



2025:DHC:7546



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

% Date of Decision: 29.08.2025

+ **CRL.A. 421/2018**

RAHUL @ SHIV

.....Appellant

Through: Mr. Suraj Prakash Sharma, Advocate.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr Pradeep Gahalot, APP for State  
with SI Mahendra Patel PS Narela,  
Delhi.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT : (ORAL)**

1. By way of the present appeal, the appellants seek to assail the judgment of conviction dated 09.03.2018 and order on sentence dated 17.03.2018 passed by the learned Additional Sessions Judge-02, North District, Rohini Courts, Delhi in SC No. 58443/2015, arising out of FIR No. 817/2013 registered at P.S. Narela under Sections 392/394/397/411/34 IPC.

Vide the impugned order on sentence, the appellant was directed to undergo RI for a period of 7 years alongwith fine of Rs. 3,000/-, in default whereof to undergo SI for 4 months, for the offences punishable under Sections 392/397 IPC. He was further sentenced to undergo RI for a period of 4 years alongwith fine of Rs.2,000/-, in default to undergo SI for 3 months for the offence punishable under Section 394 IPC. Both sentences were ordered to run concurrently and benefit under Section 428 Cr.P.C was



extended to the appellant.

2. Briefly, the prosecution's case is that on 09.11.2013, at about 6:30 p.m., PW-2/*Sant Lal* and his friend PW-6/*Rahul Kumar* were walking in a park near Metro Vihar, Holambi Kalan, when three persons, namely the appellant/*Rahul @ Shiv* and two juveniles, 'M' and 'S', intercepted them. 'S', armed with a *danda*, struck PW-6/*Rahul Kumar*, while the appellant placed a knife on the back of PW-2/*Sant Lal*, threatening to stab him if he moved. 'M' thereafter removed a KKT-21 mobile phone from *Sant Lal* and a Samsung DUOS mobile phone from *Rahul Kumar*. Upon alarm being raised, a police patrolling party reached the spot and, with the assistance of the complainant and his friend, apprehended the assailants. The robbed mobile phones were recovered from 'M', while the knife was seized from the possession of the appellant.

3. The prosecution examined nine witnesses in support of its case. PW-2/*Sant Lal* and PW-6/*Rahul Kumar*, the complainant and injured eye-witness respectively, fully supported the prosecution version, identified the appellant in Court, and attributed to him the act of threatening PW-2 with a knife during the robbery. PW-1/HC *Urmed Singh* and PW-5/Ct. *Deepak Kumar*, members of the police patrolling team that reached the spot on hearing the alarm, deposed about the apprehension of the accused with the aid of the complainant party and the recovery of the knife and mobile phones in their presence. The seizure memos of the knife (Ex. PW-1/D) and mobile phones (Ex. PW-1/B) were duly proved. PW-7/Dr. *Ayudhesh* proved the MLC of PW-6 (Ex. PW-7/A), which recorded swelling and bruise on the left elbow, opined as simple in nature. PW-9/SI *P.L. Meena*, the Investigating Officer, deposed to the preparation of site plan (Ex. PW-1/L), arrest and personal



search memos (Ex. PW-1/E and Ex. PW-1/F), and proved the seizure memos of the case property prepared during investigation.

4. The statement of the appellant under Section 313 Cr.P.C. was recorded, wherein he denied the prosecution case in its entirety, claimed false implication, alleged that the witnesses were interested and had deposed falsely, and further stated that nothing was recovered from his possession or at his instance. He did not lead any defence evidence.

5. From the testimonies of PW-2 and PW-6, both of whom consistently identified the appellant and attributed to him the role of using a knife in the robbery, corroborated by the depositions of PW-1 and PW-5 regarding the apprehension and recoveries, as well as the medical evidence of PW-7, the prosecution version stands established. No material contradiction has been elicited to discredit these witnesses, nor has any plausible defence been set up by the appellant. Thus, this Court does not find any ground to interfere with the finding on his conviction, and the matter now turns to the question of sentence.

6. The appellant has sought to be released on probation on account of good conduct. Learned counsel for the appellant submits that the appellant, apart from one prior involvement in FIR No. 775/2013 under Sections 392/397/34 IPC at P.S. Narela in which he was discharged, has no other criminal antecedents and has duly deposited the fine amount as directed by the Trial Court. It is further urged that the injuries caused were simple in nature, as specifically recorded in the MLC.

7. The factum of the appellant's discharge in the said FIR and absence of any other previous involvement stands verified as per the status report filed by the learned APP for the State.



8. The Probation Officer's report dated 27.08.2025 signed by Mr. *Arun Kumar*, Probation Officer, Rohini Courts, has been handed over in Court and the same is taken on record. The report mentions that the appellant/*Rahul @ Shiv* (32 years, married), resides at Metro Vihar, Holambi Kalan, Delhi, along with his widowed mother, two younger brothers, wife and two minor sons. He has studied up to Class XII and has been working as a delivery boy with Zomato, earning about ₹20,000/- per month, and is the sole breadwinner of the family. The family's economic condition is described as poor; the house measures about 18 sq. m., is small and poorly maintained, and lacks basic amenities, while the locality is predominantly inhabited by persons from the lower-income group. The appellant is reported to be physically and mentally fit, of normal social behaviour, and without harmful habits, stating that he neither smokes nor drinks and prefers to spend his time with family. His neighbours, when interviewed, described him as a man of good moral conduct, never known to have been involved in any controversy. His mother and other family members also expressed that the incident has been a misfortune for him, and described him as a simple, family-oriented person devoted to his responsibilities. The probation officer's assessment notes that the appellant has a stable family background, a positive community image, and bears the responsibility of sustaining his household.

9. The underlying object of releasing offenders on probation is to facilitate their reintegration into society as law-abiding citizens, fostering self-reliance and aiding in their reformation. A testament to the importance of this provision is that the Supreme Court in Lakhvir Singh & Ors. Vs. State of Punjab & Anr., reported as (2021) 2 SCC 763, has extended the



benefits of the Probation of Offenders Act, 1958 even to convicts who had not completed the mandatory minimum sentence of seven years as prescribed in Section 397 IPC, since IPC was enacted before the Probation of Offenders Act came into being. The relevant extract is reproduced hereunder:-

*“16. A more nuanced interpretation on this aspect was given in CCE v. Bahubali. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act. It is in this context; it was observed in State of M.P. v. Vikram Das that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 IPC, the offence in the present case. In fact, the observation made in Joginder Singh v. State of Punjab are in the same context*

*18. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence...”*

10. The appellant herein has been convicted under Sections 392/394/397 IPC. In view of *Lakhvir Singh* (supra), this Court retains discretion to extend the benefit of probation to the appellant in the present case, provided the circumstances justify grant of such relief.

11. Learned counsel for the appellant submits that the appellant was about 19 years of age at the time of commission of the offence and the nominal roll dated 12.11.2024 records that the appellant has undergone incarceration



for a period of 3 years, 6 months, and 26 days besides having earned remission of 5 days. The nominal roll further reflects that his conduct during confinement was satisfactory and that there was no instance of misconduct. The status report filed by the learned APP shows that the appellant was earlier involved in FIR No. 775/2013, registered under Sections 392/397/34 IPC at P.S. Narela, Delhi, in which he was discharged. The appellant's sentence was suspended vide order dated 02.05.2018 during the pendency of the appeal. The probation report dated 27.08.2025 notes that the appellant is married, resides with his family, is the sole breadwinner working as a delivery boy with Zomato earning about ₹20,000/- per month, is physically and mentally fit, of normal social behaviour, and is regarded in the community as a man of good moral conduct. The MLC of PW-6 (Ex. PW-7/A) indicates that the injuries sustained were simple in nature.

12. In view of the facts and circumstances of the present case, the judgement of conviction dated 09.03.2018 and order on sentence dated 17.03.2018 are upheld. However, considering the nature of the injuries, the absence of prior criminal involvements other than proceedings arising out of FIR No. 775/2013 in which the appellant was discharged, the period of sentence already undergone, and the overall circumstances reflected in the probation report, as well as the legal position qua the applicability of Probation of Offenders Act as iterated above, the appellant is granted the benefit of probation on his furnishing a bond in the sum of Rs.10,000/- with one surety for his good behaviour for a period of one year before the Trial Court within four weeks from today. In addition, the appellant shall pay Rs.10,000/- as cost of the proceedings under Section 5(b) of the Act which shall also be deposited with the Trial Court, within four weeks. In case of



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non-compliance, the sentence awarded by the Trial Court shall remain in force.

The appellant shall remain under the supervision of the concerned Probation Officer for a period of 1 year, and shall report before the Probation Officer once every month. It is made clear that in the event of any breach of the conditions of probation or involvement in any other offence during this period, the benefit granted under this order shall stand revoked, and the appellant shall be liable to undergo the remaining portion of the substantive sentence as awarded by the Trial Court.

13. The appeal is accordingly disposed of in the above terms.

14. A copy of this order be communicated to the Trial Court as well as the concerned Jail Superintendent.

**MANOJ KUMAR OHRI  
(JUDGE)**

**AUGUST 29, 2025/NB**