they were returning home and had reached at Brahampuri Pulia at about 11.45 p.m., three boys surrounded them and choked their necks

from behind and asked them to hand over their money and mobile. When complainant resisted, one of those boys showed knife to him and his uncle and gave its blow beneath right shoulder of the complainant. They robbed the mobile from the complainant make Kachara of grey colour and Rs.500/- from his maternal uncle. Thereafter, those assailants tried to flee away from there but complainant and his uncle raised alarm and with the help of some passersby, apprehended accused Ubaid whereas his two assailants fled away from the spot. Complainant called his father from mobile of a passerby. His father reached there and called police at no. 100. On the complaint of complainant, present FIR was registered against accused persons. Weapon of offence and case property could not be recovered, despite efforts. Investigation qua accused Junaid and Shahid remain pending as they were untraced. Charge-sheet was filed against accused Ubaid u/s 394/397/34 IPC.

2. Copies were supplied to the accused as required under Section 207 Cr.P.C. and case was committed to Sessions Court. After hearing arguments, charge for offences punishable under Section 394/397/34 IPC was framed against the accused.

3. At the trial, the prosecution examined 8 witnesses in all.

(i) PW-1 ASI Satyaprakash was Duty Officer, who had proved present FIR as Ex.PW1/A, endorsement on rukka Ex.PW1/B and had handed over the same to SI K.P. Singh. He issued certificate u/s 65-B of Indian Evidence Act Ex.PW1/C.

(ii) PW-2 Shehjad was the complainant of the present case. He had deposed regarding the robbery committed with him and his uncle Umarshad Hussain on point of knife and injury sustained by him during the incident. He also proved his complaint Ex.PW2/A, site plan Ex.PW2/B, arrest memo and personal search memo of accused Ex.PW2/C and Ex.PW2/D. He had identified accused in Court, as one of the assailant.

(iii) PW-3 Umarshad Hussain was the maternal uncle of complainant. He had also deposed regarding the robbery committed with him and his nephew Shahjad after showing knife to him and his nephew and injury sustained by his nephew during the incident. He had also identified the accused in Court, as one of assailant.

(iv) PW-4 ASI Surender Singh, was the DD Writer and deposed that on intervening night of 24/25.08.2018, at about 12.52 a.m., he received a call regarding snatching and inflicting knife injury. He recorded DD no. 5B Mark PW4/1 and marked it to IO/SI K.P. Singh.

(v) PW-5 Dr. Kunal Kishore was the CMO of JPC Hospital and deposed that on 25.08.2018, he had examined injured Shehjad and proved MLC no. 14104 Ex.PW5/A.

(vi) PW-6 ASI Babu Ram was 2nd IO of the present case and he deposed that on 28.04.2020, further investigation of present case was assigned to him. He collected CDR of complainant, prepared charge-sheet and filed it before Court. Investigation qua

accused Junaid and Shahid was kept pending as they could not be traced.

(vii) PW-7 ASI Mahender had accompanied the IO/SI K.P. Singh on the intervening night of 24/25.08.2018 and deposed about the investigation conducted in his presence by IO and proved the relevant documents i.e. recording of statement of complainant, preparation of site plan, arrest memo and personal search memo of accused Ubaid.

(viii) PW-8 SI Krishan Pal was the 1st IO of the present case and he deposed about the investigation conducted by him and proved the relevant documents.

4. Statement of the accused was recorded u/s 313 Cr. PC and the entire incriminating evidence was put to him which he denied and pleaded innocence. He took the defense that he is innocent and has been falsely implicated in the present case at the instance of IO and complainant. He used to ply battery rickshaw and on the date of incident, when he was returning after parking his battery rickshaw, he was slightly drunk and was wrongly apprehended by the public persons and falsely implicated in the present case. He pleaded that he had not robbed any articles from the complainant or his maternal uncle nor was involved in the alleged incident. He further submitted that he does not know the other persons allegedly involved in the incident nor he had any connection with them. Accused chose not to lead any evidence in his defence.

5. I have heard Mr. Masood Ahmad - Ld. Chief PP for the State, Shri Prince Bhardwaj - Ld. LAC for accused and have carefully gone through the records of the case. I have also considered the rival submissions.

6. It was submitted by Ld. Chief PP for the State that the case against the accused has been duly proved. The complainant and his maternal uncle had identified the accused in the Court as one of the assailant/robber. It was further submitted that the medical documents i.e. MLC also corroborates with the version of complainant. Thus, it was argued that the charges have been duly proved against the accused.

7. Countering the arguments of the State, Ld. Defence Counsel submitted that the prosecution has miserably failed to prove the charges against the accused. It was submitted that none of the articles allegedly, robbed by the accused including cash or mobile phone was recovered from the accused. Even complainant had failed to identify him as the person who had inflicted stab injury to him. It was submitted that weapon of offence could not be recovered in the present case. No independent witness has been examined/cited by the prosecution. Hence, it was prayed that the accused may be acquitted.

8. The complainant/injured namely Shehzad was examined by the prosecution as PW2. He deposed the entire set of facts regarding the alleged incident. It was deposed by him that on 24.08.18 at about 09.00 pm, when he was returning with his

maternal uncle Umarshad Hussain from the fair(*mela*) and reached near Brahampuri Puliya at about 11.45 pm, three persons also reached there and they firstly caught hold of his uncle and when he tried to save him, the said three persons choked his neck from behind. He further deposed that one of the person took out a knife and placed it on his stomach and dragged him and his uncle behind a parked truck. Thereafter, on the point of knife, the said persons asked for his mobile phone and money which they were carrying. He also caused injury with the said knife on his right arm, under the shoulder. He further deposed that the said three persons robbed his mobile phone make 'KACHARA' and Rs.500/- from his maternal uncle. It was further deposed by the complainant that when they raised hue and cry, some public persons gathered and they were able to apprehend one of the culprits whose name was later revealed as Ubaid while other two managed to escape.

9. This witness correctly identified the accused in court and deposed that the public persons had also given beating to him. He further deposed that he made a call to his father from the mobile phone of one of the public persons who reached the spot and called the police which reached the spot. He was taken to the hospital by the police where he was examined and thereafter his statement was recorded Ex.PW2/A, on which the present case was registered.

10. In his further examination, he deposed that he was unable to say whether it was accused Ubaid who had shown the

knife to him and his uncle or had caused injury with it upon him. He was unable to depose as to which of the accused had caused injury.

11. He was cross examined at length wherein he deposed that it was accused Ubaid who had firstly caught hold of his uncle and had asked about the time from him. He further deposed that one of the other accused choked his neck from behind and the third caught his uncle and that he had seen the face of the accused when his neck was being choked. He further clarified that the truck driver was not present in the truck, behind which they were taken. He then categorically deposed that it was accused Ubaid who had robbed Rs.500/- from his uncle and the accused who had caused injury upon him with the knife had robbed his mobile phone. He insisted that despite being dark, he had seen all the three accused and further clarified that two of them were wearing shirt and accused Ubaid was wearing a t-shirt. He also deposed that two of the accused managed to escape in the nearby streets but before that accused Ubaid was apprehended. He admitted that his mobile phone and cash could not be recovered.

12. He also admitted that the site plan was prepared in his presence at the PS but before that the police had visited the spot with him and he had pointed out the place of incident to them. He further deposed that accused Ubaid was arrested at the spot. He reiterated that he had seen the accused properly when he was apprehended by the public persons. Thereafter, he denied the

suggestions contrary to the prosecution case.

13. Thus, he fully supported the prosecution case and deposed about the particular act of the accused and his accomplices. His testimony could not be impeached at all in the cross examination nor the identity of the accused could be disputed.

14. Similarly, PW3, the uncle of the complainant namely Umarshad Hussain also supported the prosecution case and the version of PW2. He also deposed that the incident took place on 24.08.18 and he had come to Delhi from Bihar about one or two days prior to the incident.

15. It was deposed by PW3 that on the said date at about 09.00 PM, he had gone to visit the fair with the family members. The other members of the family returned earlier and he along with PW2 left the fair subsequently. While returning, they reached near a *puliya* at about 11.45 pm where three persons were present who reached near him and choked his neck and robbed his purse containing Rs.500/- and also robbed the mobile phone of his nephew Shehzad. He further deposed that while committing the act, one of the accused had choked their neck and another inflicted knife injury on the right arm of his nephew.

16. It was further deposed by PW3 that on their raising alarm, public persons reached there and one of the accused was apprehended at the spot while other two managed to escape. He identified the accused in court who was so apprehended, however

he deposed his name to be Jubair but later clarified his name to be Ubaid when a leading question was put to him by the Ld. Chief PP for the State. It was also deposed by him that PW2 called his father from the mobile phone of some public person who reached the spot and made a call to the police. Police arrived and took his nephew to the hospital but he did not accompany him there.

17. He was also cross examined at length wherein he deposed that one of the accused had choked his neck from behind but he could not see his face. However, he categorically deposed that it was accused Ubaid who had robbed his purse and that one of the accused who had fled away had caused injury upon Shehzad with a knife. He also deposed that none of the drivers of the parked trucks were present at the spot. He also deposed that the accused were wearing pant shirt and that accused Ubaid was apprehended after some chase but was visible from the spot. He clarified that there was street light at the spot and therefore, he could see their faces. Thereafter, he denied the suggestions contrary to the prosecution case.

18. The incident was verified by PW4 ASI Surender Singh who was working as DD writer at PS Seelampur on that day and he deposed that at about 12.52 am on the night intervening 24/25.08.2018, he received a call from PCR van Bravo-50 regarding snatching of purse and mobile at Brahampuri chowk and of inflicting knife injury. He recorded the information vide DD No. 5B and assigned it to SI KP Singh.

19. The IO SI KP Singh (PW8) and ASI Mahender (PW7) who both had reached the spot on receiving the information deposed that on arriving there, they met the complainant Shehzad and his uncle Umarshad who had apprehended the accused Ubaid and they disclosed that the said accused along with two others had snatched the mobile phone of the complainant and Rs.500/- from his uncle. Thereafter, he conducted the necessary investigation after getting the injured medically examined at the hospital.

20. In the cross examination, he deposed that there were no CCTV cameras nearby and no public person was also present when he arrived at the spot. However, PW7 deposed that number of persons were present at the spot but it was PW2 and PW3 who had caught hold of the accused. He also deposed that he tried to obtain the statement of 10-15 persons present at the spot but no one agreed for it. This is the only contradiction in the entire prosecution case which appeared in the testimony of PW7 & 8 but the same is not sufficient to discard the entire prosecution case. In Vijay @_Chinee v State of M.P.(2010) 8 SCC 191 it was observed by Hon'ble Supreme Court of India, as under:-

“19. It is settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the court to reject the evidence in its entirety.”

21. PW5 Dr. Kunal Kishore proved the MLC of the

injured as Ex.PW5/A. In the said MLC as well, alleged history of physical assault had been given, with mention of incised wound over right arm 5 x 0.2 cm, which again corroborates the version of the complainant.

22. The remaining witnesses examined by the prosecution were formal police witnesses who remained associated in the investigation at some stage or the other.

23. It is thus, seen that both PW2 & PW3 have duly corroborated each other regarding the place, time and manner of incident as also the role of each of the accused including that of accused Ubaid. Their testimonies could not be impeached during the entire length of cross examination and they stood their ground. Their version was further corroborated by PW7 & 8, but for an exception regarding the presence of public persons at the spot. The medical examination report of the injured has further corroborated the incident as deposed by PW2 & 3.

24. As regards the identity of the accused is concerned, it is the case of the prosecution and also deposed by the aforesaid material witnesses that he was apprehended at the spot. He was duly identified in court by both PW2 & 3 as well as PW7 & 8. The accused took a defense that he is a e-rickshaw driver and on that day he was returning after parking his rickshaw and was slightly drunk and therefore, wrongly apprehended by the public persons and falsely implicated in this case. However, he failed to prove this defense except by merely putting suggestions to PW2 alone which

is not sufficient to prove the defense. Otherwise, he has admitted his presence at the spot and the fact of his being apprehended there and therefore, his identity cannot be disputed.

25. It was argued by Ld. Counsel for the accused that neither the robbed articles nor the weapon of offence could be recovered in this case and therefore, the possibility of false implication of the accused cannot be ruled out. I disagree with this contention as it is the case of the prosecution that the two accused who had fled away had taken away the robbed articles. It has also come in the testimony of PW2 that the injury was caused upon him with the knife by another accused who robbed his mobile phone and who succeeded in escaping from the spot. Even otherwise, non-recovery of weapon of offence is not fatal to the prosecution case. Reliance can be placed on the judgment delivered in *State v Laly @ Manikandan [Criminal Appeal Nos. 1750-1751 OF 2022, dated 14.10.2022]*, wherein it was held that *“the recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. The Hon’ble SC held that even in the absence of recovery of weapon, the accused can be convicted if there is direct evidence in the form of eye witness and there can be a conviction on the basis of the deposition of the sole eye witness, if the said witness is found to be trustworthy and/or reliable.”*

26. It was further argued by Ld. Counsel for the accused that the injury upon the complainant PW2 was not caused by the

accused Ubaid nor it is the case of PW2 that he was having knife and therefore, the accused cannot be convicted under Section 394 IPC. I again differ with this submission since under Section 394 IPC, every other associate of the person causing voluntary hurt is liable under this Section which is clear from the plain reading of the said Section itself which is reproduced as under: -

“Section 394: - Voluntarily causing hurt in committing robbery -

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

27. This position has been clarified in various pronouncements and reference can be made to the judgment in **Chattar Pal versus State NCT of Delhi (CRL.A. 723/2011 Decided on 30th April, 2015)** wherein it was held as under :-

“Section 394 IPC does not stipulate use of any ‘deadly weapon’ and it simply provides that if any person voluntarily causes hurt not only the person who actually causes hurt but other persons, involved in the commission of robbery, would be equally liable to be

punished with the imprisonment as envisaged under Section 394 IPC.”

28. It is also the case of the prosecution and deposed by the witnesses particularly PW2 & 3 that the accused were armed with a knife at the time of committing the incident with which injury was also caused to PW2. It cannot be denied that a knife is a deadly weapon as provided under Section 397 IPC. However, since there is nothing to suggest that the accused had used the said weapon or even brandished the knife or was even holding the knife at the time of the incident, he cannot be convicted for the said offence through vicarious liability. Reference can be made to the judgment of Hon'ble High Court of Delhi in **Mohd. Wasim vs State (Crl. A. No. 67/2011, dated 26 May, 2025)** wherein it was held as under: -

“As pointed out by learned counsel for the appellant, it is a settled law that a person can be convicted under Section 397 of the IPC if he has used a deadly weapon as has been held by Hon'ble Supreme Court in Dilawar Singh (supra) that the aforesaid Section "envisages the individual liability and not any constructive liability."

29. It is thus, clear that the prosecution has been able to successfully prove beyond reasonable doubt that accused Ubaid along with two others had robbed the complainant and his uncle of a mobile phone and cash Rs.500/- and while committing the said

robbery, voluntarily caused hurt to the complainant with a knife.

Accordingly, accused Ubaid is held guilty and is convicted for the offence punishable under Section 392/394/34 IPC.

ANNOUNCED IN OPEN COURT

ON 26th day of May, 2026

**(SANJAY SHARMA-I)
PRINCIPAL DISTRICT & SESSIONS JUDGE
NORTH EAST DISTRICT
KARKARDOOMA COURTS, DELHI**