



2025:DHC:9510



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

% Reserved on : 29.10.2025
Pronounced on : 30.10.2025

+ **CRL.A.392/2018**

MUSHIR AHMED

....Appellant

Through: Mr Samar Singh Kachwaha, Ms
Kavita Vinayak and Mr Yash
Dadriwal, Advs.

VERSUS

STATE

....Respondent

Through: Ms Shubhi Gutpa, APP for
State with SI Jatin PS, Tilak
Nagar, New Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374 Cr.P.C. seeking setting aside of the judgment of conviction dated 05.02.2018 and order on sentence dated 07.02.2018 passed by the learned Additional Sessions Judge-II (North-West), Rohini Courts, Delhi, where by the appellant was convicted for the offence punishable under Sections 394/397/174A IPC & Sec.25(1-B)(a)/27 Arms Act in Sessions Case No.592/2006 arising out of FIR No.729/2005, registered at PS: Tilak Nagar, Delhi. He was sentenced in the following manner:-

Offence under:-	Sentence	Default sentence
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Section 394 IPC	RI for 07 years and fine of Rs. 10,000/-	SI for 30 days
Section 397 IPC	RI for 07 years and fine of Rs. 10,000/-	SI for 30 days
Section 25(1-B)(a) Arms Act	RI for 02 years and fine of Rs. 5,000/-	SI for 15 days
Section 27 Arms Act	RI for 02 years and fine of Rs. 5,000/-	SI for 15 days
Section 174A IPC	RI for 02 years and fine of Rs. 5,000/-	SI for 15 days

All the sentences were to run concurrently. Benefit of Section 428 CrPC was extended to the appellant.

The sentence of the appellant was suspended by this Court on 06.04.2018.

2. The prosecution facts, as noted by the Trial Court, are extracted hereunder:-

“The case of the prosecution in brief is that on 10/11/2005 DD no. 13A was received at Police Station Tilak Nagar pursuant to which SI D.P. Kajla along with Ct. Devender reached 5-B/17, Tilak Nagar, Delhi where one Bhupender Kumar met them who gave his statement to the police. In his statement Bhupender Kumar informed the police that he was working as Accountant in Sudhir Printers at 5-B/17, Tilak Nagar Delhi and on 10/11/2005 he along with Ajit Khurana and Sunil were in the said office when at about 4:20 p.m. three boys intruded in the room one of whom was carrying a pistol, second was carrying a long dagger and the third boy was carrying a razor like knife. The names of the boy who was carrying pistol and the boy who was carrying dagger was subsequently revealed as Mushir Ahmad and Udai Kumar Sinha respectively. The boy who was carrying razor like knife bolted the doors of the room from inside and Mushir Ahmad asked them to raise their hands on



which they complied. Thereafter all the said assailants removed their purses from their pockets. Mushir Ahmad asked Ajit Khurana to hand over the keys of cupboard but when Ajit Khurana did not hand over the keys and showed his reluctance, the other two intruders came forward to hit Ajit Khurana but Ajit Khurana pushed them away. Mushir Ahmad fired at Ajit Khurana but due to his intervention, the shot hit his right leg beneath the knee and in the process, Sunil also received injuries. On alarm being raised by Ajit and Sunil, one of them fired towards the ceiling and subsequently they ran away. Ajit and Sunil nabbed Mushir Ahmad at the main gate of the room. Bhupender Kumar chased the other accused persons out of them only one namely Udai Kumar Sinha could be apprehended with the help of one Rinku and two police officials. Ajit Khurana and Sunil were taken to the hospital with the help of public persons and both the accused persons were handed over to the police. FIR was registered on the complaint of Sh. Bhupender Kumar. Investigation was carried out. On completion of the investigation, charge-sheet was filed in the Court.”

3. Pertinently, as per the case of prosecution, the appellant along with one *Uday Kumar Sinha* and *Shyam* committed offence. While *Shyam* could never be apprehended, the appellant was declared proclaimed offender. As a result, the trial court proceeded only against the co-accused *Udai Kumar Sinha* for the offence punishable under Sections 394/397 IPC and Section 25 Arms Act resulting in his conviction vide judgement dated 07.12.2010. His conviction was reversed by a Co-ordinate Bench of this Court vide judgement dated 28.01.2015 passed in Crl. A. No. 245/2011.

4. Subsequently, the appellant surrendered and additional charge under Section 174A was framed against him. The appellant was tried separately and came to be convicted vide the impugned judgment and order on sentence.



5. In support of its case and prove the incident, the prosecution had in total examined 17 witnesses, with the material witnesses, namely, *Bhupender Kumar* as PW-2, *Ajit Khurana* as PW-8 and *Sunil Kumar* as PW-13.

6. *Bhupender Kumar* (PW-2), who was also the complainant, deposed that he was working as an Accountant with Sudhir Printers situated at 5-B/17, Ground Floor, Tilak Nagar, Delhi. On the date of incident, i.e., 10.11.2005, he along with *Ajit Khurana* and *Sunil* were present at the abovesaid office. At about 4.20 pm, three boys entered the said office, one of them was carrying Razer like knife (*ustra*), another was having a dagger and the third was carrying country made pistol (*katta*). Later on, the person carrying country-made pistol was identified as the appellant, the person who carried a dagger was revealed as Uday Kumar Sinha (co-accused). It was further claimed that the third person had bolted the door of the room from inside. The appellant had asked them to raise their hands whereafter the accused removed the purses from their pockets. While the third person had removed his purse containing visiting cards, driving license and Rs.170/-, the appellant asked *Ajit Khurana* to hand over the keys of the cupboard. When *Ajit Khurana* resisted, *Uday* and the third person came ahead to hit *Ajit Khurana*, however, the latter pushed the said persons away. At this, the appellant fired country-made pistol towards *Ajit Khurana*, which hit on his right leg. While *Sunil Kumar* attempted to save *Ajit Khurana*, he was also inflicted knife injury on his left hand and forearm. The appellant was caught at the spot after some chase by *Ajit* and *Sunil*. The co-accused *Uday Kumar Sinha* was also apprehended. The public persons who had gathered there removed the injured to the hospital while the country-made pistol was recovered at the instance of the present appellant. According to



further deposition of the witness, a dagger was stated to have been recovered from the co-accused Uday Kumar Sinha. The witness not only identified the accused, but also identified the arms recovered at their instance.

7. The other material witnesses have also stated the facts on the above lines.

8. Mr Kachwaha, learned counsel for the appellant, contended that the version given forth by the witnesses stands belied by the medical examination record in as much as the medical examination was conducted prior to the incident itself and thus the testimonies are unreliable. In this regard, learned counsel placed heavy reliance on the decision of the coordinate Bench titled Uday Kumar Sinha vs. State¹ and submitted that the trial court erred in not appreciating the judgment of acquittal passed in case of the co-accused and further failed to extend the same benefit of doubt to the present appellant.

9. The submissions of the learned counsel for the appellant are repelled by the learned APP, who submitted that the present appellant was absconding and was tried subsequently.

10. At this juncture, it is apposite to extract the following observations of the coordinate Bench in the appeal filed by the co-accused/Uday Kumar Sinha:

“9. I have considered the rival contentions of both the parties and perused the trial court record carefully and I am of the view that prosecution case suffers from material inconsistencies with regard to time of incident as also about apprehension of appellant at the spot. In his statement Ex. PW3/A, PW3 Bhupinder Kumar has given the time of incident as 4:20 PM. Even in the rukka, time of incident has been mentioned as 4:20

¹ 2015 SCC OnLine Del 6904



PM. While depositing in Court also PW3 has given time of incident as 4:20 PM. PW4 Ajit Khurana has given time of incident as 4:4:30 PM. PW9 Sunil Kumar has given time of incident as 4:15/4:30 PM. As per DD No. 13-A also the information was received at about 4:45 PM. Meaning thereby that incident took place after 4:15 PM. However, PW1 Dr. R.K. Mishra has deposed that at 3:14 PM he had examined Ajit Khurana, who was brought in the hospital by one Constable from P.S. Tilak Nagar. He further deposed that on the same day at 3:16 PM he had examined Sunil Kumar. A perusal of MLCs of Ajit Khurana and Shri Sunil Kumar also shows that Shri Ajit Khurana and Shri Sunil Kumar were medically examined at 3:14 PM and 3:16 PM, respectively. PW1 is an independent witness and not related to any of the victims. There is no reason as to why he would tell a lie about the time of medical examination of Ajit Khurana and Shri Sunil Kumar. Besides this, time as mentioned in the MLCs, prepared immediately after the incident, has to be preferred and relied upon as against the ocular statements of witnesses. Meaning thereby incident, if at all had taken place, took place at least 15 minutes prior to the medical examination of Ajit Khurana and Sunil Kumar in the hospital since it would have taken that much of time in shifting the injured persons from the place of incident to hospital. If that is so, then Ajit Khurana and Sunil could not have sustained injuries in the incident allegedly took place at 4.15 PM. This difference in time has remained unexplained and makes the prosecution story suspicious and doubtful. This creates a doubt about the veracity of the version of witnesses in the FIR and subsequent deposition in Court.”

11. A plain reading of the same would show that the Co-ordinate Bench has appreciated the facts and observed that the prosecution has failed to explain as to how the incident is stated to have been occurred around 4.15 PM, whereas the injured were already examined at 3.16 PM. This unexplained difference in time was held to have cast a shadow of doubt on the prosecution case. While observing that the appellant was entitled to



benefit of doubt, the coordinate Bench acquitted the appellant in that case (co-accused in the instant case).

12. Interestingly, despite the abovementioned judgment of acquittal being passed, in the subsequent trial held against the appellant, the Trial Court failed to appreciate that once the higher court had already appreciated the common facts and circumstances, it ought to have followed the same. The Trial Court in the present case, however, sought to distinguish the said judgment by stating that the appellant has failed to explain as to why he would be falsely implicated. Unfortunately, the trial court has proceeded in the wrong fashion. Once this court has doubted the incident itself, the main edifice of the prosecution case falls and there was no reason for the appellant to explain the false implication. It is settled law that duty to prove its case conclusively falls on the prosecution. It is only when the prosecution has been able to link the chain of circumstances without a break, that the accused is required to prove its defence. This court sees no reason as to why benefit of doubt ought not to be extended to the present appellant, once occurrence of the incidence is itself doubted.

13. The impugned judgment and order on sentence are partly set aside and the appellant is acquitted of the charges under Sections 394/397 IPC and Section 25/27 Arms Act.

14. However, at the same time, the factum of appellant's abscondence cannot be ignored. The appellant has failed to satisfactorily explain his reason to not to appear before the trial court and for which reason, his conviction under Section 174A IPC is upheld. As per Nominal Roll available on record, the appellant has undergone about 1 year 11 months and 28 days. The appellant's sentence *qua* conviction under Section 174A IPC is



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modified to the period of 1 year 11 months. The appellant has already undergone the default sentence for non-payment of fine.

15. Accordingly, the appeal partly succeeds and is disposed of in the aforesaid terms. Appellant's bail bonds are cancelled and surety is discharged.

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

17. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 30, 2025

pmc