



2025:DHC:10263



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

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Date of Decision: 18.11.2025

CRL.A. 602/2024

BUNTY KUMAR

.....Appellant

Through: Mr. Shoeb Shakeel and Mr. Vineet
Baliyan Advocates (through VC)

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms Shubhi Gupta, APP for State

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CRL.A. 609/2024

SUNIL KUMAR

.....Appellant

Through: Mr. Shoeb Shakeel and Mr. Vineet
Baliyan Advocates (through VC)

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms Shubhi Gupta, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeals arise from a common judgment dated 18.11.2023 and the order on sentence dated 08.07.2024 passed by ASJ-01(FTC) in Sessions Case No. 6489/2016 arising out of FIR No. 130/2012, registered under Sections 382/34 IPC at P.S. Saket, Delhi.



2. Vide the impugned order on sentence, the appellants were convicted for the offence punishable under Section 392/34 IPC and sentenced to undergo RI for a period of 2 years alongwith fine of Rs.50,000/- each, in default whereof, to undergo SI for a period of 6 months. The appellants were acquitted under Section 397 IPC. The benefit of Section 428 Cr.P.C. was granted to both the appellants.

The sentences of the appellants were suspended during pendency of the present appeals by this Court vide order dated 23.09.2025.

3. Briefly put, the case of the prosecution is that on 10.02.2012 at about 7:00 PM, at Mehrauli Badarpur Road, between Lado Sarai and Saidulajab, New Delhi, the accused persons, namely *Ajay Kumar @ Sonu*, *Deepak Kumar* (since expired), *Bunty Kumar*, and *Sunil Kumar*, allegedly pointed a toy pistol like weapon at the complainant *Ajay Kumar* and robbed him of his bag containing Rs.1,55,000/-, a bank passbook, and certain other documents. The prosecution has further alleged that on 20.04.2012, a TV of make Akai was recovered at the instance of accused *Deepak* and *Bunty Kumar* from the house of accused *Sushil Kumar*, which was stated to have been purchased from the robbed amount. On 04.05.2012, a sum of Rs.8,000 (part of the robbed amount) was recovered at the instance of accused *Bunty*, and on 22.04.2012, an amount of Rs.3,000 was recovered at the instance of accused *Ajay Kumar @ Sonu* from his house. Charge-sheet for the offence U/s 397/411/120B/34 IPC was filed against the accused persons. Thereafter, charges were framed, to which the accused persons pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined 18 witnesses to prove its case. The most material among them was the complainant, who was



examined as PW-2. SI Makhan Singh, the I.O. in the present case, who proved the investigation, including the arrest memos, disclosure statements, site plan, and the recoveries made at the instance of the accused, was examined as PW-17. The remaining witnesses were formal in nature and deposed regarding various aspects of the investigation. The remaining witnesses were formal in nature and deposed as to various aspects of the investigation.

In their statement recorded under Section 313 Cr.P.C, the appellants claimed innocence and false implication.

5. A perusal of the record indicates that the testimony of the complainant is cogent, credible and inspires confidence. He correctly identified the appellants in Court and had also identified Appellant/*Bunty* about two and a half months after the incident. Further, several shopkeepers along the complainant's collection route were examined by the prosecution, and they corroborated that he had, in fact, collected money from them on the said day. Their statements support the prosecution's case that the complainant was in possession of approximately Rs.1,55,000. Additionally, the recovery of the stolen amount, the motorcycle used in the offence, and the television purchased from the robbed amount, all recovered at the instance of the accused persons. The weapon used was a toy pistol leading to the acquittal of the appellants under Section 397 IPC. It is further noted that nothing was brought on record to substantiate the claims by the appellants of false implication.

In view of the above, the conviction of the appellants under Sections 392/34 is upheld.

6. Learned counsel for the appellants, on instructions, submits that the



appellants do not wish to press the appeal on merits and confine their prayer to release on probation. It is prayed that the benefit of Section 4 of the Probation of Offenders Act, 1958 be extended to them. It is further submitted that the fine imposed on both appellants already stands paid, as recorded in the Trial Court's order dated 26.07.2025, wherein the payment of fine amounting to Rs.1,00,000/- has been made.

7. Learned APP for the State has handed over a status report, which is taken on record. As per the report, although the appellants have other involvements, they stand discharged or acquitted in those cases. As per the Nominal Rolls, the appellants' jail conduct during custody period has been reported to be satisfactory.

8. Pursuant to this Court's directions, the Social Investigation Report of the appellants has been received from the Probation Officer, Saket Courts, Delhi.

As per the report concerning appellant/*Bunty*, he is 32 years of age, educated upto 10th class, and resides at his parental house situated at H. no. 1/381, Vishwakarma Colony, Jaitpur Extension-II, Badarpur, South Delhi, New Delhi, 110044. His family comprises of his aged parents, wife and two children. The report further records that the appellant He is the sole breadwinner of the family and earns his livelihood by driving his own auto-rickshaw and earns approximately Rs.700 per day after deducting daily expenses. His parents are stated to be suffering from severe diabetes, and his mother has been under treatment for the past five years. His elder daughter is studying in 3rd class, while his younger daughter suffers from a psychological ailment since birth. If he remains in custody, his parents and daughters are likely to be the most adversely affected.



As per the report concerning appellant/*Sunil*, he is 37 years of age, educated upto 8th class, and resides at his parental house situated at H. no. G-848, Ground Floor, Sangam Vihar, Dr. Amedkar Nagar, South Delhi, Delhi, 110062. His family comprises of his aged father, wife and two children. The report further records that the appellant is the sole breadwinner of the family and earns his livelihood by driving his own auto-rickshaw, with an average earning of approximately Rs.700 per day after deducting a daily rent of Rs. 450. He himself as well as his father suffer from severe high blood pressure and his younger daughter has been paralysed in her left hand since birth. If he remains in custody, his parents and daughters are likely to be the most adversely affected.

Both the appellants are reported to be of poor economic background and having been facing trial since 2012. They are stated to be of normal social behaviour. Their families and neighbours have spoken positively about their conduct and expressed a favourable opinion regarding their reformation and adjustment in society. The Probation Officer has stated that there is a possibility of rehabilitation and reformation in respect of both the appellants.

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. From above, it is pertinent to note that Section 392/34 IPC does not prescribe any minimum sentence. The IPC, having been enacted prior to the coming into force of the Probation of Offenders Act, must be read harmoniously with the latter statute. 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. In the present case, the conviction is under Section 392 IPC read with Section 34 IPC. Given that even otherwise, the offence does not carry a mandatory minimum sentence, the Court retains discretion to extend the benefit of probation to the appellants, provided the circumstances justify such relief.

11. Having regard to the nature of the offence, the period of custody already undergone, the fine paid 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 appellants have been living peacefully in society, has maintained a stable occupation, and are the sole breadwinners of their respective families. The Probation Officer's report further affirms their good conduct, normal social behaviour, and positive inclination towards reformation.

12. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the substantive sentence of imprisonment imposed upon the appellants is modified to the extent that they 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/- each, with one surety in the like amount each, to the satisfaction of the Trial Court within four weeks from today. They shall maintain peace and good behaviour and shall not commit any offence during the period of probation.

13. The appellants 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. In case 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 concerned appellant shall be liable to undergo the sentence as awarded by the Trial Court.

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



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15. 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)

NOVEMBER 18, 2025
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