

State vs Mohd. Yakub Etc on 29 March, 2025

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-08, WEST
DISTRICT TIS HAZARI COURTS, DELHI

Presided by: Hem Raj, DHJS

CNR No. DLWT02-014761-2018
SC No. 55893/2016
FIR No. 519 /2015
PS: Tilak Nagar
U/s 397/393/394/398/34 IPC
& 25/27/54/59 Arms Act

In the matter of :
State

Versus

1. Mohd. Yakub
S/o Sh. Abdul Gani
R/o H. No. B-777, JJ Colony,
Khyala, New Delhi.

2. Adatiya @ Akash
S/o Sh. Narender Sharma
R/o H. No. 81, near Krishana Ashram,
Brij Ghat, Garh Mukhteshwar,
District, Hapoor, Uttar Pradesh

3. Peter Joseph
S/o Sh. Victor Joseph
R/o Village Khucherer Road,
Chowkla, District Hapoor,
Uttar Pradesh

.....Accused persons

State Vs Mohd. Yakub & Ors	SC No. 55893/2016	FIR No. 519/2015	1/36
	Date of institution of case	:15-07-2015	
	Date of reserving for judgment	:07-02-2025	
	Date of pronouncement of judgment	:29-03-2025	

Appearance:

For the State

: Mr. Himanshu Garg, Ld. Addl.
Public Prosecutor.

For accused Peter Joseph : Sh. S.P Sharma, Ld. Counsel.

For accused Adatiya @ Akash : Sh. Vikas Bhatia, Ld. Counsel.

For accused Mohd. Yakub : Sh. Ranveer Vats, Ld. Counsel.

JUDGMENT

1. The accused namely Mohd. Yakub, Adatiya @ Akash and Peter Joseph faced trial for the offences u/s 393/394/397/398/34 and 25/27/59/25/54 Arms Act. A chargesheet was filed against them by SHO PS Tilak Nagar for the commission of the said offences.

The case of the prosecution:

2.1 The brief facts of the prosecution case are that on 24.03.2015 at about 7.30 p.m, complainant PW-1, Nishant Saluja and PW-2 Pawan Kakkar, were present in the office i.e. Nishant Forex (P) Ltd at Tilak Nagar. At that time two masked boys, one having pistol and the other having a big knife entered into the office. The boy holding the knife threatened the victims to hand over all the cash to them. The boy holding the pistol hit on the head of Pawan Kakkar with the butt of pistol and the other boy holding the knife attacked Nishant Saluja with the knife. When State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 2/36 PW-1 tried to ward off the attack with his hand, he received injury on his hand. The knife also fell from the hands of the offender. On the other hand, when PW-2 was being attacked with the butt of the pistol, one cartridge also fell from the pistol. Both the offenders got perplexed and started running away. Complainant Nishant Saluja and Pawan Kakkar caught hold of the boy holding the knife who fell and received injuries on his head. The third offender who was standing outside the gate shouted "Adatiya Yakub Bhago yahan se", who were seen running from there. They managed to run away. The identity of the apprehended accused was confirmed as Adatiya @ Akash who then along with the knife and one live cartridge was handed over to the police.

2.2. On the complaint Ex.PW-1/A of Nishant Saluja, IO PW- 14 Inspector Rampal Meena prepared tehrir Ex.PW-14/A and FIR was registered. PW-14 also seized the knife and the cartridge from the spot. FIR was registered and investigation was started. 2.3. PW-14 Inspector Rajpal Meena thereafter called the crime team. It inspected the spot and prepared its report. The Crime Team photographed the spot vide Ex.PW-5/A and Ex.PW-6/A1

-A5. IO prepared the site plan Ex.PW-2/A. One motorcycle bearing no. DL4SBL 0852 was found stationed near the spot in suspicious condition. The said motorcycle was seized vide seizure memo Ex.PW-1/G. The complainant PW-1 Nishant Saluja and injured PW-2 Pawan Kakkar were sent to the hospital for medical examination. Their MLC Ex.PW-11/A and Ex.PW- 11/B respectively were prepared. PW-2 also handed over the IO State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 3/36 his blood stained shirt which he was wearing at the time of incident. IO seized it vide seizure memo Ex.PW-1/F. 2.4. Accused Adatiya @ Akash gave his disclosure statement Ex.PW-1/L. He was also arrested and his personal search was carried out vide Ex.PW-1/J and Ex.PW-1/K respectively. Some documents were also handed over by PW-Nishant Saluja to the IO which were seized by him vide seizure memo Ex.PW-1/A. 2.5. Thereafter, a raiding team was prepared and at the instances of accused Adatiya @ Akash, remaining accused namely Peter and Yakub were

arrested from the premises bearing no. B-777, J.J Colony, Khyala, New Delhi. Accused Peter and Yakub then led the police team to a car bearing no. DL9CG 7012 parked in front of aforesaid house wherefrom a country made pistol alongwith live cartridge was recovered from underneath the driving seat of the car. The IO prepared the sketch of the country made pistol and live cartridge and same were seized by IO. The car alongwith the keys were also seized and relevant memos were prepared. Both the accused Peter and Yakub were kept in muffled faces. The IO moved a request before the Ld. MM for the judicial TIP of accused, but they refused to participate in the judicial TIP.

2.6. Thereafter, IO deposited the case property in the Malkhana and later on they were sent to the FSL for examination. After the investigation, charge-sheet was filed before the court. Later on after receipt of the FSL report, the supplementary charge-sheet along with the FSL report and sanction u/s 39 Arms Act against accused Peter was filed in the court.

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3. The Ld. Magistrate took the cognizance of the offences and committed the case to the Court of Sessions.

The charge against the accused persons:

4. The accused namely Mohd. Yakub, Adatiya @ Akash and Peter Joseph did not plead guilty for the offences U/s 393/394/398/34 IPC. Accused Adatiya @ Akash also did not plead guilty for the offences U/s 397 IPC as well as U/s 25/27/54/59 Arms Act. Further, accused Peter also did not plead guilty for the offences U/s 397 IPC and U/s 25 Arms Act. All the accused claimed trial for the respective charges framed against them.

The evidence by the prosecution:

5. To prove the afore-mentioned charges against the accused persons, the prosecution got examined fourteen witnesses in all. For the sake of convenience, a brief description of testimonies of all the prosecution witnesses including the oral as well as documentary evidence, in tabular form, is as under:-

(Oral evidence):

PW- Sh. Nishant Victim/complainant of the case. Saluja PW-2 Sh. Pawan Another victim/injured of the case.

Kakkar

PW-3 Ms. Sunita

Gupta, Sr. Scientific
Officer (Biology)

FSL

PW-4 Sh. Guru

Kirpal Singh

She examined the Exhibits and prepared
her report.

He was running his business in a shop
adjacent to the shop of victim Nishant.

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PW-5 SI Devender Singh, Incharge Crime Team	Crime team incharge who prepared crime scene report		
PW-6 ASI Sanjeev Kumar	Photographer who took five photographs of the spot.		
PW-7 HC Ombir Singh	He joined the investigation with IO SI Rajpal		
PW-8 Retired ACP Mahender	He received information regarding the incident and sent SI Raj Pal to the spot for inquiry.		
PW-9 HC Mahavir Singh	He joined the investigation with IO SI Raj Pal		

PW-10 Mohd. Nizam Registered owner of motorcycle bearing registration no. DL 4SBL-0852 PW-11 Dr. He proved MLC of victims Adatiya and Dhananjay Kumar Pawan Kumar prepared by Dr. Kamal Kant Jain PW-12 SI Satpal He got registered FIR No. 519/2015 PS Singh Tilak Nagar on the basis of rukka PW-13 ASI Sunil He joined the investigation with IO SI Rajpal PW-14 Inspector Investigating Officer of the case, who Rajpal Meena deposed about the investigation.

Documentary evidence:

Ex.PW-1/A	Statement of victim/complainant Nishant Saluja	
Ex.PW-1/B	Sketch of knife	
Ex.PW-1/C	Sketch of cartridge	
Ex.PW-1/D	Seizure memo of knife	
Ex.PW-1/E	Seizure memo of cartridge	
Ex.PW-1/F	Seizure memo of shirt of victim Pawan Kakkar	
Ex.PW-1/G	Seizure memo of motorcycle registration no. DL 4SBL 0852	bearing
Ex.PW-1/H	Seizure memo of documents of receipt of payment by accused Yakub and his driving	

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	license		
Ex.PW-1/J	Arrest memo of accused Adatiya @ Akash		
Ex.PW-1/K	Personal search memo of accused Adatiya @ Akash		
Ex.PW-1/L	Disclosure statement of accused Adatiya @ Akash		
Ex.PW-2/A	Site plan of the spot		
Ex.PW-3/A	FSL report dated 30.11.2015 prepared by Ms. Sunita Gupta, Sr. Scientific Officer		
Ex.PW-3/B	FSL report dated 30.11.2015 prepared by Ms. Sunita Gupta, Sr. Scientific Officer		
Ex.PW-3/C	Forwarding letter dated 30.11.2015 to the FSL		
Ex.PW-5/A	Crime scene report		
Ex.PW-6/A1 to	Five photographs of the spot		
Ex.PW-6/A5			

Ex.PW-6/A6 to	Negatives of the photographs of the spot
Ex.PW6/A10	
Ex.PW-9/A	Arrest memo of accused Md. Yakub
Ex.PW-9/B	Personal search memo of accused Mohd. Yakub
Ex.PW-9/C	Personal search memo of accused Peter Joseph
Ex.PW-9/D	Disclosure statement of accused Peter Joseph
Ex.PW-9/E	Disclosure statement of accused Mohd. Yakub.
Ex.PW-10/A	Superdarinama of motorcycle bearing registration no. DL 4SBL 0852

Ex.PW-10/B.1 to Four photographs of motorcycle DL4SBL0852 Ex.PW-B.4
Ex.PW-11/A MLC of victim/injured Nishant Ex.PW-11/B MLC of victim/ injured
Pawan Kakkar Ex.PW-11/C MLC of accused Adatiya Ex.PW-12/A Copy of FIR no.
519/2015 PS Tilak Nagar Ex.PW-12/B Endorsement of SI Satpal Singh on the rukka
Ex.PW-12/C Certificate u/s 65B IEA in support of FIR Ex.PW-13/A Arrest memo of
accused Peter Joseph State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No.
519/2015 7/36 Ex.PW-13/B Sketch of pistol and one live cartridge Ex.PW-13/C
Seizure memo of pistol and one live cartridge Ex.PW-13/D Seizure memo of car
bearing registration no.

DL 9CG 7012 Ex.PW-13/E Pointing out memo of the spot prepared by the IO at the
instance of accused persons.

Ex.PW-14/A Rukka Discussions on depositions of eye-witnesses namely, PW-1 and
PW-2

6. PW-1, Sh. Nishant Saluja is the complainant in this case. PW-2, Sh. Pawan Kakkar is another witness of the incident in this case. Therefore, this court deems it appropriate to discuss their testimonies in a detailed manner.

7.1. PW-1, Sh. Nishant Saluja deposed that on 24.03.2015 at about 7:30 pm, PW-2 Pawan Kakkar and he were present in the office situated at Tilak Nagar. Two young persons having covered their faces with a cloth entered into the office. One had a pistol in his hand and another had a big knife. Both directed to hand over all the cash to them. The boy holding the pistol pointed it towards PW-2 and hit its butt on head of Pawan due to which he received injury on his head. The person holding the knife attacked him due to which he sustained cut injury on his right thumb. One cartridge had fallen from pistol and knife also fell from the hand of the offenders. Having seen this, both the offenders became perplexed. Thereafter, person holding the pistol ran outside the office. The boy holding the knife also tried to run away from the office. However, PW-1 and PW-2 gathered the courage and apprehended the boy who had the knife. His identity was revealed as accused Adatiya. When the offenders were trying State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 8/36 to run away, they were saying "Bhago Yakub". Two persons managed to escape from the spot including the boy who had the pistol in his hand. Third person was standing outside the office. 7.2 He further deposed that one neighbour, namely, PW-4 Gurukirpal Singh called the police. Accused Adatiya @ Akash was handed over to the police including the knife. The statement of PW-1, Ex. PW-1/A was recorded. PW-1 further deposed about the preparation of the several documents and

proved the same. He also deposed that one TVS Star motor cycle was found stationed at some distance from their office, which was also seized by the police.

7.3 He further deposed that third boy, being addressed as Yakub used to come to the office for receiving payment and he had submitted documents of Yakub which he furnished in their office while receiving payment. He identified accused Adatiya @ Akash in the court. He also identified accused Peter Joseph as the boy who had the pistol in his hand and he also identified accused Yakub who ran away from the spot from outside of his office.

7.4. In the cross-examination by accused Peter, he stated that accused Peter was not arrested in his presence. No CCTV cameras were installed inside and outside of his office or outside the shop of Gurukirpal. He further stated that he had seen the pistol on the next day of the incident and that all the accused were present in the PS Tilak Nagar in other room. He further stated that he identified accused Peter Josef on the next date of incident in the PS. State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 9/36 7.5. In the cross-examination by accused Yakub and Adatiya @ Akash he stated that he had two employees and one was present at the time of incident.

8.1. PW-2, Sh. Pawan Kakkar also deposed in the similar lines as deposed by PW-1 regarding the incident. However, he did not depose about the fact that the accused Peter Joseph and Adatiya @ Akash demanded cash from them. He also identified the accused Yakub as the person who used to come in their office for money transfer.

8.2. In the cross-examination by accused Peter, he stated that he did not participate in the TIP. He admitted the suggestion of accused that only one knife was recovered in his presence but voluntarily he stated that the cartridge was also taken into possession by the police. He further stated that he did not identify accused Peter Joseph before identifying him in the court. 8.3 In the cross-examination by accused Yakub and Adatiya @ Akash, he stated that in his presence no CCTV footage from anywhere was collected by the police.

Statement u/s 294 Cr.P.C of accused persons:-

9. The statement of the accused persons u/s 294 Cr.P.C was recorded wherein they admitted the contents and genuineness of the following documents:-

- i. TIP proceedings dated 25.03.2015 (Ex.AD1) ii. Ballistic FSL Report dated 27.01.2016 (Ex.AD2) iii. TIP proceedings dated 25.03.2015 (Ex.AD3) iv. Sanction u/s 39 Arms Act (Ex.PX-1) State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 10/36

10. In view of the statements u/s 294 Cr.P.C, the witnesses namely Ms. Swati Singh/Ld. MM Sh.V.R Anand/Assistant Director Ballistics and Ms. Monika Bhardwaj/ the then Addl. DCP-1 (West) from the list of witnesses were dropped.

11. During the trial, Sh. S.P Sharma, Ld. Counsel for accused Peter Joseph also made a statement thereby not disputing the identity of vehicle bearing registration no. DL 9CG 7012.

The statement of accused persons u/s 313 Cr.P.C:

12. The statements of accused persons Yakub, Adatiya @ Akash and Peter u/s 313 Cr.P.C were recorded. The incriminating circumstances appearing in evidence against the accused were brought to their notice and their explanations were sought. Accused persons wished to lead defence evidence.

Defence Evidence:

13. In defence, accused got examined three witnesses. Accused Peter examined Sh. Victor Joseph as DW-1. Accused Yakub and Adatiya @ Akash examined themselves as DW-2 (though DW-2 should be DW-3) after their application u/s 315 Cr.P.C were allowed.

14. The Ld. Prosecutor and the Ld. Counsel for the accused persons advanced the final arguments.

Submissions by Ld. Prosecutor:

15. Ld. Prosecutor while relying upon the oral and documentary evidence on the record argued that the prosecution has been able to prove the case against the accused persons beyond reasonable doubt. He further emphasized the testimonies State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 11/36 of PW-1 and PW-2. He further argued that there is no motive on the part of PW-1 and PW-2 to falsely implicate the accused persons in the offence. He further argued that knife and a cartridge were recovered at the spot and that accused Adatiya @ Akash was also apprehended at the spot.

Submissions by Ld. Counsel for accused persons :

16. On the other hand Ld counsel for accused persons argued that the prosecution has miserably failed to prove the case against the accused beyond reasonable doubt. They further argued that one of the main eye witness PW-4 Guru Kirpal Singh has turned hospital and did not support the prosecution. Moreover, the knife allegedly recovered from the spot was also not sent to the FSL. They further argued that the IO has failed to obtain finger prints from the spot. They further argued that accused Peter and Yakub refused to participate in the judicial TIP as they were already shown by the IO to the concerned witnesses. They further argued that despite the presence of CCTV cameras near the spot, the IO has failed to file the same on record which effects the credibility of the prosecution case at a great length. They further argued that IO has also failed to file on record the CDR of Yakub to show that he was present at the spot at the relevant time.

Analysis:

17. It is settled principle of criminal jurisprudence that the prosecution has to prove the case against the accused beyond reasonable doubt and the accused has to prove its defence on State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 12/36 preponderance of probabilities. What do we mean by the expression 'beyond reasonable doubt'?

18. For our good fortune, the said expression has been defined by the Hon'ble Supreme Court in the various judgments. In the judgment of Paramjeet Singh @ Pamma Vs. State of Uttarakhand, 2011CRI.L.J.663, Hon'ble Mr. Justice Dr. B. S. Chauhan, elaborated the concept of Standard of Proof in a criminal trial in the following terms:

"11. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination or fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with commission of a crime, the court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide: Kashmira Singh Vs. State of Madhya Pradesh, AIR 1952 SC 159; State of Punjab Vs. Jagir Singh Baljit Singh & Anr. AIR 1973 SC 2407; Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, AIR 1981 SC 765; Mousam Singha Roy & Ors. Vs. State of West Bengal, (2003) 12 SCC 377; and Aloke Nath Dutta & Ors. Vs. State of West Bengal, (2007) 12 SCC 230).

12. In Sarwan Sigh Rattan Singh Vs. State of Punjab, AIR 1957 SC 637, this court observed (Para12) :

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"Considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence (before an accused can be convicted."

19. Furthermore, in the judgment of Sucha Singh and Another Vs. State of Punjab, (2003) 7 SCC 643, the Hon'ble Supreme Court explained the term Beyond Reasonable Doubt and observed as under:-

21. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See Gurbachan Singh v.

Satpal Singh and others, AIR 1990 SC 209 : 1990(1) RCR(Crl.) 297 (SC)]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v. Ashok Kumar Srivastava, AIR 1992 SC 840 :

1992(3) RCR(Crl.) 63 (SC)]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State of (Delhi Admn.) (AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in *Stirland v. Director of Public Prosecution* (1944 AC (PC)

315) quoted in *State of U.P. v. Anil Singh*, AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

20. The accused persons have been charged for the offences u/s 393/394/397/398 IPC.

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21. Section 393 IPC reads as under:-

"Attempt to commit robbery- Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

22. Section 394 IPC reads as under:-

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

23. Section 397 reads as under:-

"397. Robbery, or dacoity, with attempt to cause death or grievous hurt.--

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

24. In the judgment of Dilawar Singh v. State of Delhi, (2007) 12 SCC 641, the Hon'ble Supreme Court stated the essential ingredients of section 397 in the following manner:

"19. The essential ingredients of Section 397 IPC are as follows:

1. The accused committed robbery.

2. While committing robbery or dacoity (i) the accused used deadly weapon (ii) to cause grievous hurt to any person (iii) attempted to cause death or grievous hurt to any person.

3. "Offender" refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 15/36 individual liability and not any constructive liability.

Section 397 IPC is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But the other accused are not vicariously liable under that section for acts of the co-accused."

25. Section 398 IPC reads as under:-

"398. Attempt to commit robbery or dacoity when armed with deadly weapon.--

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years."

26. Section 398 IPC is applicable when at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon.

27. Section 393 IPC is an attempt to commit robbery. Section 394 IPC is applicable in two situations. First is when any person in committing or attempting to commit robbery voluntarily causes hurt, then such person is liable u/s 394 IPC. The second situation is that when any person while committing or attempting to commit robbery voluntarily causes hurt then such person and any other person jointly concerned in commission or attempt to commit robbery become liable. Section 390 IPC defines robbery. It provides that when the hurt is caused in order to 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 causes the offence of robbery. The basic difference u/s 390 IPC (punishing section 392 IPC) and 394 IPC is that the hurt u/s 392 IPC is caused with a view of commit robbery wherein u/s 394 IPC, the hurt is not necessary to commit theft. This can be understood by the use of words 'for that end' in Section 390 IPC.

State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 16/36 Moreover, Section 392 IPC is applicable in a case of complete robbery and is not applicable where the robbery falls short of completion and in other words there was only an attempt.

28. Section 397 IPC is applicable when at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person. It applies to the offender who uses the deadly weapon in commission of the offence. It is settled law that the word 'use' does not mean that the weapon must have been actually used. The word 'use' denotes that if the weapon is within the sight of the victim and was capable of causing terror in his mind, then the offender can be said to have used the weapon. For example, if the offender has hidden a pistol underneath the belt of his pants covered by the shirt not tucked up into the pants and the offender shows the pistol by lifting the shirt in order to show the pistol to the victim, the weapon can be said to have been used for the purpose of Section 397 IPC. Furthermore, Section 397 is applicable to the situation where the offence of robbery is complete.

29. Section 398 IPC is applicable to the situation where the offender does not use the weapon but is armed with any deadly weapon. Thus, the stark difference between Section 397 IPC and 398 IPC is that u/s 397 IPC, the weapon must have been used but for the purpose of Section 398 IPC, it is not necessary that the weapon must be used but it is sufficient if the offender is armed with deadly weapon. Section 398 IPC is applicable where the offence of robbery or dacoity is not complete and there remains an attempt only whereas S. 397 applies to a complete robbery.

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30. It is further settled that Section 397 and 398 IPC are not substantive offences but they only regulate the punishment. In addition to that, it can be said that Section 392 IPC corresponds to Section 397 IPC whereas Section 393 IPC corresponds to Section 398 IPC.

31. Before deciding the question whether the prosecution has been able to prove the case against the accused beyond reasonable doubt or not, the court is of the opinion that the contentions of the accused be dealt first.

Absence of independent public person:-

32. The first argument of Ld. Counsel for the accused persons was that no independent public witness has been joined by the IO in the investigation and that the alleged independent public witness, namely, PW-4 Guru Kirpal Singh did not support the prosecution case. Aforesaid contention of the Ld. Counsel are in two parts, first is that no independent public witness has been joined in the investigation which on the face of it is incorrect as PW-4 Guru Kirpal Singh is an independent public witness who as per the case of the prosecution was a neighbour. The second part of the contention was that PW-4 Guru Kirpal did not support the prosecution case. The court is not in the agreement with the aforesaid submissions of the accused that no independent public person has been examined which is clear from the fact that PW-4 is an independent witness.

33. A careful perusal of the testimony of PW-4 shows that he has supported the prosecution case as far as the incident is concerned. He has deposed that on 24.03.2015, i.e. the date of State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 18/36 incident at about 7 or 7:30 pm when he was at his shop, he heard some noise coming from the adjacent shop of Nishant. When he came out, he saw that Nishant and his employee had caught hold of a person. One of the employees of Nishant was bleeding from his head. Although he could not identify the said person, who was apprehended by Nishant and his employee. The witness could not identify him in the court despite having a glance over the persons present in the court, stating that he was unable to identify. He further deposed that he came to know from the owner of the Nishant's shop that two persons had probably entered into the said shop to commit robbery and out of which, one had fled away and the person who had been caught was having a butcher's knife in his hand. He made a call to the SHO of local police station from his mobile phone and police reached at the spot and had taken the assailant. He further deposed that he had seen a bullet which was recovered from the assailant.

In the cross-examination, he stated that a bullet and knife were not subjected to police proceedings in his presence and he had not noticed any crime team inspecting the crime scene. He further stated that he was never called to participate in the TIP proceedings. He denied the suggestion that he being neighbour of Nishant was an interested witness.

34. Therefore, the crux of his testimony was in the nature of *res gestae*. He has not seen the offence but he has reached at the shop of Nishant so soon after the incident that whatever he has heard and observed must fall within the definition of *res gestae* evidence as prescribed u/s 6 of Indian Evidence Act. Although he did not identify accused Adatiya @ Akash in the court, but he State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 19/36 specifically deposed about the incident and the apprehension of one accused at the shop of Nishant. Thus, the testimony of PW-4 Guru Kirpal cannot be said to be completely hostile against the case of the prosecution. His testimony definitely can be taken as corroborative piece of evidence to the testimony of PW-1 and PW-2. Merely that he has failed to identify accused Adatiya @ Akash in the court does not mean that

his testimony has turned into the nature of hostile evidence and goes against the prosecution case. Therefore, this court is unable to accept the submissions of Ld. Counsel and accordingly, the submissions stand rejected.

35. The next point vehemently raised by the Ld. Defence Counsel is that there are material contradictions in the testimony of the prosecution witnesses. But here the question which assumes importance is that what would amount to the material contradictions and what would not. In *State of Rajasthan Vs. Kalki* (1981)2 SCC 752 the Hon'ble Supreme Court was pleased to hold that as under:-

"normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so."

36. Therefore, in view of the aforesaid observations of the Hon'ble Supreme Court in the case of *Kalki* (supra), the law regarding the contradictions and discrepancies are that unless and State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 20/36 until the so-called contradictions and discrepancies in the prosecution are not such that they go to the roots of the prosecution case creating a reasonable doubt in prosecution story, then the normal discrepancies and contradictions can be overlooked. The reason being that there may be several reasons for slight deviation, in the manner of narrating the incident to the police at the early stage, could be caused because of the limitation of the human memory, the ability to grasp the events minutely and the normal errors of time. It also depends upon individual to individual as to how he perceives the incident and the role ascribed to each accused. It is not normal for majority of the human beings who have just being attacked by the offenders with a purpose to rob them with a deadly weapon such as pistol and knife and to depose so minutely so as not to allow any minor deviation or discrepancy in the statements. In view of these observations, if testimony of PW-1 and PW-2 is observed minutely, it reveals that they both have supported the prosecution case in its material particulars as they both have deposed about the two masked offenders, one with the knife and another with the pistol and also the manner in which the incident had been committed with them. They had also correctly identified the accused persons in the court as well as the case properties. No material contradictions and discrepancies have been noted by this court in the oral and the documentary evidence prepared in that regard.

37. Although Ld. Counsel for the accused tried to make a mountain out of a molehill by submitting that in the complaint Ex. PW-1/A, Nishant Saluja stated to police that the person State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 21/36 standing outside the gate shouted "Adatiya, Yakub bhago yahan se jaldi" whereas, he deposed that the offenders while trying to run away from the office were saying "Bhago Yakub". The Ld. Counsel argued that if Yakub was standing outside the gate, then he could not have shouted his name and as per the statement Ex. PW-1/A, it appears that accused Peter was standing outside and accused Yakub was in the office along with

Adatiya @ Akash otherwise the person standing outside could not have raised the name of accused Yakub. He argued that thus there is a reasonable doubt about the fact as to who were present in the office and who was standing outside the gate.

Though the said argument appears to be interesting on its face, however, the cross-examination by the accused shows that the accused persons have failed to cross-examine the witness PW-1 or confronted the witness with the aforesaid fact. Hence, once the witness has not been given a chance to explain the so-called part, therefore, the accused persons could not have raised any doubt about the veracity of the statement and deposition of the complainant in the court. It is well settled principle of law that if witness' testimony is to be challenged by a previous statement in writing then the contention of the witness must be drawn to the said part of the writing and in case of failure thereto, the testimony of the witness cannot be said to have been properly challenged and the accused has to be said to have accepted the same. Thus, the court does not find any force in the said submissions and same are rejected.

State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 22/36 Defects and lapses in investigation:-

38. Ld. Counsel for accused further argued that the IO did not carry out proper investigation in a professional manner which render the case of the prosecution doubtful. He particularly emphasized on not lifting the chance print from the spot as well as the knife allegedly recovered from accused Adatiya @ Akash was not sent to the FSL.

39. It is well settled principle of criminal law that the defective investigation should not give any benefit to the accused if the case has otherwise been proved by the testimonies of the eye witnesses. In Vishveswaran Vs. State (2003)6 SCC 73 in para 12 the Hon'ble Supreme Court has held as: ".....It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of the prosecution when it is otherwise proved.

40. In view of the aforesaid propositions of law, it is said that the minor lapses on the part of the IO in the investigation should not cause any unreasonable doubt in the story of the prosecution and it is only when prosecution case is suffering from inherent lacuna and embellishments in the investigation which tents the prosecution story so much so that there is no plausible explanation and it suffers the reasonable doubt to the extent that the accused cannot be found guilty on the basis of State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 23/36 lapse in the investigation. In the considered opinion of this court, the fact that IO did not sent the alleged recovered knife to the FSL as well as did not take any chance print did not cause any severe damage to the prosecution case especially, in view of the testimony of PW-1 Nishant and PW-2 Pawan Kakkar.

41. The next argument raised by the Ld. Counsel for accused persons is that the IO despite the presence of CCTV camera near the spot has failed to collect the CCTV footage which would have otherwise shown that no such offence as alleged by PW-1 and PW-2 had been committed by accused. In this regard, it would be appropriate to discuss the testimony of prosecution witness PW-1 Nishant. In his cross-examination, he stated that the CCTV camera were not installed inside or outside of his office nor any CCTV camera was installed at the shop of Guru Kirpal. Though he stated that one CCTV camera was installed at A Daikin AC Showroom. Further, the accused suggested to IO PW-14 Inspector Rajpal Meena that no CCTV camera was present at the spot which the IO admitted. The IO further deposed that he did not take the footage of CCTV installed at the shop of Guru Kirpal as the said CCTV was installed after one shop and the same did not have the footage of the incident.

42. The accused persons did not file any application during trial or investigation that a neighbouring shop had the CCTV footage which be directed to be preserved nor the accused summoned any witness from the said shop. Moreover, there is nothing in the testimonies of PW-1 and PW-2 that they had any motive for the false implication of the accused persons. Nothing State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 24/36 could be elicited in the cross-examination of PW-1 and PW-2 to that effect. Hence, the court is not in agreement with the contentions of the Ld. Counsel that no CCTV footage having been filed on the record, gave rise to a reasonable doubt in their favour. Accordingly, the same stands rejected.

43. Having discussed the different pleas of the accused persons, now let us see if the prosecution has been able to prove the offences with which accused persons have been charged. To decide the same, we again have to revert back to the testimonies of PW-1 Nishant and PW-2 Pawan Kakkar. A careful perusal of their testimonies would show that the accused Adatiya@ Akash and Peter Joseph entered to their office alongwith knife and pistol respectively. They both have deposed that accused Adatiya @ Akash caused hurt with a knife on the person of PW-1 Nishant and accused Peter Joseph hit the butt of the pistol on the head of PW-2 Pawan Kakkar. It is to be seen whether the oral version of PW-1 and PW-2 find any corroboration from the medical documents on the record or not. The MLC Ex.PW-11/A of PW-1 Nishant shows that he was brought to the hospital at about 10 p.m on 24.03.2015 where doctor noted superficial incised wound over right thumb. PW-1 Nishant deposed that when accused Adatiya@ Akash attacked him, he tried to ward off the attack with his hand due to which he sustained cut injury on his right thumb. Thus, MLC Ex.PW-11/A corroborates the oral version of PW-1 Nishant.

44. Similarly, MLC Ex.PW-11/B of PW-2 Pawan Kakkar would reveal that he was brought in the hospital on 24.03.2015 at about 9.45 p.m. Doctor noted CLW over right parietal region of State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 25/36 the skull as well as abrasion over left zygomatic bone. The zygomatic bone is a bone on the cheek of a human being. Thus, the injury on the MLC of PW-2 also corroborates the version of both the PWs.

45. The Ld. Counsel for accused tried to show from the medical document of the witnesses that the witnesses were not brought together at the hospital. They pointed out that as per the MLC Ex.PW-11/B, the time of arrival of PW-2 was shown as 9.45 p.m whereas as per the MLC

Ex.PW-11/A of PW-1, the time of arrival was shown as 10 p.m. However, this court is not willing to accept the contentions of the Ld. Counsel for the reasons, firstly that the serial number of MLC Ex.PW-11/B is 399 whereas the serial number of MLC Ex.PW-11/A is 4000. Thus, the record implies that MLC of PW-2 was firstly made and doctor then examined PW-1. Merely that doctor had noted different time on the MLC, does not lead the inference that both the persons were not brought together in the hospital. It is quite possible that the concerned doctor after having prepared his MLC noted down the time of 10 p.m when he started preparing second MLC. Moreover, no cross-examination has been conducted on this aspect by the accused persons from PW-11 Dr. Dhananjay Kumar who proved the MLC. Accordingly, the contention of the accused persons stands rejected.

46. However, it is also an admitted fact on the record that both the eye witnesses i.e. PW-1 and PW-2 did not depose specifically that any article or money was robbed by the accused persons namely Peter Joseph and Adatiya @ Akash or something was taken away by them. Thus, the question arises herein as to what State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 26/36 offence has been committed by the accused persons. It is clear from the language of Section 392 IPC that it is only applicable when a robbery has been committed. Section 393 IPC is only an attempt. Section 394 IPC applies into a case where robbery has been committed as well as where there has been only an attempt to commit robbery when hurt was caused voluntarily by one person and any other person was jointly concerned in committing or in attempting to commit robbery. Similarly, Section 397 IPC is applicable to a situation where robbery is completed. Further. Section 398 IPC is applicable to an attempt to commit robbery or dacoity when offender is armed with a deadly weapon. It is also settled law that sections 397 and 398 IPC are not substantive offences, but they merely regulates punishment.

47. Thus, it is clear that in view of the manner of the incident, it is clear that no complete robbery has been taken place. It was only an attempt by accused persons namely Adatiya@ Akash and Peter Joseph. It is also clear that accused Adatiya@ Akash and accused Peter Joseph were armed with a knife and a pistole respectively. The seizure memo Ex.PW-1/D of the knife would show that it has total length of 32.5 cm with length of the blade as 20 cm and width of blade as 4.5 cm and the handle of the knife having length as 12.5 cm. The measurement of the knife would show that it was quite a big knife. The next question which arises here is whether the said knife can be a deadly weapon or not. It is settled that the knife per se is not a deadly weapon and the use and manner thereto makes any knife a dangerous weapon. The said knife has been used for the commission of robbery and injury was caused to injured PW-1 as well and thus, considering State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 27/36 the measurement of the knife, this court is of the opinion that the knife Ex.P-1 was a deadly weapon.

48. As far as the role of accused Peter Joseph in the alleged commission of offence is concerned, both the PWs have corroborated each other that accused Peter Joseph hit the but of the pistol on the head of PW-2 Pawan Kakkar and during the attach a cartridge fell down from the pistol. Though the Ld. Counsel has argued that the pistol has not been recovered at the spot, but it is a trite law that the recovery of a deadly weapon or pistol is not necessary and accordingly, the testimonies of PW-1 and PW-2 are safe to prove that accused Peter had the possession of one pistol out of which one

cartridge fell down. This, it can be safely concluded that accused Peter has also the possession of a deadly weapon i.e. a pistole with him while attempting to commit robbery.

49. Now remains, the role and involvement of accused Mohd. Yakub. Both the witnesses PW-1 and PW-2 have categorically deposed individually that accused Adatiya@ Akash and accused Peter Joseph tried to run away from the office and accused Peter Joseph managed to escape from the offence while shouting for his third companion. The identity of the third companion i.e. Mohd. Yakub has also been established by the prosecution through the testimonies of PW-1 and PW-2 as Mohd. Yakub used to come to their office in connection to collect the money received from money transfer.

50. Thus, the prosecution has been able to prove that while accused Adatiya@ Akash and Peter Joseph entered into office, accused Yakub remained outside the gate of the office. Hence, it State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 28/36 is held that the prosecution has been able to prove the case against the accused persons for the offence u/s 394/34 IPC as well as u/s 398 IPC individually against accused Adatiya@ Akash and Peter Joseph.

51. Now, let use discuss other charges against accused namely Adatiya@ Akash and Peter. Accused Adatiya@ Akash has also been charged for the offence u/s 25 & 27 Arms Act, 1959 as he was found in possession of a knife at the time of commission of robbery. Whether such knife was covered under the provisions of Section 25 or 27 Arms Act or not, is to be seen. The Governments of NCT of Delhi under the power conferred in pursuance of the Arms Act, 1959 had issued notification which regulates that the sale, manufacturing and possession of such knives, is an offence. Vide DAD notification dated 29.10.1980, the Governments of NCT of Delhi has provided for the regulation regarding the possession, sealer and manufacturing of the knife. The said notification reads as under:-

"Case File (25/54/59 Arms Act) (Knife) Notification regarding length and breadth of Knife DAD Notification (To be Published in Part IV of Deli Gazette) (Extra Ordinary) Delhi Administration, Delhi Notification Dated the 29th October, 1980 No. F/13/451/79-Home (G) - Whereas the administration is of the opinion that having regarding to the circumstances prevailing in the Union Territory of Delhi is necessary Appointed Date expedient in the public interest, 'to regulate the manufacture sale or possession for sale or test the spring actuated knives, gararidar knives, bottondar knives and other knives which open or close with any other mechanical device State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 29/36 with a sharp edge blade of 7.62 Cms, or more in length and 1.72 cms or more in breadth in the Union Territory of Delhi.

Now, therefore in exercise of the powers under rule 19 of the Arms Rules, 1962 read with the Govt. of India, Ministry of Home Affairs Notification No. 2/2/69-UTL(ii) dt. 21st June, 1969, the Administrator Delhi is pleased to direct that "no person in the Union Territory of Delhi shall manufacture, sale or possess for sale or test spring actuated knives, gararidar knives, bottondar knives and other knives which open or

close with any other mechanical device with a sharp edge blade of 7.62 Cms, or more in length and 1.72 Cms or more in breadth in the Union Territory of Delhi" unless he hold a licence issued in accordance with provisions of the Arms Act, 1959 (No. 64 of 1959) and Arms Rule, 1962 framed thereunder with effect from the publication of this Notification in Delhi Gazette.

Sd/-

(Nathu Ram) Deputy Secretary, Home (G) Delhi, Administration, Delhi No. F-13/451/179 (Home General) dt. 29.10.1980 This is necessary to be included in the case file."

(emphasis supplied)"

52. A careful perusal of the aforesaid notification shows that it is applicable only to spring actuated knives, gararidar knives, buttondar knives as well as other knives. The notification shows that there are two categories of knives, one is spring actuated knives, gararidar knives, buttondar knives in which type of knives, the length of blade or total length of knife or breadth of blade is not material and the second category of knife is that where knife opens or closes with other mechanical device and also has the requisite length and breadth in accordance with the State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 30/36 notification. Thus, the length of blade or total length of knife or breadth of blade is important in second type of knives.

53. Considering the knife recovered in this case, it is seen that the knife recovered in this case is not a knife which could be open or close with a mechanical device. Thus, though total length of blade, total length of knife and breadth of blade is covered within the parameters required thereto, but in view of the fact that the knife recovered in this case was not operated with any mechanical device to open or close it, did not make the knife to be covered under Arms Act, Thus, the prosecution has failed to prove the offence u/s 25/27 Arms Act against the accused Adatiya@ Akash as the knife recovered from his was not covered within the parameters of DAD notification dated 29.10.1980.

54. Now comes the question whether the cartridge recovered at the spot which allegedly fell from the pistol, held by the Peter is an ammunition or not. As per the case of the prosecution, the pistole was recovered at the instance of accused Peter from a car parked infornt of H. No. 777, JJ Colony, Khyala, New Delhi. The said country made pistol was recovered alongwith live cartridge from underneath of the driving seat of the car. The said pistole alongwith cartridge recovered at the spot as well as live cartridge were sent to the FSL. The FSL report Ex.AD-2 admitted by accused would show that the cartridge Mark as Ex.A-1 recovered from the spot was found to be a misfired cartridge. The FSL report further states that the individual characteristics of fired pin dent mark present on cartridge Ex.A1 and test fired cartridge from the country made pistol recovered from accused Peter, State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 31/36 cannot be proved having fired from the country made pistol by accused Peter. Therefore, the FSL report has failed to prove that the cartridge recovered at the spot Mark Ex.A-1 had no connection with the pistol recovered from accused Peter Joseph. Moreover, the cartridge Mark Ex.A-1 is a misfired cartridge.

55. In the judgment of *Tehar Vs State of M.P*, Misc. CRIMINAL CASE No. 57707 of 2022, dated 13.12.2022, the Hon'ble High Court of MP held that empty cartridge is not an ammunition. While relying upon the judgment of the Hon'ble High Court of Delhi reported as 2012 (130) DRJ 504 held that even live cartridge is a minor ammunition. The Hon'ble High Court of MP observed that in view of the definition of 'ammunition' under section 2(i)(a)(iii) of Arms Act r/w definition of 'cartridge' under Rule 2 (12) of the Arms Rule, 2016, an empty cartridge is not an ammunition. As per the definition of the cartridge, the cartridge means a complete object consisting of a cartridge case, primer, propellant, bullet or any single or multiple projectile. Thus, a mis-fired cartridge is also clearly not an ammunition. Hence, accused Peter Joseph cannot be convicted for the offence u/s 25 Arms Act for having possession of cartridge Mark Ex.A-1. Accordingly, he stands acquitted for the offence u/s 25 Arms Act in respect to the empty cartridge recovered at the spot.

56. The next question, which arises is whether accused Peter Joseph could be held liable for the possession of the country made pistol containing a live cartridge allegedly recovered at his instance from underneath driving seat of the car.

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57. After having carefully gone through the prosecution evidence in this regard, this court is of the opinion that the alleged recovery of country made pistol containing one live cartridge at the instance of accused Peter Joseph from his case is not free from embellishments or doubt. PW-14 IO Inspector Raj Pal Meena deposed that 25.03.2015 he prepared a raiding party consisting of himself, Ct. Ombir, Ct. Mahavir Singh and HC Sunil (PW-14, PW-7, PW-9 and PW-13 respectively). The seizure memo Ex.PW-13/C of the country made pistol containing the live cartridge shows that it was got recovered by accused Peter Joseph from underneath the driver seat of silver colour Accent Car bearing no. DL9CG 7012. IO PW-14 Inspector Raj Pal deposed the same as well. However, the other members of the police team did not corroborate his versions. PW-13 ASI Sunil deposed that the pistol was got recovered by the accused persons near the driver seat of the car. PW-9 HC Mahavir Singh also deposed that the pistol was got recovered by the accused persons from near the driver seat of the car. Thus, there is a reasonable doubt as to the exact place from where the alleged pistol containing live cartridge was recovered.

58. Moreover, there is also a reasonable doubt about the fact that as to how the silver colour Accent Car bearing no. DL9CG 7012 was brought to the police station. PW-13 ASI Sunil deposed that he was not aware as to who brought the said car to the police station. However, PW-9 HC Mahavir Singh deposed that the said car was brought to the police station by HC Sunil (PW-13). If PW-13 HC Sunil brought the car to the police station, he would State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 33/36 not have forgotten the same. Thus, a reasonable doubt has crept in the prosecution story in regard to the aforesaid fact.

59. Another infirmity in the prosecution case in regard to the aforesaid fact is that PW-7 HC Ombir Singh was also part of the raiding team which recovered the country made pistol containing a live cartridge and the Accent Car of the accused Peter Joseph. PW-14 IO Inspector Raj Pal deposed that same. However, PW-9 HC Mahavir Singh and PW-13 ASI Sunil did not depose if Ct. Ombir Singh

was also the part of the raiding party on 25.03.215 at the time of recovery of country made pistol and Accent Car. PW-7 Ct. Ombir Singh himself did not depose anything if he also took part in the investigation on 25.03.2015. Therefore, a doubt remains if PW-7 Ct. Ombir Singh was involved in the investigation on 25.03.2015 or not.

60. Another lacunae in the prosecution case which makes the recovery of country made pistol including a live cartridge as unbelievable is that as per the FSL report Ex.AD-2, the FSL expert opined that no opinion could be given if the misfired cartridge Ex.A-1 was caused by the country made pistol recovered from accused Peter Joseph. Thus, the FSL report failed to connect the misfired cartridge Ex.A-1 with the country made pistol allegedly recovered from the possession of accused Peter Joseph. Therefore, in the absence of the evidence to connect the alleged pistol with the misfired cartridge recovered at the spot, the accused Peter Joseph could not have been tried for the offence u/s 25 Arms Act as well. Hence, accused Peter Joseph stands acquitted from the offence u/s 25 Arms Act for possession of country made pistol including a live cartridge.

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61. At this stage, it would be appropriate to discuss the defence evidence led by the accused. Peter Joseph examined his father Victor Joseph as DW-1 to prove the fact that Peter Joseph was picked up on 25.03.2015 from his house. The arrest memo Ex.PW-13/A of Peter Joseph shows that he was arrested on 25.03.2015 at about 10.30 a.m from his house only. The arrest memo shows that his mother Ms. Anita Joseph was given the information about his arrest. In the cross-examination, DW-1 admitted that his wife was present in the house on that day. Hence, the testimony of DW-1 did not yield any favour to the accused rather it provides corroboration to the prosecution case.

62. Accused Mohd. Yakub examined himself. He deposed that on 24.03.2015, he was present at his house and brought some fruits and vegetables from the market. He gave it to his children. In the cross-examination, he admitted that he knew Nishant Saluja. He also admitted that prior to the incident of this case, he had visited the office of the complainant to collect payment of Western Union money transfer. Thus, he provided corroboration to the prosecution case that he had been visiting the office of the complainant before the incident as well.

63. Accused Adatiya @ Akash also examined himself as DW. He also admitted his presence on 24.03.2015 at about 7 p.m near the shop of the complainant. He deposed that he alongwith his brother in law Sandeep were getting the tyre of their car changed and in the meanwhile there was chaos and accordingly, they reached at the shop of Nishant. Thereafter, because of some confusion, he was beaten and handed over to the police. Thus, he also admitted his presence at the shop of complainant Nishant at State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 35/36 the time of the incident.

64. Thus, the defence evidence led by the accused persons would shows that it did not help the accused persons rather their depositions provided the corroboration to the prosecution case. Therefore, it is held that the defence evidence led by the accused failed to help their cause and rather gave credence to the prosecution case.

65. In view of the aforesaid discussions, it is held as under:-

- i. Accused persons namely Mohd. Yakub, Adatiya @ Akash and Peter Joseph stands convicted for the offence u/s 394/34 IPC.
- ii. Accused Adatiya @ Akash and Peter Joseph also individually stand convicted for the offence u/s 398 IPC.
- iii. Accused Peter Joseph stands acquitted from the offence u/s 25 Arms Act.
- iv. Accused Adatiya @ Akash also stands acquitted from the offence u/s 25/27 Arms Act.

66. Let the convicts be heard on the point of sentence.

	HEM	Digitally signed by HEM RAJ
	RAJ	Date: 2025.03.29 15:27:47 +0530
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Court on 29-03-2025.	(HEM RAJ)	
	Addl. Sessions Judge-08 (West)	
	Tis Hazari Courts Delhi	

State Vs Mohd. Yakub & Ors SC No. 55893/2016 FIR No. 519/2015 36/36