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

+ CRL.A. 165/2017

JUNAID

.....Appellant

Through:

Appellant in person

versus

STATE OF NCT OF DELHI

.....Respondent

Through:

Ms.Shubhi Gupta, APP for
State with
SI Akash Kumar, PS:
Bhajanpura.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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14.10.2025

1. The present appeal has been filed under Sections 374(2) Cr.P.C. assailing the judgment of conviction dated 21.12.2016 and the order on sentence dated 26.12.2016, passed by the Learned ASJ/Special Judge (NDPS), North-East District, Karkardooma Courts, Delhi, in Sessions Case No. 17(1)/2015 arising out of FIR No. 481/2015, registered at Police Station Bhajanpura, for offences punishable under Sections 392/397/411 IPC. Vide the impugned order on sentence, the appellant was convicted under Section 411 IPC and sentenced to undergo Rigorous Imprisonment for 2 years with fine of Rs. 1,000/-, in default whereof to further undergo Simple Imprisonment for 15 days.

During the pendency of this appeal, the appellant's sentence was suspended vide order dated 25.04.2017, and he was released on bail.



2. Briefly stated, the case of the prosecution was that on 08.04.2015 at about 9:00 p.m., the complainant Arun Kumar was walking in Bhagat Singh Park, Yamuna Vihar, when an unknown person approached him under the pretext of making an emergency call and, upon his refusal, placed an *ustra* on his neck and forcibly took away his mobile phone. The complainant lodged a report the next day, leading to registration of FIR No. 481/2015. On the basis of secret information received on 09.04.2015, the appellant was apprehended from Jungle Jalebi Park, Yamuna Vihar, and a mobile phone make *ZEN* (red and black) was recovered from his possession. An *ustra* was also recovered from his house. After investigation, charges were framed under Sections 392/397/411 IPC.

3. During trial, the prosecution examined nine witnesses. The complainant (PW-1) supported the factum of robbery and identified the recovered mobile phone as belonging to him but could not identify the accused or the *ustra* in court. The recovery witnesses (PW-3, PW-4, and PW-6) stated about the seizure of the mobile phone and *ustra* at the instance of the appellant. The proprietor of *Durga* Communication (PW-5) proved the purchase bill linking the mobile phone to the complainant. The Investigating Officer (PW-9 SI Shahid Khan) detailed the raid, arrest, and recovery proceedings. The rest of the witnesses were formal in nature who deposed with respect to various aspects of the investigation.

The appellant denied the allegations in his statement under Section 313 Cr.P.C. and claimed false implication, asserting that he was under the influence of drugs at the time of arrest. No defence witness was examined.

4. Upon consideration of the evidence, the Trial Court found that though the complainant had not identified the accused as the robber, the recovery of



the stolen mobile phone from his possession within 24 hours of the incident remained uncontroverted. The Trial Court held that the presumption under Section 114(a) of the Evidence Act applied and concluded that the appellant had retained possession of stolen property with knowledge of its stolen nature. Accordingly, the appellant was acquitted of charges under Sections 392 and 397 IPC, but convicted under Section 411 IPC.

Having considered the evidence and findings recorded by the Trial Court, this Court finds no reason to interfere with the decision of the Trial Court and concurs with the reasoning adopted therein.

5. The nominal roll on record dated 10.10.2025 indicates that, the appellant has undergone about 1 year and 3 months of custody (including undertrial and remission period). His conduct in jail has been reported as satisfactory, and no punishment has been recorded. It records that the fine amount remains unpaid. It is noted that the sentence of the appellant was suspended vide order dated 25.04.2017, and he was released on 02.05.2017.

6. Learned counsel for the appellant submits on instructions that he does not wish to press the present appeal on merits.

7. The appellant is present in Court and identified by the IO. He has handed over his gate pass which is taken on record. Having understood the consequences, he prays that his sentence be modified to the period already undergone. He further submits that he is not involved in any other case.

8. Learned APP for the State, on the other hand, has handed over a status report along with a previous involvement report prepared by the SHO, P.S. Bhajanpura, which is taken on record. As per the report, the appellant had earlier been found involved in a few other cases. It is stated that out of these,



out of which one he has been convicted in, second has been acquitted and the third is pending trial.

9. The law with regard to release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in Sonadhar v. State of Chhattisgarh decided on 06.10.2021, in **SLP (CRL)No. 529/2021** the relevant portion of the same is extracted hereinunder:

'We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavour be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not



to compel or extract acceptance from such convicts depriving of the right of appeal.'

10. Having perused the Trial Court record and the impugned judgment, and considering that the appellant has already undergone more than one year of substantive custody out of a two year sentence, the Court is of the view that no useful purpose will be served by requiring him to undergo the remaining term. Taking into account his age, and overall conduct, the substantive sentence is reduced to the period already undergone.

11. Accordingly, while upholding the conviction of the appellant under Section 411 IPC, the sentence awarded to him is modified to the period already undergone. The appellant shall, however, deposit the fine amount of Rs.1,000/- before the Trial Court within one week from today, and furnish the receipt thereof to the concerned IO. In default of payment of fine, he shall undergo the default sentence as imposed by the Trial Court.

12. The appeal is partly allowed and stands disposed of in the above terms. Pending applications, if any, also stand disposed of. The bail bonds furnished by the appellant stand cancelled, and the sureties are discharged.

13. A copy of this order be sent to the concerned Jail Superintendent and the Trial Court for information and necessary compliance.

MANOJ KUMAR OHRI, J

OCTOBER 14, 2025/kb