* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12.10.2026
Date of Decision: 16.10.2026
Uploaded on: 16.10.2016

\# **CNR No. DLHC010789392024**
\+ **CRL.A. 1042/2024**

MOHD SALEEM .....Appellant
Through: Mr. Chetan Lokur, Adv. (*through VC*)
versus

STATE NCT OF DELHI .....Respondent
Through: Mr. Raghuvinder Verma, APP

\# **CNR No. DLHC010817812024**
\+ **CRL.A. 1077/2024 & CRL.M.(BAIL) 917/2026**

ARSHAD .....Appellant
Through: Mr. Amitej Kumar Nagar, Adv. (*through VC*)
versus

STATE OF NCT OF DELHI .....Respondent
Through: Mr. Raghuvinder Verma, APP

\# **CNR No. DLHC010885952024**
\+ **CRL.A. 1136/2024**

ASMAT ALI .....Appellant
Through: Mr. Arman Roop Sharma, Adv. (DHCLSC-*Pro Bono*), Mr. Aman Khan Afghani & Ms. Priya Pachouri, Advs.
versus

STATE (GNCT OF DELHI) .....Respondent
Through: Mr. Raghuvinder Verma, APP

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CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present appeals have been filed challenging the common judgment dated 23.07.2024 and the consequential order on sentence dated 07.09.2024 passed by the learned Principal District and Sessions Judge in Sessions Case No. 381/2016, arising out of ***FIR No. 108/2012***, registered at Police Station Pandav Nagar, for offences punishable under Sections 395/412/34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

FACTUAL MATRIX

2. The prosecution's case is that on 11.04.2012, upon receipt of DD No. 21A, SI Sudhir (PW-9), accompanied by Ct. Surender (PW-1), reached Gali No. 3, F Block, Samaspur, Pandav Nagar, Delhi, where Ct. Digpal (PW-5), HC Kanwarpal (PW-6), the complainant Ram Yadav (PW-2), and the three accused, namely, Mohd. Saleem, Arshad and Asmat Ali, were present. Mohd. Saleem and Arshad, who had allegedly been beaten by members of the public, were taken to LBS Hospital for medical examination.

3. During the search of accused Asmat Ali, seven purple-coloured boxes were recovered, which the complainant identified as the boxes used by the accused persons to offer rewards. The complainant's statement regarding the incident of robbery was recorded, and FIR No. 108/2012 was registered. During the investigation, ₹19,000/- belonging to the complainant and one MTS mobile phone were recovered from accused Mohd. Saleem, while a black Samsung mobile phone was recovered from accused Arshad. One mobile phone and

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certain documents were also recovered from accused Asmat Ali. The remaining ₹11,000/- allegedly robbed from the complainant could not be recovered, as accused Arshad had allegedly handed it over to his associate Raju, who could not be apprehended. The prosecution alleged that five persons, including the three accused and their associates Raju and Ali, had participated in the commission of the offence.

4. Upon completion of the investigation, the chargesheet was filed against the three accused for offences punishable under Sections 395/412/34 of the Indian Penal Code, 1860. After compliance with Section 207 Cr.P.C., the matter was committed to the Court of Sessions. A charge under Section 395 IPC was framed against all three accused, while a separate charge under Section 412 IPC was framed against accused Mohd. Saleem. All the accused pleaded not guilty and claimed trial.

5. The prosecution examined nine witnesses in support of its case.

> ***"(i) PW-1 Ct. Surender*** *had accompanied the Investigating Officer, SI Sudhir Kumar (PW-9), and participated in the investigation. On 10.04.2012, when he reached the spot along with SI Sudhir, Ct. Digpal and HC Kanwarpal met them at the spot with three accused persons, namely, Mohd. Saleem, Arshad and Asmat Ali. The complainant was also present there. Accused Saleem had injuries on his person, and accused Arshad was also complaining of pain in his hand. On the directions of the Investigating Officer, he, along with HC Kanwarpal, took accused Saleem and Arshad to LBS Hospital, got them medically examined there and thereafter returned to the spot. The Investigating Officer recorded the statement of the*

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complainant, prepared the rukka and handed it over to him. He went to the police station and got the case registered. Thereafter, he returned to the spot and handed over the original rukka and copy of the FIR to the Investigating Officer. The Investigating Officer arrested the three accused persons. Accused Asmat was arrested vide arrest memo Ex. PW-1/A, and his personal search was conducted vide Ex. PW-1/B. His disclosure statement was recorded vide memo Ex. PW-1/C.

***(ii) PW-2 Shri Ram Yadav** was the complainant and victim of the crime. He testified that on 10.04.2012, he had boarded a bus going towards Jaitpur from Laxmi Nagar at about 2:00 p.m. Some persons boarded the bus, selling lottery tickets and charging ₹50/- while offering a reward of ₹250/-. The said persons were five in number, and three of them approached him and asked him to participate in the lottery, but he refused. He was carrying ₹11,000/- in his pant pocket and another sum of ₹19,000/- in a separate pocket of his shirt. He specifically stated that accused Saleem had taken ₹11,000/- from his pant pocket and accused Arshad had taken ₹19,000/- from his shirt pocket. He further stated that accused Asmat was selling the lottery tickets (dibbis). When the bus crossed the Laxmi Nagar Flyover, accused Asmat gave a whistle, following which three persons got down from the front gate of the bus and two persons alighted from the rear gate. He also got down from the bus and chased the robbers. He stated that he apprehended accused Saleem and raised an alarm of "Chor, Chor", following which members of the public beat accused Saleem. Accused Arshad was also apprehended and beaten by members of the public. Accused Asmat himself came to the spot with the money.*

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He gave his statement Ex. PW-2/A to the police and pointed out the place of occurrence. All three accused persons, namely, Saleem, Arshad and Asmat, were arrested vide memos Ex. PW-2/B, Ex. PW-2/C and Ex. PW-1/A, respectively, and their personal searches were conducted vide Ex. PW-2/D, Ex. PW-2/E and Ex. PW-1/E, respectively. Accused Asmat was found in possession of seven blue-coloured dibbis (Ex. P-1 collectively), which were seized vide memo Ex. PW-2/F. He also identified photocopies of 38 currency notes of ₹500/- denomination as Ex. P-2 (collectively).

6. *This witness was cross-examined by the learned Additional Public Prosecutor, during which he stated that he had boarded bus route No. 473. He stated that two persons had approached him and asked why he was not buying the dibbis for a reward. They intimidated him, causing him to become frightened. One of those persons took ₹11,000/- from him, which he had wrapped in a blue handkerchief, while another person took ₹19,000/- from his shirt pocket. The currency notes were in the denomination of ₹500/- each. He stated that the person who had robbed him of ₹11,000/- had passed the money to his associate, and they got down from the bus and ran towards Samaspur Village, Pandav Nagar. He stated that he apprehended the person who had snatched ₹19,000/- from him with the assistance of members of the public. He further stated that two policemen on a motorcycle, who were patrolling the area, had apprehended accused Arshad and Asmat Ali. He identified accused Saleem as the person who had taken ₹19,000/- from him and whom he had apprehended at the spot with the money. He identified accused Arshad as the person who had taken ₹11,000/- from him and passed it on*

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to his associate. He also identified accused Asmat Ali as the person who was selling the dibbis in the bus. He stated that the currency notes were seized by the police vide seizure memo Ex. PW-2/F1. He had moved an application Ex. PW-2/G for the release of the currency notes on superdari *and executed the* superdarinama *Ex. PW-2/H.*

***(iii) PW-3 ASI Tejbir Singh** was working as Duty Officer at Police Station Pandav Nagar on 10.04.2012. He deposed that, upon receipt of the rukka from Ct. Surender, sent by IO/SI Sudhir Kumar, he registered the FIR through the computer operator. He proved the copy of the FIR as Ex. PW-3/A.*

***(iv) PW-4 SI Manu Kumar** stated that on 03.12.2014, further investigation of the case was assigned to him. After completion of the investigation, the challan was prepared and filed before the Court.*

***(v) PW-5 ASI Digpal** stated that on 10.04.2012, he, along with HC Kanwar Pal, was patrolling on a private motorcycle. During patrolling, when they reached near the bus stand of Route No. 473 at about 2:00 p.m., a bus stopped there and five boys got down and ran towards a village. Another person also got down from the bus and shouted that his money had been taken by those five boys. They chased the five boys, and the complainant apprehended accused Mohd. Saleem. They also chased and apprehended accused Asmat Ali, while accused Arshad was apprehended by HC Kanwar Pal. Information regarding the incident was given to the police station.*

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SI Sudhir and Ct. Surender reached the spot from the police station. On searching accused Saleem, ₹19,000/- belonging to the complainant was recovered. Accused Saleem and Arshad had injuries on their persons, allegedly sustained when they were beaten by members of the public, and were taken to the hospital by HC Kanwar Pal and Ct. Surender. On searching accused Asmat Ali, seven purple-coloured dibbis were recovered from his possession. The currency notes were seized vide memo Ex. PW-2/F1, and the seven dibbis were seized vide memo Ex. PW-2/F. Thereafter, accused Saleem and Arshad were brought back to the spot from the hospital. The Investigating Officer prepared the rukka and sent Ct. Surender to the police station for registration of the FIR. The Investigating Officer also prepared the site plan. Accused Saleem was arrested vide memo Ex. PW-2/B, his personal search was conducted vide Ex. PW-2/D, and his disclosure statement was recorded vide Ex. PW-5/A.

***(vi) PW-6 ASI Kanwar Pal** deposed on the same lines as PW-5 ASI Digpal.*

***(vii) PW-7 Dr. Onkar Singh Tomar** deposed that on 10.04.2012, he medically examined accused Mohd. Saleem and observed a lacerated wound measuring 5 cm × 0.5 cm on the centre of the top of his head, an abrasion measuring 2 cm × 0.5 cm on his nose, traumatic swelling over the nose with clotted blood present on both nostrils, and a reddish contusion measuring 12 cm × 4 cm on the top of his left shoulder. He prepared the MLC Ex. PW-7/A and referred the patient to the Surgery Department for an X-ray of the nasal bone. He further stated that on the same day, he examined accused Arshad vide*

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MLC Ex. PW-7/B, but no fresh injury was found on his person.

(viii) PW-8 HC Hari Ram *was working as MHC(M) at Police Station Pandav Nagar on 10.04.2012. He stated that SI Sudhir Kumar had deposited one* pulanda *containing case property, and an entry was made at Serial No. 109 of Register No. 19, exhibited as Ex. PW-8/A. He further stated that on 11.04.2012, SI Sudhir Kumar deposited another* pulanda *containing case property, and an entry was made at Serial No. 114 of Register No. 19, exhibited as Ex. PW-8/B.*

(ix) PW-9 Inspector Sudhir Kumar *was the Investigating Officer of the case. He deposed that on 10.04.2012, at about 2:25 p.m., upon receipt of DD No. 21A, Ex. PW-9/A, he, along with Ct. Surender (PW-1), reached the spot, where Ct. Digpal, HC Kanwar Pal and the complainant, Shri Ram Yadav, met him. The three accused persons, namely, Saleem, Asmat and Arshad, were handed over to him. The complainant disclosed that the accused persons had taken ₹30,000/- from him, out of which ₹19,000/- had already been recovered from accused Saleem. He was informed that the remaining ₹11,000/- had been taken away by two other associates of the accused persons who had fled.*

He sent accused Saleem and Arshad to LBS Hospital through HC Kanwar Pal and Ct. Surender. He further deposed that seven small dibbis were recovered from accused Asmat. He recorded the complainant's statement, Ex. PW-2/A, prepared the rukka, Ex. PW-9/B, and sent Ct. Surender to the police station for registration of the FIR. He prepared the site plan, Ex. PW-2/DA, at the instance of the complainant. He seized the recovered

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> *currency notes amounting to ₹19,000/- and the seven dibbis, arrested the accused persons and conducted their personal searches. He also recorded their disclosure statements. Despite efforts, the two other associates of the accused persons could not be arrested. The departure entries concerning the patrolling duty of HC Kanwar Pal and Ct. Digpal on 10.04.2012 were proved as Ex. PW-9/C and Ex. PW-9/D, respectively."*

6. Statements of accused persons under Section 313 Cr.P.C. were recorded. They all denied the case of the prosecution in entirety. They stated that they are innocent and have been falsely implicated in this case and nothing was recovered from them. However, they did not opt to lead evidence in their defence.

7. Upon consideration of the evidence adduced on record, the learned Trial Court passed the impugned judgment dated 23.07.2024, convicting the appellants for the offences in question. The relevant portion of the impugned judgment is reproduced hereinbelow:

> *"38. Therefore, in view of the above discussion, I am of the opinion that the prosecution has proved its case against all the accused persons beyond reasonable doubt, in view of the testimony of PW-2, coupled with the testimony of other police officials and the cross-examination of PW-9 Inspector Sudhir Kumar conducted on behalf of the accused persons.*
>
> *39. In view of the foregoing discussion, I am of the opinion that the prosecution has been able to prove its case against all the accused persons under*

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Section 395 IPC beyond reasonable doubt. Since the recovery of ₹19,000/- has been effected only from accused Mohd. Saleem, the prosecution has also proved its case against him under Section 412 IPC. Accordingly, all the accused persons, namely, Mohd. Saleem, Arshad and Asmat Ali, are hereby held guilty and convicted under Section 395 IPC. Accused Mohd. Saleem is also held guilty and convicted for the offence punishable under Section 412 IPC."

8. Vide the consequential order on sentence dated 07.09.2024, the learned Trial Court sentenced the appellants as follows:

"6. In view of the facts and circumstances, all the convicts, namely, Mohd. Saleem, Arshad and Asmat Ali, are sentenced as under:

(i) For the offence under Section 395 IPC, all the convicts, namely, Mohd. Saleem, Arshad and Asmat Ali, are sentenced to rigorous imprisonment for a period of ten years, with a fine of ₹10,000/- each. In default of payment of fine, they shall undergo simple imprisonment for a period of four months each.

(ii) Convict Mohd. Saleem is also sentenced to rigorous imprisonment for a period of five years, with a fine of ₹10,000/-, for the offence under Section 412 IPC. In default of payment of fine, convict Mohd. Saleem shall undergo simple imprisonment for a period of four months.

7. Benefit of Section 468 BNSS (Section 428 Cr.P.C., as applicable earlier) is extended to the

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convicts. All the sentences awarded to the convicts shall run concurrently."

SUBMISSIONS ON BEHALF OF APPELLANTS

9. Learned counsel for the appellants submits that the impugned judgment of conviction and the consequential order on sentence suffer from material errors of law and appreciation of evidence. It is contended that the learned Trial Court has selectively considered the prosecution evidence while disregarding material contradictions elicited during the cross-examination of prosecution witnesses, thereby rendering the findings against the appellants perverse and unsustainable in law.

10. It is further submitted that the prosecution has failed to establish the essential ingredients of the offence of dacoity punishable under Section 395 IPC, particularly the involvement of five or more persons in the commission of the alleged offence. It is contended that, although two other persons, namely, Ali and Raju, were allegedly involved in the incident, they were neither charge-sheeted nor brought before the Court for trial, and the prosecution failed to establish their involvement or the alleged concerted action of all five persons.

11. Learned counsel further submits that the prosecution has failed to establish the commission of robbery in accordance with law, as no weapon was recovered from the appellants and the evidence on record allegedly does not establish that the appellants caused or attempted to cause death, hurt or wrongful restraint in the course of the alleged incident.

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12. It is also contended that the testimony of the complainant, Ram Yadav (PW-2), suffers from material contradictions concerning the amounts allegedly stolen by the accused persons, the recovery and seizure of the currency notes, the purpose for which the money was obtained, and the preparation of the site plan. It is argued that the complainant's testimony regarding the recovery of the alleged stolen amount is inconsistent with the seizure memo bearing his signature and that the failure to record the serial numbers of the currency notes further casts doubt on the alleged recovery.

13. Learned counsel additionally submits that the medical evidence does not corroborate the prosecution's version regarding the alleged apprehension and beating of the appellants by members of the public, as the MLC of the appellant concerned records no fresh injury. It is further argued that the complainant having turned hostile, the learned Trial Court erred in relying upon his testimony without adequately considering the material inconsistencies therein.

14. It is further contended that the prosecution failed to establish any reliable evidentiary link between the appellants and the alleged absconding associates, Ali and Raju, and did not examine independent witnesses despite the alleged presence of several persons at the spot. Reliance is placed on the cross-examination of ASI Digpal (PW-5), wherein a suggestion was put that the appellant had been picked up from his residence and beaten by police officials rather than by members of the public.

15. Lastly, learned counsel submits that the investigation suffers from procedural infirmities, including the alleged recording of General Diary proceedings on plain paper, contrary to the applicable police regulations. On these grounds, it is urged that the impugned judgment of conviction and order

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on sentence are unsustainable and that the appeals deserve to be allowed.

SUBMISSIONS ON BEHALF OF STATE

16. Learned Additional Public Prosecutor for the State submits that the prosecution has successfully established its case against the appellants beyond reasonable doubt through the consistent testimony of the complainant, Ram Yadav (PW-2), read with the testimonies of ASI Digpal (PW-5) and ASI Kanwar Pal (PW-6). It is submitted that PW-5 and PW-6, who were on patrolling duty in the area, witnessed the complainant alighting from the bus and chasing the accused persons while raising an alarm of "chor-chor". The complainant apprehended accused Mohd. Saleem, while the remaining accused persons were apprehended with the assistance of the police officials.

17. It is further submitted that the recovery of ₹19,000/- from accused Mohd. Saleem and seven dibbis from accused Asmat Ali has been duly established through the prosecution evidence and the relevant seizure memos. The prosecution has also established that the remaining amount of ₹11,000/- was taken away by accused Arshad and handed over to his associate, who managed to escape. The mere fact that the other two associates could not be apprehended does not, by itself, negate the prosecution's case regarding their participation in the incident.

18. Learned Additional Public Prosecutor further submits that the discrepancies highlighted by learned counsel for the appellants are minor variations and do not discredit the prosecution case in its entirety. The testimony of the complainant must be read as a whole and in conjunction with the corroborative evidence of the police witnesses and the recovery of the case

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property. It is contended that the absence of recovery of the remaining amount or the non-examination of independent public witnesses is not, by itself, sufficient to discard otherwise reliable evidence.

19. It is accordingly submitted that the learned Trial Court has duly considered the evidence on record and rightly convicted the appellants for the offences charged. The impugned judgment of conviction and order on sentence are, therefore, sought to be sustained, and the appeals are liable to be dismissed.

FINDINGS AND ANALYSIS

20. This Court has heard the submissions advanced by learned counsel for the parties and has perused the material available on record.

Dacoity Not Made Out

21. At the outset, this Court considers it appropriate to examine the essential ingredients of dacoity as defined under Section 391 of the Indian Penal Code, 1860. The relevant portion of Section 391 of the Indian Penal Code, 1860, is reproduced hereinbelow:

> *"391. Dacoity.—*
>
> *When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity"."*

22. A bare perusal of the provision reveals that the commission or attempted commission of robbery conjointly by five or more persons is an essential ingredient of the offence. The provision also includes persons present and

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aiding the commission or attempted commission of robbery, provided that the total number of such persons amounts to five or more.

23. In the present case, admittedly, only three persons, namely, Mohd. Saleem, Arshad and Asmat Ali, were prosecuted and tried. Although the prosecution has alleged the involvement of two other associates, namely, Ali and Raju, the mere assertion that five persons were present at the spot or were involved in the incident is not, by itself, sufficient to establish the offence of dacoity. The prosecution is required to establish, through cogent and reliable evidence, that five or more persons conjointly committed or attempted to commit robbery, or that the total number of persons committing or attempting to commit robbery, together with those present and aiding its commission or attempt, was five or more.

24. There must be some corroborative evidence to establish that five persons were involved in the commission of the offence. This Court cannot be oblivious to the possibility of false or exaggerated allegations being made to attract graver offences. A mere assertion regarding the involvement of five persons, without supporting evidence, cannot and should not be sufficient to attract the offence of dacoity.

25. In the present case, the involvement of the alleged associates must be assessed in the light of the evidence actually adduced on record, rather than on the basis of an unsubstantiated allegation. Further, the presence of five persons, even if established, would not by itself fulfil the requirements of Section 391 IPC unless the underlying act is proved to constitute robbery within the meaning of Section 390 IPC. Accordingly, the prosecution must establish both the requisite number of participants and the commission or attempted

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commission of robbery before the appellants can be held guilty of dacoity under Section 395 IPC. The relevant portion of the complainant's testimony is reproduced hereinbelow:

> *"….. Some persons had boarded the bus and they were selling lottery. They were charging Rs. 50/- and giving a reward of Rs. 250/-. There were total five persons and three persons approached me and asked me to play lottery. I refused to play lottery.*
>
> *I was carrying Rs. 11,000/- in my pant pocket and I was also carrying another sum of Rs. 19,000/- in a separate pocket of my shirt. The witness has pointed out towards one person and stated that he had taken out Rs. 11,000/- from his pant pocket and on being asked, the accused stated his name as Saleem. The witness has pointed out towards accused wearing blue shirt and states that he is the same person who had taken out Rs. 19,000/- from his inside shirt pocket. On being asked, the said accused has stated his name as Arshad…..**Three persons got down from the bus from the front side. Two persons de-boarded the bus from the back gate. I also got down from the bus and chased the robbers. The witness has pointed towards accused Saleem and stated that accused Saleem was apprehended by him. I had shouted "chor-chor" and public persons had beaten Saleem. Accused Arshad was apprehended by public persons and given beatings……"***

Robbery Not Made Out

26. This Court shall now examine whether the essential ingredients of robbery, as defined under Section 390 IPC, are established in the present case. The relevant portion of Section 390 of the Indian Penal Code, 1860, is

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reproduced hereinbelow:

> ***"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."*

27. Under the said provision, theft amounts to robbery where, for the purpose of committing the theft, while committing the theft, or while carrying away or attempting to carry away the property obtained by theft, the offender voluntarily causes or attempts to cause death, hurt or wrongful restraint, or fear of instant death, instant hurt or instant wrongful restraint.

28. Upon a careful perusal of the testimony of the complainant, Ram Yadav (PW-2), this Court finds that, in his examination-in-chief, he did not specifically state that the accused persons had caused or attempted to cause him death, hurt or wrongful restraint, or had put him in fear of instant death, instant hurt or instant wrongful restraint. However, during his cross-examination by the learned Additional Public Prosecutor, he stated that the persons who stood beside him and intimidated him, whereupon he became frightened, apprehending that they might be carrying weapons and could cause him harm if he objected. Relevant portion of Examination-in-Chief and Cross-Examination of PW-2 is reproduced hereinbelow:

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Examination-in-Chief	Cross-Examination
On 10.04.2012, I used to work as a welder with Pragati Construction Company, having its office at Laxmi Nagar. I had taken a bus at about 2.00 PM to board towards Jaitpur from Laxmi Nagar. Some persons had boarded the bus and they were selling lottery. They were charging Rs. 50/- and giving a reward of Rs. 250/-. There were total five persons and three persons approached me and asked me to play lottery. I refused to play lottery. *I was carrying Rs. 11,000/- in my pant pocket and I was also carrying another sum of Rs. 19,000/- in a separate pocket of my shirt. The witness has pointed out towards one person and stated that he had taken out Rs. 11,000/- from his pant pocket and on being asked, the accused stated his name as Saleem. The witness has pointed out towards accused wearing blue shirt and states that he is the same person who had taken out Rs. 19,000/- from his inside shirt pocket. On being asked, the said accused has stated his name as Arshad.* *When the bus had crossed Laxmi Nagar flyover, accused Asmat gave a whistle blow. Three persons got down from the bus from the front side. Two persons de-boarded the*	***The persons who were standing beside me intimidated me, and I became frightened that they might be carrying some weapon and, if I objected, they could cause harm to me. One of those persons then took out Rs. 11,000/- in the denomination of currency notes of Rs. 100/- each which were kept wrapped in a blue handkerchief, and the other person had taken out Rs. 19,000/- from the extra front pocket of the shirt in the denomination of currency notes of Rs. 500/- each**.*

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bus from the back gate. I also got down from the bus and chased the robbers. The witness has pointed towards accused Saleem and stated that accused Saleem was apprehended by him. I had shouted "chor-chor" and public persons had beaten Saleem. Accused Arshad was apprehended by public persons and given beatings.	

29. The aforesaid testimony must be assessed in its entirety and in the context of the statutory requirements of Section 390 IPC. The mere fact that the complainant became frightened would not, by itself, satisfy the requirements of the provision unless such fear was of instant death, instant hurt or instant wrongful restraint and was caused by the offender for a purpose specified therein. In the present case, the complainant has neither stated in his examination-in-chief nor in his cross-examination that the appellants threatened him with instant death, hurt or wrongful restraint. His testimony merely indicates that the appellants approached him while attempting to sell lottery tickets and that he became frightened. There is no specific assertion that the appellants caused or attempted to cause any of the consequences contemplated under Section 390 IPC, or that the complainant apprehended instant death, instant hurt or instant wrongful restraint. In the absence of evidence establishing these essential ingredients, the prosecution has failed to establish that the alleged theft amounted to robbery within the meaning of Section 390 IPC.

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30. The Hon'ble Supreme Court, in ***Mohd. Wajid and Another v. State of Uttar Pradesh and Others, (2023) 20 SCC 219***; elucidated the essential ingredients required to be satisfied before theft can amount to robbery under Section 390 of the Indian Penal Code, 1860. The Court held that the offender must voluntarily cause or attempt to cause death, hurt or wrongful restraint, or fear of instant death, instant hurt or instant wrongful restraint, for one of the purposes specified in the provision. Mere occurrence of hurt or violence during the course of the transaction is insufficient unless the requisite nexus with the commission of theft or the carrying away of the stolen property is established. The relevant portion of the judgment is reproduced hereinbelow:

> *"15. Theft amounts to "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. Before theft can amount to "robbery", the offender must have voluntarily caused or attempted 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. The second necessary ingredient is that this must be 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 third necessary ingredient is that the offender must voluntarily cause or attempt to cause to any person hurt, etc. for that end, that is, in order to the committing of the theft, or for the purpose of committing theft or for carrying away or attempting*

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> *to carry away property obtained by the theft. It is not sufficient that in the transaction of committing theft, etc. had been caused. If hurt, etc. is caused at the time of the commission of the theft but for an object other than the one referred to in Section 390 IPC, theft would not amount to robbery. It is also not sufficient that the offender has been caused in the course of the same transaction of the theft.*
>
> *16. The three ingredients mentioned in Section 390 IPC, must always be satisfied before theft can amount to robbery, and this has been explained in Bishambhar Nath v. Emperor, in the following words: (SCC OnLine Oudh CC para 5)*
>
> *"5. ... The words 'for that end' in Section 390, Penal Code, clearly mean that the hurt caused by the offender must be with the express object of facilitating the committing of the theft, or must be caused while the offender is committing the theft or is carrying away or is attempting to carry away the property obtained by the theft. It does not mean that the assault or the hurt must be caused in the same transaction or in the same circumstances."*

31. Accordingly, this Court finds it necessary to determine whether the evidence establishes the commission of robbery within the meaning of Section 390 IPC. Unless the foundational ingredient of robbery is established, the charge of dacoity under Section 395 IPC cannot be sustained. The prosecution must also establish that five or more persons conjointly committed or attempted to commit the robbery, or that the total number of persons jointly committing or attempting to commit the robbery and those present and aiding its commission or attempt amounted to five or more, as required under Section 391 IPC.

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32. In view of the foregoing discussion, this Court finds that the prosecution has failed to establish the commission of dacoity, as defined under Section 391 IPC and punishable under Section 395 IPC. Consequently, the conviction of appellant Mohd. Saleem under Section 412 IPC cannot be sustained, as an essential ingredient of the said offence, namely, that the property in question was stolen in the commission of a dacoity, has not been established by the prosecution. Accordingly, the conviction of appellant Mohd. Saleem under Section 412 IPC is also liable to be set aside.

Theft

33. This Court, however, finds no reason to doubt the recovery of ₹19,000/- from accused Saleem. The evidence on record is sufficient to establish the offence of theft. Section 378 of the Indian Penal Code, 1860, defines theft as the dishonest taking of movable property out of the possession of any person, without that person's consent, by moving such property in order to effect the taking.

34. In the present case, this Court is satisfied that the ingredients of theft, as defined under Section 378 IPC, stand established. The relevant provisions of Sections 378 and 379 of the Indian Penal Code, 1860, are reproduced hereinbelow:

> ***"378. Theft.—***
> *Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*
>
> *XXX*

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> ***379. Punishment for theft.—***
> *Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

35. Upon a consideration of the testimony of the complainant, read with the evidence of the police witnesses and the recovery proceedings, this Court finds that the recovery of ₹19,000/- from appellant Mohd. Saleem stands established. The complainant has specifically deposed that the said amount was taken from his possession without his consent. The evidence, therefore, establishes the dishonest removal of movable property from the complainant's possession, thereby satisfying the essential ingredients of theft under Section 378 IPC. Accordingly, the offence punishable under Section 379 IPC stands established against appellant Mohd. Saleem.

36. Accordingly, the offence punishable under Section 379 IPC is made out. Section 379 IPC prescribes punishment with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

37. Having regard to the facts and circumstances of the present case, and upon perusal of the nominal rolls of the appellants, this Court notes that the appellants have already undergone a period of incarceration of nearly two years. In view of the period of custody already undergone by them, this Court deems it appropriate to sentence the appellants to the period of imprisonment already undergone by them.

CONCLUSION

38. In view of the foregoing discussion, the appeals are partly allowed. The impugned judgment of conviction dated 23.07.2024 and the consequential

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order on sentence dated 07.09.2024 are set aside insofar as they relate to the conviction of the appellants under Section 395 IPC and the conviction of appellant Mohd. Saleem under Section 412 IPC. However, the appellants are held guilty of the offence punishable under Section 379 IPC, in view of the findings recorded hereinabove, and are sentenced to the period of imprisonment already undergone by them.

39. The appellants shall be released forthwith, if not required to be detained in any other case, subject to compliance with the applicable provisions of law.

40. The appeals stand disposed of in the above terms. Pending application(s), if any, also stand disposed of.

41. A copy of this judgment be transmitted to concerned jail superintendent for information and necessary compliance.

MADHU JAIN
(JUDGE)

OCTOBER 16, 2026/RM

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