$~

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

% ***Reserved on: 16.10.2026***
Pronounced on: 27.10.2026
Uploaded on: 27.10.2026

CNR No. DLHC011272612012

\+ CRL.A. 908/2012

JIYA LAL .....Appellant

Through: Ms. Arti Bansal, Ms. Shruti Goel, Advs. with appellant in person.

versus

STATE .....Respondent

Through: Mr. Satinder Singh Bawa, APP with Insp. Sanjay Dahiya, PS Punjabi Bagh & SI Ajay, PS Jahangir Puri.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is a criminal appeal filed under Section 374 of the Code of Criminal Procedure, 1973 (Cr.P.C.) impugning the Judgment dated 29th March, 2012 and the Order on Sentence dated 08th June, 2012 passed by the learned Additional Sessions Judge-03, North-West District, Rohini Courts, Delhi (Trial Court), in Sessions Case No. 25/2011, arising out of FIR No. 561/2004 registered at Police Station Jahangir Puri.

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

2. The prosecution case, in brief, is that on 04th August, 2004, at around 4 AM, complainant Moti Lal (PW-1) was going to Azadpur Subzi Mandi on a two wheeler scooter bearing registration No. DDK-611 and Kishan Lal (PW-4), a clerk of Hansa Nand, was the pillion rider on the said scooter and was carrying a bag containing cash of Rs. 3 lacs. At about 4:10 AM, when they reached near the gate of Fruit Mandi, PW-1 heard the sound of firing of bullet. PW-4 shouted *"mere ko goli maar dee hai, muje bachaon"*. PW-1 immediately stopped the scooter and tried to manage PW-4. In the meanwhile, two boys came there and snatched the bag from PW-4. One of them, even fired at PW-1, but he somehow managed to save himself. Upon PW-1 raising alarm, those boys fled away.

3. PW-1 then immediately informed Hansa Nand and and they both took the injured Kishan Lal to the hospital. The police was informed. SI Sanjay Kumar (PW-14) along with Constable Subhash and Constable Paramvir (PW-6) came at the spot at the Out Gate of Azadpur Mandi. The statement of Moti Lal was recorded (Ex. PW1/A). On the said statement, a *Rukka* (Ex. 14/A) was prepared which was sent to the police station and FIR no. 561/2004 (Ex. PW3/A) was registered under Sections 307/394/397/34 IPC.

4. On 11th August, 2004, based upon a secret information, co-accused Haridwar @ Chacha, Babloo Pasi and Subhash @ Satya Prakash were arresested in case FIR no. 683/2004 under sections 307/186/353/34 IPC. Upon their personal search, a *desi katta* alongwith one live cartridge and one used cartridge were recovered

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

from co-accused Haridwar @ Chacha. A *Buttondar* knife was recovered from accused Subhash @ Satya Prakash. On interrogation they gave disclosure statements stating about their involvement in the case FIR no. 561/2004. In the said disclosure statement, they disclosed that after committing the robbery, they went to the *jhuggi* of the present appellant Jiya Lal where they distributed the looted money. On the basis of their disclosure statement, appellant Jiya Lal was arrested from his *jhuggi* at Wazirpur Industrial Area on 17th August, 2004.

5. Upon completion of investigation, charge-sheet was filed under Sections 307/394/395/397/412/120-B/34 IPC and Sections 25/27/ 54/59 of the Arms Act, 1959 against the appellant and the co-accused persons. Charges were framed against them under Sections 394/395/397/120-B/34 IPC for voluntarily causing hurt by use of deadly weapon while committing robbery and under Sections 307/120-B/34 IPC for attempting to murder Kishan Lal. Additional charge under Section 216-A IPC was framed against the appellant Jiya Lal for harbouring the other three co-accused persons.

6. In order to substantiate its case, the prosecution examined 18 witnesses including the two star witnesses Moti Lal (PW-1) and Kishan Lal (PW-4).

7. In his statement recorded under Section 313 Cr.P.C., the appellant denied all the incriminating evidence appearing on record against him. He refused to lead any evidence in his defence.

8. Upon conclusion of trial, the learned Trial Court *vide* Judgment dated 29th March, 2012 convicted the appellant and the other three

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

accused persons under Sections 394/395/120-B/34 IPC and under Sections 307/120-B/34 IPC. The appellant Jiya Lal was additionally convicted under Section 216-A IPC. *Vide* Order on Sentence dated 08th June, 2012, the appellant and the co-accused persons were sentenced as under:

> *"5. Considering the totality of facts and circumstances, the convicts namely Subhash @ Satya Prakash, Haridwar @ Chacha and Babloo Pasi @ Bhola and Jiya Lal are sentenced with 5 years Rigorous Imprisonment u/s 394/34 IPC r/w 120-B IPC; 7 years Rigorous imprisonment u/s 307/34 IPC r/w 120-B IPC; 7 years Rigorous imprisonment u/s 395/34 IPC r/w 120-B IPC. Convicts Babloo Pasi @ Bhola and Subhash @ Satya Prakash are further sentenced with 7 years Rigorous imprisonment u/s 397 IPC. Convict Jiya Lal is further sentenced with 3 years Rigorous Imprisonment u/s 216-A IPC. All the convicts are fined a sum of Rs. 3,000/- each in default of payment of which they shall undergo 3 months SI. All the sentences shall run concurrently."*

9. Feeling aggrieved, the appellant Jiya Lal has preferred the present appeal.

10. Learned counsel for the appellant submitted that the impugned Judgment of conviction and Order on Sentence are unsustainable as the prosecution has failed to establish the appellant's involvement by placing reliable evidence. It was contended that the appellant was not named in the FIR and that his name surfaced during the investigation for the first time in the disclosure statement of co-accused persons.

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

11. It was argued that the role attributed to the appellant Jiya Lal was limited to the extent that he was keeping watch from a distance, without any specific overt act demonstrating his participation in the robbery, assault or conspiracy. No recovery was effected from his possession or at his instance, and no incriminating material was produced to corroborate the allegation against him.

12. Learned counsel further contended that the testimony of PW-1 Moti Lal does not support the prosecution case inasmuch as PW-1 did not identify him.

13. It was further submitted that identification of the appellant by PW-4 Kishan Lal in Court is unreliable, in the circumstances of the present case, to establish the appellant's identity beyond reasonable doubt. The appellant was stranger to PW-4, no prior test identification parade was conducted, and the role attributed to him was that of keeping watch from a distance. It was also argued that the prosecution has failed to establish any specific act on the appellant's part or any independent circumstance demonstrating his participation in the alleged crime. It was thus submitted that prosecution has failed to prove its case against the appellant beyond doubt and therefore, the appeal is liable to be accepted.

14. *Per contra*, learned Additional Public Prosecutor (APP) for the State submitted that the learned Trial Court passed the Judgment of conviction and Order on Sentence after due appreciation of evidence on record. It was submitted that the prosecution has been able to duly

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

establish the occurrence of the robbery, use of firearm and knives, and the infliction of injuries upon Kishan Lal.

15. Learned APP contended that the testimony of PW-4 being the injured witness is most material to the prosecution case and his identification of the appellant Jiya Lal in Court could not be disregarded merely because the appellant had not been named in the FIR. It was argued that the evidence of an injured witness stands on a high pedestal and carries considerable evidentiary value and therefore must be given due weightage.

16. It was further submitted that prosecution case cannot be thrown aside merely because no recovery has been affected from the appellant. It was argued that appellant had received Rs. 5,000/- as his share but the same could not be recovered from his possession as he had spent the said money and therefore, under the circumstances, the absence of recovery of his share of robbed cash is not fatal to the prosecution case. According to the learned APP, the prosecution has been able to prove the case against the appellant Jiya Lal beyond doubt and thus prayed for the dismissal of the appeal.

17. The court has considered the submissions made by both the sides and has gone through the records of the case.

18. PW-1 Moti Lal is the complainant, who was driving the scooter on which PW-4 was travelling as a pillion rider. His testimony lends supports to the prosecution case regarding the occurrence and the presence of PW-4 at the place of occurrence. However, PW-1 stated that upon hearing the gunshot he bent down to protect himself and

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

thus was unable to identify the person who fired the shot, snatched the bag or used the knives.

19. Even though PW-1 was cross-examined by the learned APP after being declared hostile, such cross-examination has been of no help in establishing the identity of the appellant or in attributing any specific act to him.

20. PW-4 Kishan Lal, an injured witness, identified the appellant in Court. He deposed that at about 4:10AM, while they were at a short distance from the gate of Fruit Mandi, co-accused Haridwar @ Chacha stopped his scooter by parking a scooter in front of him and at that time another small boy was sitting on the scooter. He instantly asked PW-1 to call Seth whose money he was carrying and before PW-1 could cover a distance of 20 feet, co-accused Babloo Pasi fired at him and the bullet passed through his body. Co-accused Subhash @ Satya Prakash placed a knife on handle of the scooter, while appellant/accused Jiya Lal kept observing at some distance. He further deposed that all the four accused persons except co-accused Haridwar @ Chacha scuffled with him and snatched away his bag having cash of Rs. 3 lacs. According to him, it was a gang of 7-8 persons who had robbed him of the aforesaid amount.

21. Admittedly, appellant is not named in the FIR as one of the assailants. It is nowhere mentioned that one of the assailants was keeping the watch at the time of the occurrence. In fact, as per the FIR only two of the assailant were actively involved in the occurrence, even though it is also stated that there were some more boys with them

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

at the time of the occurrence. Admittedly, PW-1 Moti Lal was not able to identify any of the assailants in Court. Admittedly, as per the testimony of PW-1 he did not see the persons taking away the bag carried by Kishan Lal. His cross-examination by the learned APP has been of no help in establishing the identity of the appellant.

22. PW-4 Kishan Lal, the injured witness identified the appellant in Court. While he himself being the injured lends assurance of his presence at the time of occurrence, it does by itself establish the identity of the appellant. It is neither the stand of the prosecution nor the PW-4 that appellant was known to PW-4 prior to the occurrence. In fact, in his examination-in-chief, PW-1 himself stated that he came to know about the names of the accused persons on that day itself in Court when the Court asked their names from him during his testimony. Admittedly, appellant was not arrested from the place of incident. He was arrested on 17th August, 2004 that is, after 13 days of the occurrence on the basis of the disclosure statement of the co-accused. No Test Identification Parade (TIP) was conducted.

23. It is well settled that dock identification without a prior TIP has little or no evidentiary value where the witness has no prior familiarity with the accused. In ***Nazim & Ors. Vs. The State of Uttarakhand***, ***2025 INSC 1184***, the Hon'ble Supreme Court while relying on its previous judgment in ***P. Sasikumar Vs. State***, ***(2024) 8 SCC 600***, observed that TIP is only part of the investigative process and that the substantive evidence is dock identification. However, where the

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

accused is a stranger to the witness and no TIP is held, the Courts must exercise extreme caution in accepting such identification.

24. In the present case, the appellant was not named in the FIR, and his involvement emerged during the investigation through the disclosure statements attributed to the co-accused. He was arrested on 17th August, 2004 nearly two weeks after the occurrence. No test identification parade was conducted to test the capacity of PW-4 to identify him as one of the persons present during the incident. Further, the role attributed to the appellant was that of keeping watch at some distance, rather than that of a principal assailant directly involved in firing or snatching of the bag. No explanation whatsoever has been given by the prosecution as to why TIP was not conducted in this case before a Magistrate as it ought to have been done. These circumstances do not render PW-4's identification for the first time in Court without TIP to be admissible.

25. There is another reason why the testimony of PW-4 does not inspire confidence is that his testimony is self contradictory inasmuch as, in examination-in-chief, he deposed that it was co-accused Haridwar @ Chacha who had stopped his scooter by parking his scooter in front of him. The role attributed by him to the appellant was that he was keeping a watch from a distance. But in cross-examination, he stated that it was the appellant who had stopped his scooter by parking a scooter in front of his scooter. That being so, the testimony of PW-4 is not trustworthy *qua* the present appellant with regard to his role.

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

26. The prosecution also relies on disclosure statements of the co-accused wherein they stated that after commission of the robbery they had assembled at the *jhuggi* of the appellant for the division of the robbed cash and appellant Jiya Lal received Rs. 5,000/-. However, no such amount or other incriminating article was recovered from the appellant or at his instance, and no independent evidence establishes the factum of the assembly of the appellant and the co-accused at his *jhuggi* or regarding the sharing of the robbed cash.

27. A disclosure statement made before the police is inadmissible in evidence except to the extent as permissible under Section 27 of the Indian Evidence Act, 1872. In the present case, the disclosure statement made by the co-accused has not lead to the discovery of any fact and therefore, the same is inadmissible in evidence.

28. There is also no evidence to prove that the appellant shared any common intention with the co-accused. Likewise, the conviction under Section 120B IPC, requires proof of an agreement to commit an illegal act, which may be inferred from the circumstances but cannot rest on conjectures. In ***State of Maharashtra Vs. Monika Kiran Suryawanshi & Ors., 2026 INSC 685***, the Hon'ble Supreme Court observed that to secure a conviction under Section 120-B of the IPC, the prosecution must establish meeting of mind and an agreement to commit an illegal act. Once a conspiracy is proved, the act committed by one of the conspirator becomes the act of the other. However, the foundational pre-requisite i.e. the agreement itself must be proved through direct or circumstantial evidence. In the present case, no reliable evidence

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

independently establishes the appellant's participation, coordination with the assailants, or prior agreement to commit the alleged offences.

29. The conviction of the appellant under Section 216-A IPC is also unsustainable. There is absolutely no evidence except the disclosure statement to establish that the appellant subsequently harboured or concealed the co-accused within the meaning of that Section. The prosecution has thus failed to prove through the reliable evidence the essential ingredients of the offence.

30. Considered cumulatively, the evidence at best establishes the occurrence and the injuries suffered by PW-4 but does not connect the appellant with the alleged crime. The appellant's involvement in commission of the offence remains doubtful. The co-accused's disclosure statements are inadmissible in evidence, and the ingredients of conspiracy and harbouring have not been established.

31. The conviction is founded only on the basis of suspicion and as is well settled by the Hon'ble Supreme Court in the case of ***Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406*** suspicion, however strong, cannot take the place of proof and the prosecution must establish its case beyond doubt.

32. In the considered view of the Court the prosecution has miserably failed to establish the appellant's guilt beyond reasonable doubt. The appellant is therefore, entitled to acquittal.

33. The appeal is allowed. The Judgment of conviction dated 29th March, 2012 and the Order on Sentence dated 08th June, 2012 passed by the learned Trial Court insofar as they relate to the appellant Jiya

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52

Lal are set aside The appellant is acquitted of all the charges framed against him.

34. The bail bond of the appellant shall remain valid for a period of six weeks.

35. A copy of this judgment be sent to the learned Trial Court and Jail Superintendent for information and necessary compliance.

36. The appeal stands disposed of in the above terms alongwith pending application(s), if any.

RAVINDER DUDEJA, J.

OCTOBER 16, 2026/*AK*

Signature Not Verified
Signed By:VAISHALI PRUTHI
Signing Date:27.10.2026 16:52