



2025:DHC:11933



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

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Date of Decision: 19.12.2025

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CRL.A. 318/2020

SALAM @ SHAH ALAM

.....Appellant

Through: Mr. RPS Bhati, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal, the appellant seeks to assail the judgement of conviction and order on sentence dated 21.12.2019 passed by ASJ-05(Shahdara), Karkardooma Courts, Delhi, in SC no. 978/2016 arising out of FIR no. 90/2016 registered under Sections 392/397/34 IPC at P.S. MS Park, Delhi.

2. Vide the impugned order on sentence, the appellant is sentenced to undergo RI for a period of 7 years alongwith fine of Rs.2,000/-, in default thereof would undergo SI for a period of 1 month for the offence punishable under Section 392/34 read with 397 IPC. The benefit of Section 428 Cr.P.C. was granted to the appellant.

The sentences of the appellant was suspended during pendency of the present appeal by this Court vide order dated 01.10.2020.



3. Briefly put, the case of the prosecution is that the complainant was running a medical shop under the name Kiran Medicos at 1449/4B, Chander Lok, Main 100 Foota Road. On 04.03.2016, at about 11:30 PM, one young boy came to the shop and asked for Disprin. When the complainant was about to hand over the medicine, the said boy entered the shop and was joined by two other associates, out of whom one entered the shop while the other remained outside. It is alleged that one of the boys inside the shop forcibly removed cash from the cash box, while another stood behind the complainant holding a knife, and the third stood outside the shop armed with a country-made pistol. After committing the robbery, the accused persons threatened the complainant and fled from the spot. On checking the cash box, the complainant found that a sum of approximately Rs.35,000/- was missing, whereupon he made a call at 100 number and the present FIR came to be registered.

4. In support of its case, the prosecution examined 11 witnesses. The most material among them was the complainant, *Ramshankar*, who was examined as PW-4. The remaining witnesses were formal in nature and deposed regarding various aspects of the investigation.

In his statement recorded under Section 313 Cr.P.C, the appellant claimed innocence and false implication. He did not lead any evidence.

5. A perusal of the record indicates that the testimony of the complainant/injured witness PW-4 is cogent, credible and inspires confidence. PW-4 has consistently deposed about the incident and has specifically attributed a clear role to the appellant, stating that he was armed with a knife during the commission of the offence, while another accused robbed the cash and the third stood guard with a country-made pistol. The



testimony of PW-4 stands duly corroborated by the CCTV footage and photographs extracted therefrom, which clearly depict the presence and acts of the accused persons at the spot. PW-4 duly identified the appellant in Court and in the CCTV footage.

Having considered the material placed on record, this Court concurs with the findings of the trial court and finds no grounds to interfere with the same are made out. Consequently, the conviction of the appellant is upheld qua the offence under Sections 392/397/34 IPC.

6. Learned counsel for the appellant, on instructions from the appellant, submits that the appellant, who has undergone more than half of the sentence, does not wish to press the appeal on merits and confine his prayer to seeking release on probation. It is prayed that the benefit of Section 4 of the Probation of Offenders Act, 1958 be extended to him.

7. Learned APP for the State submits that the appellant is not convicted in any other case. He further submits, on instructions, that although one other case bearing FIR No. 74/2013, registered under Sections 379/411 IPC at P.S. Jyoti Nagar, was instituted against the appellant/Salam, he has already been acquitted in the said case.

8. Pursuant to the directions of this Court, the Social Investigation Report of the appellant has been handed over in Court from the Probation Officer, Karkardooma Courts, Delhi, which in turn has been forwarded by the concerned District Probation Officer, Ghaziabad. As per the report, the appellant is a resident of Jeevan Gate, Pooja Colony, Azad Enclave, Tronika City, Ghaziabad. The appellant's family consists of his wife and two sons and 4 daughters. The appellant is the sole breadwinner of his family working as a property dealer earning Rs.10,000/- per month. It is noted that he is



physically and mentally fit. The Probation Officer concludes that the appellant possesses positive social support, and shows good prospects of rehabilitation, and therefore finds him suitable for release on probation under supervision.

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 Act 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 Act came into being. The relevant extract is reproduced hereunder:-

“16. ... A more nuanced interpretation on this aspect was given in CCE v. Bahubali¹⁵. 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.¹⁶ It is in this context, it was observed in State of M.P. v. Vikram Das⁶ 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 Punjab¹⁷ 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. In the present case, the offence is under Section 392/397/34 IPC. It is pertinent to note that Section 392/34 IPC does not prescribe any minimum sentence. Though, Section 397 IPC prescribes a minimum sentence of 7 years. Nevertheless, it is well settled that the provisions of the Probation of Offenders Act, 1958 are to be read harmoniously with the provisions of the Indian Penal Code, and that the benefit of probation can be extended wherever the statute does not specifically exclude its operation or prescribe a compulsory minimum punishment. The bar on the application of the Act arises only where a special statute enacted after 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause and hence, this Court retains discretion to extend the benefit of probation to the appellant, provided the circumstances justify such relief.

11. Having regard to the nature of the offence, the period of incarceration already undergone, the case has been pending since 2016 and the overall findings of the Social Investigation Report, as well as the legal position *qua* the applicability of Probation of Offenders Act as iterated above, this Court is persuaded to adopt a reformatory approach. The appellant has been living peacefully in society, has maintained a stable occupation, and is the sole breadwinner of his family. The Probation Officer's report further affirms his good conduct, normal social behavior, and positive inclination towards reformation.

12. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the sentence imposed upon the appellant is modified to the extent that he shall be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, upon furnishing a probation bond in the sum of Rs.10,000/-, with one surety



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in the like amount, to the satisfaction of the Trial Court within four weeks from today. They shall maintain peace and good behaviour for a period of one year and shall not commit any offence during the period of probation.

13. The appeal and all pending applications, if any, stand disposed of in the above terms.

14. A copy of this judgment be communicated to the Trial Court, the concerned Probation Officer, and the concerned Jail Superintendent for information and compliance.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 19, 2025/dh