



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14.10.2026

Date of Decision: 29.10.2026

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CNR No. DLHC010233012016

+ CRL.A. 98/2016

PRAMOD KUMAR

....Appellant

Through: Mr. Kashmir Singh, Adv.
versus

STATE

.....Respondent

Through: Ms. Raghuvinder Verma, APP for the
State

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present appeal has been preferred by the appellant, Pramod Kumar, challenging the judgment dated 21.12.2015 and the order on sentence dated 22.12.2015 passed by the learned Additional Sessions Judge-03 (Central), Tis Hazari Courts, Delhi, in **Sessions Case No. 88/2015** arising out of **FIR No. 115/2012** registered at Police Station Ranjit Nagar, Central District, Delhi. *Vide* the impugned judgment, the appellant was convicted for the offences punishable under Sections 392, 397 and 411 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Sections 25 and 27 of the Arms Act, 1959 (hereinafter referred to as 'Arms Act'). The appellant was sentenced to rigorous imprisonment for a period of three (3) years with a fine of ₹1,000/- for the offence punishable under Section 392 IPC, rigorous imprisonment for a period of seven (7) years with a fine of ₹1,000/- for the offence punishable under Section 397 IPC, simple imprisonment for a period of one (1) year for



the offence punishable under Section 411 IPC and rigorous imprisonment for a period of three (3) years with a fine of ₹1,000/- for the offence punishable under Section 25 of the Arms Act. In default of payment of each fine imposed under Sections 392 and 397 IPC and Section 25 of the Arms Act, the appellant was directed to undergo simple imprisonment for a period of one month. All the substantive sentences were directed to run concurrently and the benefit of Section 428 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') was extended to him. The order on sentence does not separately award any sentence for the offence punishable under Section 27 of the Arms Act.

FACTS

Prosecution's Case

2. The case of the prosecution is that on 13.07.2012, at about 10:00 a.m., the complainant, Nitin Shukla, along with his friends Mohit and Tanmay, was travelling in a bus from Shadipur Depot towards East Patel Nagar. While they were deboarding near the East Patel Nagar Public Library, the complainant noticed that his Nokia X2-01 mobile phone was missing. It is alleged that when Tanmay dialled the number of the missing phone, its ringtone was heard from the pocket of the appellant. The appellant allegedly took out the phone and discarded its SIM card. When Tanmay sought the return of the phone, the appellant is stated to have taken out a button-operated knife, placed it against his abdomen and threatened to stab him. The appellant was thereafter allegedly apprehended with the assistance of the other passengers and members of the public, and the mobile phone and knife were taken from him. A call was made to the police and, on the basis of the statement of the complainant, the aforementioned FIR was registered.



3. Upon receipt of the information recorded *vide DD Nos. 13-A and 15-A*, the police reached the spot. According to the prosecution, the complainant and his friends, with the assistance of Krishan Gopal, handed over the appellant along with the mobile phone and knife to the police. The knife was sketched and seized, the mobile phone was taken into possession and the appellant was arrested. During the course of investigation, the Investigating Officer (IO) collected the documents relating to the mobile phone, the PCR records and the call-detail record. Upon completion of the investigation, the charge-sheet was filed against the appellant.

Framing of Charges

4. Upon consideration of the material on record, the learned Trial Court, *vide* order dated 22.04.2013, framed charges against the appellant under Sections 392, 397 and 411 IPC and Sections 25 and 27 of the Arms Act, as recited in the formal charge. It was alleged that on 13.07.2012, while travelling in Bus Route No. 944 near the East Patel Nagar Public Library, the appellant committed robbery of the complainant's mobile phone, used a knife while committing the robbery, retained the stolen mobile phone and possessed a button-operated knife without any permit or licence in contravention of the applicable notification issued under the Arms Act. The appellant pleaded not guilty to the charges and claimed trial.

Prosecution Evidence (PE)

5. In support of its case, the prosecution examined thirteen (13) witnesses. The complainant, Nitin Shukla (PW-2), and Mohit (PW-3), in their examinations-in-chief recorded on 05.12.2013, narrated the alleged incident, identified the appellant and attributed the recovery of the mobile phone and knife to him. Their cross-examinations were deferred at the request of the defence. When PW-2 was cross-examined on 13.11.2014, he stated that his



mobile phone was not found and nobody was apprehended at the spot, and that neither the mobile phone was recovered nor the appellant arrested until about 3:00 p.m., while he remained at the police station. He further stated that his earlier deposition had been made after going through his statement at the instance of the IO and that he had identified the appellant at the instance of the IO. It was further deposed that the contents of **Ex. PW-2/A (rukka)** had not been narrated by him to the police and that the seizure memos of the knife and mobile phone and the sketch of the knife had been prepared at the police station. PW-3, when cross-examined on 28.01.2015, stated that the mobile phone had not been recovered after the incident, that the appellant had not been apprehended until about 3:00/4:00 p.m., while the witnesses remained at the police station and that he had seen the appellant for the first time before the Court.

6. Tanmay (PW-4) in his examination-in-chief deposed, that the mobile phone of PW-2 had gone missing and that he had made a call to the police. He, however, did not support the prosecution regarding the ringtone having emanated from the appellant's pocket, the recovery of the mobile phone and knife, or the alleged threat extended with the knife. Krishan Gopal (PW-6), the independent public witness, stated that members of the public had apprehended one person following an incident of pickpocketing, but he was unable to identify that person and did not support the material particulars attributed to him. PW-4 and PW-6 were cross-examined by the learned Additional Public Prosecutor at the time.

7. HC Shiv Lal (PW-5), the PCR official, deposed that the complainant and his friends had apprehended the appellant with the assistance of PW-6 and had handed him over along with the recovered mobile phone and knife. SI Khajan Singh (PW-13), the Investigating Officer (IO), also deposed



regarding the apprehension of the appellant, the alleged recoveries, preparation of the seizure documents and arrest of the appellant. Dr. Shaily Meena (PW-1) proved the medical examination of the appellant. HC Ravi Kumar (PW-7) proved the relevant DD entries and registration of the FIR, while HC Surender Kumar (PW-9) and Ct. Anil (PW-10) proved the PCR records. Dinesh Kumar (PW-8) proved the notification issued under the Arms Act. Saurabh (PW-11) proved the invoice relating to the mobile phone, and Hemant Singh (PW-12) proved the call-detail record (CDR), customer application form and the certificate under Section 65B of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act').

Defence Evidence (DE) (Statement under 313 CrPC)

8. After the conclusion of the prosecution evidence, the incriminating circumstances appearing against the appellant were put to him in his statement recorded under Section 313 CrPC. The appellant denied the prosecution evidence and claimed false implication. He stated that he had gone to Sir Ganga Ram Hospital by a TSR for treatment of a cyst on his upper lip and had been picked up by the police from the gate of the hospital. He further stated that the IO had implicated him because he had not appeared before him despite being directed to do so and that the IO bore a grudge against him. The appellant did not lead any evidence in his defence.

Impugned Judgment

9. Upon appreciation of the evidence on record, the learned Trial Court relied upon the examination-in-chief of PW-2 and PW-3. It observed that their cross-examination had been recorded after a substantial interval and that the order dated 16.07.2014 reflected that the complainant and the appellant had sought an adjournment to approach this Court for quashing of the FIR. The learned Trial Court held that the subsequent departure of these witnesses from



their examination-in-chief did not render their earlier testimony wholly unreliable. It further relied upon the portions of the testimony of PW-4 which it found reliable, the deposition of PW-5 and the PCR record concerning the apprehension of a person and the recovery of a mobile phone and knife. The learned Trial Court consequently held that the apprehension of the appellant, recovery of the mobile phone and knife, and use of the knife during the commission of the robbery stood proved beyond reasonable doubt. Accordingly, the appellant was convicted for the offences punishable under Sections 392, 397 and 411 IPC and Sections 25 and 27 of the Arms Act.

Order on Sentence

10. Thereafter, arguments on the quantum of sentence were heard. On behalf of the appellant, leniency was sought on the grounds that he was about forty years of age, had a wife and four children, was the sole earning member of his family, had his father to look after and had no previous criminal antecedents. The learned Trial Court, however, having regard to the circumstances in which the offence was found to have been committed and the use of a knife, declined to extend the benefit of leniency and imposed the sentences noticed hereinabove.

Present Proceedings

11. Aggrieved by the aforesaid conviction and the order on sentence, the appellant preferred the present criminal appeal before this Court. The appeal was admitted *vide* order dated 27.01.2016. Although the appellant's initial application seeking suspension of sentence was dismissed on 15.03.2016, his sentence was subsequently suspended *vide* order dated 19.07.2017 and his release on bail was directed, subject to the conditions stipulated therein.

**SUBMISSIONS ADVANCED****On behalf of the Appellant**

12. Learned counsel appearing on behalf of the appellant submitted that the conviction cannot be sustained since the material public witnesses had not supported the case of the prosecution when their testimonies were read in their entirety. It was contended that the learned Trial Court had nevertheless relied substantially upon the examinations-in-chief of PW-2 and PW-3, notwithstanding the material departures made by them during their cross-examination.

13. Drawing attention to the testimony of PW-2, Nitin Shukla, learned counsel submitted that his examination-in-chief was recorded on 05.12.2013, whereas he was cross-examined on 13.11.2014, after an interval of almost one year. It was submitted that during his cross-examination, PW-2 admitted that his earlier deposition had been made after going through his statement at the instance of the Investigating Officer, that he had identified the appellant at the instance of the Investigating Officer, that the appellant had not been apprehended at the spot and that the seizure memos and the sketch of the knife had been prepared at the police station. It was urged that these admissions rendered his earlier version unsafe to rely upon.

14. Learned counsel further submitted that PW-3, Mohit, whose examination-in-chief was also recorded on 05.12.2013, did not support the prosecution case during his cross-examination recorded on 28.01.2015. PW-4, Tanmay, likewise did not support the prosecution version concerning the alleged recovery and use of the knife and was cross-examined by the learned Additional Public Prosecutor (APP) also.

15. Learned counsel also drew attention of this Court towards the impugned judgment, wherein the learned Trial Court relied upon the interval



between the examinations-in-chief and cross-examinations of PW-2 and PW-3 and upon portions of the testimony of PW-4. On the basis of the aforesaid made submissions, it was submitted that the conviction could not be sustained.

On behalf of the State

16. Learned APP appearing on behalf of the State opposed the appeal and submitted that PW-2 and PW-3 had supported the prosecution's case during their examinations-in-chief. It was further submitted that the stolen mobile phone had been recovered from the possession of the appellant and that the said recovery supported the prosecution's case. The conviction of the appellant was, accordingly, sought to be sustained.

Rebuttal on behalf of the Appellant

17. In rebuttal, the learned counsel appearing on behalf of the appellant reiterated that PW-2 had expressly admitted that his earlier deposition was made after going through his statement at the instance of the IO. It was further submitted that the further examination of PW-4 had been deferred at the request of the learned APP and that when he (PW-4) was subsequently examined, he did not support the prosecution's case, and that he was further cross-examined by the prosecution also wherein he did not support its case again either. It was thus contended that reliance upon the earlier examinations-in-chief of the witnesses was misplaced.

ANALYSIS AND FINDINGS

18. This Court has heard the learned counsel appearing on behalf of the appellant and the learned APP for the State and has also perused the evidence placed on record.

19. The principal question that arises for consideration of this Court in the present appeal is whether the subsequent departures made by PW-2 and PW-3 in their cross-examinations efface their earlier sworn testimony, and



whether the evidence, read as a whole, proves the robbery, the use of the knife and the apprehension of the appellant at the spot.

20. Since the principal controversy in the present appeal arises from the materially divergent versions given by PW-2 and PW-3 in their examinations-in-chief and their subsequently recorded cross-examinations, this Court considers it apposite to reproduce the relevant portions of their depositions. Their cross-examinations, recorded after substantial intervals, contain departures bearing upon the core of the prosecution's case. The re-examination of PW-2 also assumes significance, as it directly addresses the explanation offered for the change in his version. The evidentiary worth of these witnesses cannot, therefore, be assessed by referring to isolated answers or by reading one part of their testimony to the exclusion of the other. Accordingly, the material portions of their examinations-in-chief and cross-examinations, together with the re-examination of PW-2, are set out below, so that their testimony may be evaluated as a whole and tested against the independent corroborative evidence available on record.

PW-2's Examination-in-Chief (Dated 05.12.2013)

"In the year 2012, I was student of BOA at Pusa Institute, New Delhi. On 13.07.2012, it was around 10 am, I boarded a bus from Shadipur Depot for going to Patel Nagar East. My other two friends, namely, Mohit and Tanmay with me. As soon as, bus was reaching Patel Nagar Bus Stop, I felt that someone had removed my Mobile Phone make Nokia X2-01 which was kept by me in the left side pocket of pant. I immediately told this fact to my friends who were also travelling with me. My friend Tanmay immediately made a call on my mobile phone and the ring of my mobile phone started and it was found ringing in the pocket of accused. Accused took out the



phone from his pocket and destroyed the SIM. When my friend Tanmay tried to take my mobile phone from the accused, accused took out one knife from his dub of pant. Accused today present in the Court, put the knife on the stomach of Tanmay and threatened him to stab, if he tried to intervene. The other students who were also travelling in the bus, helped us in apprehending the accused. Accused was apprehended on the bus stand and mobile phone as well as knife was taken by us from him. My friend Tanmay made a call to the Police. Police reached at the Bus Stand and recorded my statement Ex. PW 2/A which bears my signature at point A. I handed over my mobile phone as well as knife which were recovered from the accused to the Police. Police prepared sketch of the knife Ex. PW 2/B which bears my signature at point A and thereafter, knife was seized by the Police through a sealed pullanda. Seizure memo of the knife is Ex. PW 2/C which bears my signature at point A. Police also seized my mobile phone through seizure memo Ex. PW 2/D which bears my signature at point A. Accused was arrested by the Police in the present case vide arrest memo Ex. PW 2/E and his personal search was conducted vide memo Ex. PW 2/F. Both memos bear my signature at point A. Police took us along with accused to the PS Ranjeet Nagar. Thereafter, I was allowed to go by the Police to my house. I can identify the case property if shown to me.

At this stage, MHC(M) produced one sealed pullanda with the seal of KS, same is opened and contained one Mobile Phone make Nokia X2-01, D-Gray colour. Complainant identified the same mobile which was recovered from accused and belongs to him. Mobile is Ex. P-1.

At this stage, MHC(M) produced one another sealed pullanda with the seal of KS, same is



opened and contained one buttondar knife. Complainant identified the same knife which was recovered from accused and was put by him on the stomach of Tanmay. Knife is Ex. P-2.
(Emphasis supplied)

PW-2's Cross-Examination (Dated 13.11.2014)

“Perhaps the route of bus number was either 944 or 984. it is correct that bus was crowded with passengers. **When I was getting down from the bus I realized that someone had picked my pocket and I found that my mobile phone was missing. It was around 10.30 am. I told the persons present around there that my mobile phone had been stolen. The bus moved. My friend Tanmay made a call on 100 number regarding theft of my mobile phone.** About 20-25 persons gathered there after the incident. 15-20 persons had got down from the bus alongwith me. I took casual search of 1-2 persons but I did not find the mobile from those persons.

After 15-20 mins of making the call to the police, PCR van arrived there. After five minutes of PCR van local police also came there. We alongwith local police went to PS Ranjit Nagar. I left the police station Ranjit Nagar at around 3/3.30 pm. It is correct that my mobile phone was not found at the spot and nobody was apprehended at the spot. It is correct that neither my mobile phone was recovered nor accused was arrested till 3 pm while i remained in the police station. Police had not done writing work at the spot. I signed some papers in the police station but I did not count it. Some papers were blank and some papers were written. I did not read over the said papers which were signed by me nor police read the same prior to obtaining my signature. It is correct that I had deposed on 05.12.13 after going through the statement at the instance of IO. It is correct that i identified the accused Pramod at the



instance of the IO. It is correct that accused was not apprehended at the spot. It is correct that the contents of Ex.PW2/A were not told by me to the police. It is correct that seizure memo of knife Ex.PW2/C and seizure memo of mobile phone Ex.PW2/D and sketch memo of knife Ex.PW2/B were made in the police station.” (Emphasis supplied)

PW-2's Re-Examination (Dated 13.11.2014 i.e. on the day of the cross)

“I am a Graduate and presently pursuing MBA from SIMBOSIS university. It is correct that I sign any document after going through the same. It is correct that my mobile phone was stolen. It is correct that my friend Tanmay made a call on my mobile phone after knowing the fact my mobile phone was stolen. It is wrong to suggest that we heard the ringbell of my mobile phone in the pocket of one person nearby standing us. It is wrong to suggest that after hearing the ringbell of my mobile phone accused Pramod took out my mobile phone from his pocket and destroyed the same. It is wrong to suggest that when my friend Tanmay tried to take my mobile phone from accused Pramod then he took out one knife from belt of his pant and put knife on the stomach of Tanmay. It is correct that I had seen my mobile phone in the court on 05.12.13 and I identified the said mobile phone as belongs to me. It is correct that I did not inform to the hon'ble court about the pressure made by the IO on 05.12.13. It is wrong to suggest that I did not inform to the hon'ble court about the pressure made by the IO on 05.12.13 as it was not made by the IO to depose me before the court. Vol. I committed mistake on 05.12.13.

Today I have deposed correctly and I have deposed wrong facts on 05.12.13. It is wrong to suggest that I deposed correct fact on 05.12.13 without any pressure. It is wrong to suggest that I am deposing



falsely today at the instance of accused.” (Emphasis supplied)

PW-3's Examination-in-Chief (Dated 05.12.2013)

“In the year 2012, I was student of BOA at Pusa Institute, New Delhi. On 13.07.2012, it was around 10 am, I boarded a bus from Shadipur Depot for going to Patel Nagar East. My other two friends, namely, Nitin and Tanmay with me. As soon as, bus was reaching Patel Nagar Bus Stop. My friend Nitin told us that his Mobile Phone make Nokia X2-01 which was kept by him in the left side pocket of pant was missing. My friend Tanmay immediately made a call on his mobile phone and the ring of his mobile phone started and it was found ringing in the pocket of accused. Accused took out the phone from his pocket and destroyed the SIM. When my friend Tanmay tried to take mobile phone from the accused, accused took out one knife from his dub of pant. Accused today present in the Court, put the knife on the stomach of Tanmay and threatened him to stab, if he tried to intervene. The other students who were also travelling in the bus, helped us in apprehending the accused. Accused was apprehended on the bus stand and mobile phone as well as knife was taken by us from him. My friend Tanmay made a call to the Police. Police reached at the Bus Stand and recorded my statement U/s 161 Cr.P.C. Police prepared sketch of the knife already Ex. PW 2/B which bears my signature at point B and thereafter, knife was seized by the Police through a sealed pullanda. Seizure memo of the knife is already Ex. PW 2/C which bears my signature at point B. Police also seized my mobile phone through seizure memo already Ex. PW 2/D which bears my signature at point B. Accused was arrested by the Police in the present case vide arrest memo already Ex. PW



2/E and his personal search was conducted vide memo already Ex. PW 2/F. Both memos bear my signature at point B. Police took us along with accused to the PS Ranjeet Nagar. Thereafter, we were allowed to go by the Police to our house. I can identify the case property if shown to me. At this stage, one Mobile Phone which has already been taken from the sealed pullanda during testimony of PW 2 shown to the witness who identified the same mobile which was recovered from accused and belongs to Nitin. Mobile is already Ex. P-1. At this stage, one knife which has already been taken from the sealed pullanda during testimony of PW 2 shown to the witness who identified the same knife already knife a Ex. P-2.” (Emphasis supplied)

PW-3's Cross-Examination (dated 28.01.2015)

“It is correct that on 5.12.2013, the IO read over my statement U/s 161 Cr.PC to me in the Court before recording my examination-in-chief. Vol. On that day, I had only refreshed my memory by reading my statement U/s 161 Cr.PC. Whatever happened on the day of incident was narrated by me in my statement U/s 161 Cr.PC. It is correct that accused Parmod was shown to me on that date before recording my examination-in-chief. It is correct that my friend Tanmay had called the police at 100 number and thereafter we were taken to PS by PCR. It is correct that mobile phone of my friend Nitin was not recovered after the incident. It is correct that my friend Tanmay made a call to the stolen mobile and he found that said mobile phone was switched off. We remained in the PS till 3.00/4.00 pm. It is correct that till 3.00/4.00 pm, accused Parmod was not apprehended in this case by the police. Police obtained my signatures on 4/5 documents out of which some were blank. Police asked me to read the



contents of the said documents but due to paucity of time, I could not read them. It is correct that I saw the accused Parmod for the first time in the Court. It is wrong to suggest that I have deposed falsely.”

PW-5's Testimony (Dated 10.04.2015)

“On 13.07.2012, I was posted at PCR . On that day, I was incharge in PCR Van Oscar 45 from 8.00 AM to 8.00 PM. I was present in the area of East Patel Nagar and received a message from Control Room at about 10.00 AM. Thereafter, we reached East Patel Nagar Bus Stand near Metro Pillar No. 164. There complainant Nitin Shukla met us along with his friends namely Tanmay and Mohit. They had apprehended one person by the name of Pramod Kumar with the help of one public person, Krishan Gopal. I sent a message in Control Room . Thereafter, IO ASI Khazan Singh along with his staff reached the spot. Accused Pramod Kumar who is present in the court today along with recovered knife and mobile phone was handed over to the IO. Thereafter, I again received another call and left the spot.

It is wrong to suggest that accused Pramod was not produced by the complainant and his friends. It is further wrong to suggest that public persons had not handed over knife and NOKIA mobile phone which was recovered from the accused. It is wrong to suggest that I am deposing falsely.”
(Emphasis supplied)

PW6's Testimony (Dated 10.04.2015)

“Date, month and year I do not remember. However, it was two-three years ago, at about 10.00 AM , I was present at bus stop , East Patel Nagar, one bus came there and public persons gathered there. They were telling that there was pick pocketing and a mobile phone was stolen. Public persons



had apprehended one person. Police came there after some time. Police made me a witness and obtained my signatures as I was in hurry to reach my house. They also prepared some documents. I am unable to identify that person who was apprehended by public persons .Even I am unable to tell the name of public persons and name of accused.

At this stage, learned Addl. PP for the State seeks permission to cross examine the witness as he is resiling from his earlier statement.

Heard and allowed.

Xxxxxxxx by learned Addl.PP for the State.

I have studied up to class 12th standard. I can read and write Hindi. It is correct that police conducted all the proceedings in my presence. Police also made enquiries from me and they recorded my statement. I had not stated in my statement Mark X to the police that on 13.07.2012, I was going to Kendriya Terminal in a bus route no.944 or that when the said bus reached near Delhi Public Library, East Patel Nagar, one person took out the mobile phone of one passenger. Confronted with the statement Mark X of portion A to A 1 where it is so recorded. I had also not stated in my statement that I also deboarded from the bus and that some boys who were studying at PUSA institute were also deboarded or that I came to know the name of that person Nitin Shukla who deboarded from the bus along with his friends Mohit and Tanmay. Confronted with the statement Mark X of portion B to B 1 where it is so recorded. I had also not stated in my statement that I had heard the ringing the bell of mobile phone in the pocket of Pramod Kumar who was apprehended there and on demanding the phone by Tanmay , he threatened Tanmay with knife in my presence and it was put on the abdomen of Tanmay or that Pramod told him “Saalo bhag jao nahi to pet phad dunga” On this Pramod was apprehended by his friends. Confronted with the statement Mark X of portion C to C 1 where it is so recorded. I had also not stated in my



statement Mark X to the police that Tanmay made a call at 100 number, thereafter, police came there and conducted the proceedings in my presence as the knife and mobile phone were handed over to the police or that it was converted into pulanda and seized in my presence. Confronted with the statement Mark X of portion D to D 1 where it is so recorded.

It is wrong to suggest that I have been won over by the accused or that I had already entered into a outside court compromise with accused or that due to this reason, I am not deposing true facts in the court. It is further wrong to suggest that on 13.07.12 I was going to Kendriya Terminal in a bus route no. 944. It is wrong to suggest that accused Pramod who is present in the court today is the same person who was apprehended by Nitin Shukla along with his friends Tanmay and Mohit with my help. It is also wrong to suggest that I heard the ring of mobile phone from the pocket of accused Parmod or that when it was demanded by Tanmay, he put knife on the abdomen of Tanmay. It is further wrong to suggest that accused present in the court today is the same person who had committed theft of mobile phone in a running bus route no. 944. It is further wrong to suggest that all the proceedings were conducted in my presence or that after going through all the documents and their contents I signed the same at point X on each document which were prepared in my presence or that I am deliberately not deposing the true facts in the court in order to save the accused from the penal punishment or that I am deposing falsely.”
(Emphasis supplied)

21. Section 3 of the Evidence Act includes within the ambit of “*oral evidence*” all statements which the Court permits or requires witnesses to make before it, while Sections 137 and 138 of the same regulate the



examination-in-chief, cross-examination and re-examination of witnesses. The testimony of a witness must always be read as a whole and assessed with due care and caution. A statement recorded by the police under Section 161 CrPC does not ordinarily constitute substantive evidence but subject to the exceptions preserved under Section 162(2) CrPC, such a statement may be used for the limited purpose of contradicting its maker, when examined as a prosecution witness, in terms of the proviso to Section 162(1) CrPC and in the manner prescribed under Section 145 of the Evidence Act. Section 154(2) of the Evidence Act further makes it clear that a party permitted under Section 154(1) to put questions to its own witness in the nature of cross-examination is not precluded from relying upon any part of that witness's evidence. Thus, neither the witness's subsequent departure from the version given in examination-in-chief nor the permission granted to the prosecution to cross-examine its own witness has the effect of effacing the entire testimony from the record. The Court may rely upon such part of the testimony as it finds credible and trustworthy upon a careful scrutiny of the deposition as a whole and in the light of the other evidence available on record.

22. The Supreme Court has repeatedly cautioned against granting long adjournments between the examination-in-chief and cross-examination of a witness. In ***Vinod Kumar v. State of Punjab, (2015) 3 SCC 220***, the Supreme Court deprecated the long interval of one year and eight months between the examination-in-chief and cross-examination of the witness, observing that it afforded ample time to pressurise or win him over. The Court held that the evidence of such a witness must be read in its entirety and that the dependable portion of his earlier testimony could not be discarded merely because he subsequently prevaricated. It further emphasised that cross-examination should ordinarily be completed on the same day as the examination-in-chief.



23. Further, in *Rajesh Yadav v. State of U.P.*, (2022) 12 SCC 200, the Apex Court reiterated that prolonged adjournments following examination-in-chief may, with the passage of time, enable private witnesses to be won over. It reaffirmed, that the testimony of a witness who subsequently turns hostile is not effaced from the record and that those portions which are found dependable upon careful scrutiny may be relied upon. The Court accordingly in this case directed that the Trial Courts endeavour to complete the examination-in-chief and cross-examination of private witnesses on the same day, as far as possible. The relevant portion of the aforesaid judgment is as follows:

Rajesh Yadav v. State of U.P. (supra)

“22. The expression ‘hostile witness’ does not find a place in the Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief-examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief-examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief-examination could be termed as evidence. Such evidence would become complete after the cross-examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened



can also be considered, particularly in a situation where the chief-examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.” (Emphasis supplied)

24. Section 309 CrPC likewise mandates that, once the examination of witnesses has commenced, it shall proceed from day to day unless the Court finds it necessary to adjourn the proceedings for reasons to be recorded. More recently, in *Selvamani v. State of T.N.*, (2024) 19 SCC 112, the Supreme Court upheld reliance upon the examination-in-chief of a witness, which stood corroborated by the other material on record, despite the witness having altered his version when cross-examined after an intervening period.

25. The same principle was applied by a Coordinate Bench of this Court in *Babu Ram v. CBI*, 2014 SCC OnLine Del 2838, wherein the witness supported the prosecution during examination-in-chief but resiled from that version when cross-examined after an interval. The Court in this case accepted the credible part of the concerned witnesses’ examination-in-chief, as it stood corroborated by the remaining evidence on record. The governing principle, therefore, is neither that the testimony given in examination-in-chief must invariably prevail over a subsequent contrary statement made in cross-examination, nor that the subsequent retraction automatically effaces the earlier sworn testimony, but, that the testimony of a witness who subsequently resiles or makes a contrary statement in cross-examination does not stand effaced from the record. That the deposition must be read and assessed as a whole in light of the entire evidence on record, and the Court must determine which part of it is truthful, dependable and acceptable.



26. In the present case, the examinations-in-chief of PW-2 and PW-3 were recorded on 05.12.2013. Their cross-examinations were deferred at the request of the defence and were eventually recorded on 13.11.2014 and 28.01.2015, respectively. The order dated 16.07.2014 further records that the complainant and the learned counsel for the appellant jointly sought an adjournment to approach this Court for quashing of the concerned FIR. Now that order is not, by itself a proof of any compromise or inducement, but it is however, a relevant intervening circumstance when assessing the materially altered versions subsequently given by PW-2 and PW-3.

27. In their examinations-in-chief, PW-2 and PW-3 furnished a coherent account of the occurrence. They deposed that the mobile phone was found missing, that its ringtone was thereafter heard emanating from the appellant's pocket, that the appellant took out the mobile phone and discarded its SIM card and that he placed a knife against PW-4 and threatened to stab him. They further deposed that the appellant was apprehended at the spot and that the mobile phone and the knife were taken from him. Both of the above witnesses also, identified the appellant, the mobile phone and the knife before the Court.

28. It is true, that the cross-examinations recorded subsequently contain material departures from the aforesaid account but those departures cannot be considered in isolation from the remainder of their testimony. In his re-examination, PW-2 admitted that he was a graduate, that he signs documents only after reading them, that his mobile phone had been stolen and that PW-4 had called his number. He had also identified the mobile phone before the Court. He further admitted that, on 05.12.2013, he had not complained to the Court that the Investigating Officer (IO) had compelled him to depose in any particular manner. PW-3, for his part, stated that his police statement had merely refreshed his memory and that he had narrated to the police what had



occurred. Now although, the cross-examinations recorded subsequently contain material departures from the aforesaid account, those departures do not constitute a credible correction of the earlier testimony. PW-2's assertion that he had deposed on 05.12.2013 at the instance of the IO is materially weakened by his admission that he did not complain to the Court on that date of any pressure having been exerted upon him. His further admission that he ordinarily signed documents only after reading them is inconsistent with his claim that he had signed blank or written papers without reading their contents. Significantly, even while resiling from the incriminating part of the occurrence, he continued to admit that his mobile phone had been stolen, that PW-4 had called his number and that he had identified the handset before the Court. PW-3 likewise clarified that his statement given to the police had merely been used to refresh his memory and affirmed that he had narrated to the police what had occurred. These answers somewhere demonstrate that the subsequent versions were not coherent alternative accounts of the incident but selective retractions of those facts which implicated the appellant. This Court is, therefore, not persuaded to discard their examinations-in-chief merely on the basis of those later denials, particularly when the earlier account receives independent corroboration from the evidence discussed hereafter. At this stage, it is also material to note that, in ***Vinod Kumar v. State of Punjab (supra)***, the Supreme Court treated the interval of one year and eight months between the examination-in-chief and cross-examination as having afforded ample time to pressurise or gain over the witness and held that the resulting prevarication did not justify brushing aside the earlier testimony when the evidence was read in its entirety. The present case must be assessed on the very same principle, particularly since PW-2 and PW-3 resiled only after



intervals of approximately eleven months and nearly fourteen months, respectively.

29. The account furnished by PW-2 and PW-3 in their examinations-in-chief as stated above, also receives independent corroboration from the testimony of PW-5, the PCR official. PW-5 deposed that, upon reaching the East Patel Nagar bus stand near Metro Pillar No. 164, he found that the appellant had been apprehended by PW-2, PW-3 and PW-4 with the assistance of PW-6. He further stated, that the appellant, along with the mobile phone and the knife, was handed over to the IO. His testimony was met merely with bare suggestions, and no material contradiction could be elicited from him. PW-6, despite being unable to identify the appellant before the Court, supported the occurrence of a mobile phone theft, the gathering of members of the public and the apprehension of one person before the arrival of the police.

30. The contemporaneous official record, lends further assurance to the prosecutions version. **DD No. 15-A** and the proved PCR material, record that a pickpocket had been apprehended near Metro Pillar No. 164. The PCR message likewise records, that a snatcher had been apprehended and that a mobile phone and a knife had been recovered. The IO also deposed that the appellant was produced at the spot by the complainant and his companions along with the recovered articles. The present case is therefore, not one of a belated arrest founded upon a doubtful test identification or of a recovery subsequently engineered by the investigating agency. The appellant's apprehension at the spot stands established by mutually reinforcing oral evidence and contemporaneous documentary material.

31. The explanation offered by the appellant in his statement under Section 313 CrPC that he had been picked up from the gate of Sir Ganga Ram Hospital



and falsely implicated on account of a grudge borne by the IO remained a bare assertion. No document relating to his treatment, circumstance concerning his movements or other material was produced to render the explanation probable. The said explanation does not displace the cogent evidence adduced by the prosecution.

32. The substantial interval preceding the cross-examinations, the intervening request for quashing of the proceedings, the abrupt and internally inconsistent departures made thereafter, and the independent corroboration available in support of the earlier account, cumulatively justify the conclusion that the subsequent retractions were not truthful. The legal significance of these circumstances is reinforced by the Supreme Court's decision in *Selvamani v. State of T.N. (supra)*, wherein, after noticing that the witnesses had resiled in their cross-examinations recorded three and a half months after their examinations-in-chief, the Court held that the long gap supported the inference that they had been won over, while accepting their earlier version because it stood sufficiently corroborated by the other evidence on record. These circumstances altogether, do indicate, that PW-2 and PW-3 had come under an intervening influence. The finding of guilt however, does not rest upon that inference alone. It rests upon the reliable portions of their sworn testimony, read together with the testimony of the PCR official and PW-6, the contemporaneous DD and PCR records, the evidence of the IO, and the recoveries proved during the trial.

33. The evidence accepted above establishes that, while carrying away the stolen mobile phone, the appellant placed the knife against PW-4 and threatened to stab him when the phone was demanded. The convictions under Sections 392 and 397 IPC, therefore, warrant no interference. The proved possession and carrying of the button-operated knife in a public place, in



contravention of the notification dated 17.02.1979 issued under Section 4 of the Arms Act, also sustains the conviction under Section 25(1B)(b) of that Act.

34. The impugned judgment however, calls for modification on two limited aspects. First, this Court is of the opinion that the conviction of the appellant under section 411 IPC cannot be sustained. In *Mir Nagvi Askari v. CBI, (2009) 15 SCC 643*, the Supreme Court explained that Section 411 IPC is directed against a receiver of stolen property and not against the principal thief, robber or mis-appropriator. The relevant portion depicting as aforesaid, is as under:

“**181.** Section 411 provides for punishment to the person who dishonestly receives stolen property. The person must have the knowledge that it is a stolen property. We must bear in mind that A-3 had entered into a criminal conspiracy with A-1, A-2 and A-4. He would in that respect be deemed to have known that the property in question was stolen property. **This section as also the succeeding sections are directed not against the principal offender e.g. a thief, robber or misappropriator but against the class of persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore outside the scope of this section.** Accordingly, the conviction of the principal offender is also not a prerequisite to the conviction of the receiver of stolen property under this section. However, in the present case the principal offenders i.e. A-1, A-2 and A-4 have been held guilty of a “criminal breach of trust”, therefore, the conviction of A-3 would be even more clearly established from the facts and



circumstances of the present case.” (Emphasis supplied)

So as can be seen from the aforesaid judgment, once the appellant has been found to be the person who robbed the mobile phone, his separate conviction under Section 411 IPC for receiving or retaining the very same property cannot be sustained.

35. Secondly, the conviction under Section 27 of the Arms Act cannot be sustained. In *Surinder Singh v. State (UT of Chandigarh)*, (2021) 20 SCC 24, the Apex Court held that, to establish an offence under Section 27, the prosecution must necessarily prove contravention of either Section 5 or Section 7 of the Arms Act. The same shall be clear from the relevant portions reproduced below:

“29. Adverting to the conviction of the appellant under Section 27 of the Arms Act, it appears to us that the trial court has erred in arriving at his culpability. **There is no gainsay that in order to prove a charge under Section 27 of the Arms Act, the prosecution must necessarily demonstrate contravention of either Section 5 or 7 of the Act.** In the instant case, although not explicitly stated, it appears that the trial court has held it to be a case of breach of Section 5 of the Arms Act, which stipulates that no person shall use, possess, manufacture, etc. any firearms, unless such person holds a licence in this behalf, and prescribes a minimum punishment of 3 years of imprisonment.”

“31. **True it is that prior to the amendment of Section 27 of the Arms Act, vide Arms (Amendment) Act, 1988, the said provision penalised the use of any arms and ammunition for any “unlawful purpose”. However, post its amendment, Section 27 of the Arms Act is strictly confined to violation of conditions mentioned either under Section 5 or 7 of the Arms Act and**



the “unlawful purpose” of using arms and ammunition is no longer an inseparable component of the delinquency.” (Emphasis supplied)

36. Now in the present case, the contravention proved against the appellant is confined to the possession and carrying of the button-operated knife in a public place in breach of the notification dated 17.02.1979 issued under Section 4 of the Arms Act. But the prosecution has neither established, that the use of the said knife was in contravention of Section 5 nor proved, that it was a prohibited arm within the meaning of Section 7. Therefore, a contravention of the notification issued under Section 4 cannot substitute the statutory requirement under Section 27.

37. Accordingly, the conviction of the appellant under Section 27 of the Arms Act is liable to be set aside, while his conviction under Section 25(1B)(b) of the Act shall remain undisturbed.

CONCLUSION

38. In view of the discussion hereinabove, the conviction of the appellant under Section 411 of IPC and Section 27 of the Arms Act is set aside. Consequently, the sentence imposed *vide* the order on sentence dated 22.12.2015 for the offence punishable under Section 411 IPC is also set aside.

39. However, the conviction of the appellant under Section 392 of IPC, Section 397 of IPC and Section 25(1B)(b) of the Arms Act, together with the sentences imposed thereunder, stands affirmed. The substantive sentences imposed for the same shall run concurrently and the appellant shall be entitled to the benefit of set-off under Section 428 CrPC.

40. Therefore, the judgment of conviction dated 21.12.2015 and the order on sentence dated 22.12.2015, stand modified to the aforesaid extent.



41. Since the sentence of the appellant was suspended by a Coordinate Bench of this Court *vide* an order dated 19.07.2017, he shall now surrender before the concerned learned Trial Court within a period of two (2) weeks from the date of pronouncement of this judgment to undergo the remainder of the sentence. In the event of his failure to surrender within the stipulated period, the concerned learned Trial Court shall take appropriate steps to secure his custody.
42. Therefore, the present criminal appeal is partly allowed in the aforesaid terms and is accordingly, disposed of.
43. Pending application(s), if any, also stand(s) disposed of.
44. Interim order(s), if any, also stand(s) vacated.
45. A copy of this judgment be sent to the concerned learned Trial Court as well as the concerned jail superintendent for information and necessary compliance.
46. This judgment be uploaded on the website *forthwith*.

MADHU JAIN
(JUDGE)

OCTOBER 29, 2026/PG