



2025:DHC:7327



§~21 & 22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of Decision: 25.08.2025+ **CRL.A. 663/2024 & CRL.M.(BAIL) 1254/2024**

AMIR

.....Appellant

Through: Mr. Akhilesh Kr. Singh, Advocate
with Appellant through V.C. with Jail
Warden Kapil*versus*

STATE NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot APP for State
with SI Sachin Sharma, P.S. Laxmi
Nagar+ **CRL.A. 696/2024 & CRL.M.(BAIL) 1294/2024**

DEEPAK @ CHUNNU

.....Appellant

Through: Mr. Akhilesh Kr. Singh,
Advocate. with Appellant through
V.C. with Jail Warden Kapil*versus*

STATE NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot APP for State
with SI Sachin Sharma, P.S. Laxmi
Nagar**CORAM:****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT (ORAL)**

1. As the impugned judgment on conviction and order on sentence are



common, therefore, the appeals are taken up together for consideration and are disposed of by this common decision.

2. By way of the present appeals filed under Section 374 Cr.P.C., the appellants seek to assail the judgment of conviction dated 31.01.2024 passed by the Ld. ASJ in SC No. 3730/2019 arising out of FIR No.2655/2015 registered under Sections 392/394/397/34 IPC at P.S. Shakarpur, Delhi, whereby the appellants were convicted for offences under Sections 308/394/34 IPC.

Vide order on sentence dated 03.06.2024, the appellants were sentenced to undergo RI for 5 years with a fine of Rs.10,000/- and in default of payment of fine, to further undergo SI for 6 months for the offence punishable under Sections 308/394 IPC. All the sentences were directed to run concurrently and benefit under Section 428 CrPC was also granted to the appellants.

3. The facts, in a nutshell, noted by the Trial Court, are extracted hereunder:

“Shorn of unnecessary details, case of the prosecution is that on 14.11.2015 at about 12.15 pm, when the complainant/victim was crossing the road at ‘Shakarpur Chungi’ for catching the bus, four offenders including the accused persons came and forcibly took him to nearby jungle. Thereafter, one of the offenders, put a knife on complainant's neck and threatened to kill him if he shouted for help. The accused namely Aamir took out Rs.1,800/- from complainant's pocket. Another offender took out complainant's mobile phone from his pocket. When the complainant resisted, the accused namely Deepak hit a brick on his head causing injury to him. The complainant/victim somehow ran away from the spot and informed about the incident to the police officials of a passing by PCR vehicle. The police caught the accused persons but remaining two offenders



fled away from the spot.

2. On the complaint of the victim, an FIR was registered under Section 392/394/397/34 IPC and after completion of the investigation, final report was filed against accused persons. Other two offenders remained absconding, and they could not be arrested.”

4. During the trial, in total, 09 prosecution witnesses were examined. Complainant/Victim was examined as PW-5. Dr. *Suraj*, who conducted the medical examination of the complainant, was examined as PW-9. The rest of the witnesses were formal witnesses, who deposed about various aspects of the investigation. In defence, the statements of the appellants were recorded under section 313 CrPC, wherein they denied the prosecution case, and stated that they had been falsely implicated.

5. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated in the present case. He contends that the timings mentioned in the examination-in-chief are different from that in the complaint, that no public witnesses were joined, and neither any money nor the mobile phone was recovered from the appellants.

6. Learned APP for the State defends the impugned judgement and submits that there was a huge time gap between the date of making complaint and recording of the testimony of the complainant, that non-joining of public witnesses was not fatal to the prosecution case and that the complainant attributed clear and specific roles to the appellants and they were also identified by other witnesses.

7. A perusal of the complainant's testimony reveals that on 14.11.2015, at around 10-10.30 am, the complainant had joined a procession of a political



party at Indira Gandhi Hockey Stadium, ITO, New Delhi. Thereafter, at about 12.15 pm, he boarded a bus to go home, but, on the way, he came to know that the bus was not going to his destination, therefore, he alighted from the bus near *Lalita Park (Chungi Shakarpur)* and started crossing the road to go to the opposite side to catch another bus. While he was crossing the road, four people came from behind, caught him by the collar and dragged him towards a nearby park. Those people had beaten him also. He further deposed and identified the appellant/*Deepak @ Chunnu* as one of the offenders, who had hit the brick on his head and appellant/*Amir*, as the offender, who had taken out Rs.1,800/- from the pocket of his pants. A PCR Van which was passing through came at the spot and the complainant narrated the incident. At his pointing out, the appellants were apprehended but the other two offenders managed to flee.

8. PW-1/HC *Rakesh* recorded the statement of the complainant, i.e., Ex. PW-1/A, based on which the present FIR was registered. PW-3/HC *Anshul Malik*, deposed that on the date of the incident, when the PCR van reached near the park, the complainant narrated the incident on the aforesaid lines and on his instance, the two appellants were apprehended from the spot, but two of the offenders managed to flee away. He correctly identified the appellants in Court. PW-6/ASI *Ram Mehar Singh* and PW-7/HC *Vipin Tomar*, who were accompanying PW-3, also deposed on similar lines. They also identified the appellants.

9. PW9/Dr. *Suraj* proved the MLC of the complainant (Ex.PW9/A). Pertinently, in the MLC, time of arrival of the complainant at LBS Hospital



is recorded as 12.35 pm and the complainant/PW-5 has also testified that the offence, in which he was injured, had been committed at 12.15 pm. In MLC, it is recorded that the complainant had suffered a lacerated wound on the head in the parietal area about 5x 0.5 cm and a lacerated wound on the left temporal area measuring 4x0.5 cm. The MLC corroborates the complainant's version both on the timing of the incident as well as of the injury being caused on his head. The injuries are opined to be simple in nature.

10. At this stage, learned counsel for the appellants, on instructions from appellants who were produced on VC from Central Jail-14, Mandoli jail through Warden Kapil, states that the appellants, being fully aware of the consequences, do not wish to challenge his conviction under the aforesaid Sections, however, pray that the sentence awarded to them be modified to the period already undergone by him.

11. Even otherwise, this Court, considering that PW-5 has categorically deposed that appellant/*Amir* had taken out Rs.1800/- from his pocket and appellant/*Deepak @ Chunnu* had hit a brick on his head during the commission of the offence, their arrest from the spot and their identification by PW3, PW6 and PW7, concurs with the findings of the Trial Court and finds that no grounds to interfere with the same are made out. Consequently, the conviction of the appellants under Sections 308/394/34 IPC is upheld.

12. The learned APP, on instructions from the concerned I.O., states that the appellants are involved in other cases, details of which are placed on record.

At this stage, learned counsel for the appellants state that the other



cases are pending trial and in no case, the appellants have been convicted except the present case.

13. The latest nominal roll of the appellant/*Amir* indicates that he has undergone nearly 01 year, seven months and fourteen days including remission. The nominal roll of the appellant/*Deepak* reveals that he has undergone 01 year, eight months and seventeen days in custody as on 11.08.2025, including remission. The nominal roll further indicates that the conduct of the appellants is satisfactory. The appellants have faced trial for nearly 10 years. The appellant/*Deepak* is an autorickshaw driver and is the sole bread-earner for his family which comprises his old parents, wife and two minor children whereas appellant/*Amir* is an e-rickshaw driver who provides for his family which comprises of his old parents.

14. Considering the aforesaid, the sentence of the appellants is modified to the extent that the appellants are directed to be released on the period already undergone by them in custody, if not required in any other case. The sentence of fine, however, shall remain as it is. In case of non-payment of fine within two weeks, the appellants shall undergo the default sentence.

15. The appeals are partly allowed and disposed of in the above terms. Pending applications shall also stand disposed of.

16. A copy of this order be communicated to the concerned Jail Superintendent as well as the trial court.

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 25, 2025/ry