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

+ CRL.A. 446/2018

KRISHAN @ KISHAN

Through:

.....Appellant
Mr. Archit Upadhayay, Advocate
(DHCLSC) with appellant in
person

versus

STATE

.....Respondent
Through: Mr Pradeep Gahalot,
APP for State with
SI Deepika, PS Sonia Vihar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

14.10.2025

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1. The present appeal has been filed under Sections 374(2) and 482 of the Code of Criminal Procedure assailing the judgment of conviction dated 07.03.2017 and the order on sentence dated 24.03.2017, passed by the Learned (NDPS)/ASJ, North-East District, Karkardooma Courts, Delhi, in Sessions Case No. 44995/2015 arising out of FIR No. 85/2015, registered at Police Station Sonia Vihar, for offences punishable under Sections 393/394/34 IPC. Vide order on sentence, the appellant was directed to undergo Rigorous Imprisonment for seven years and to pay a fine of ₹2,000/-, in default whereof to further undergo one year's Simple Imprisonment.

During the pendency of this appeal, the appellant's sentence was



suspended on 30.05.2018, and he was released on bail.

2. The co-convict, Dinesh Bhati @ Dina, was additionally convicted for offences under Sections 397 IPC and 25/27 Arms Act and sentenced separately. The appeal filed by the co-convict, Dinesh Bhati @ Dina, being CRL.A. 540/2017, was disposed of as abated vide order dated 11.04.2023.

3. Briefly stated, the prosecution case was that on 13.02.2015 at about 10:30 p.m., the complainant, Mukammil @ Mukhiya Tyagi, was returning home on foot after visiting a market near 5th Pushta, Sonia Vihar. When he reached in front of the Hero Honda showroom, two persons allegedly obstructed his way and attempted to rob him of the cash he was carrying. One of them, identified as Dinesh Bhati @ Dina, was stated to be armed with a country-made pistol and allegedly fired at the complainant, but the shot did not hit him. Thereafter, Dinesh struck the complainant on the head with the butt of the pistol, causing an injury. The complainant raised an alarm, attracting public persons who apprehended both accused, including the present appellant Krishan @ Kishan. On the basis of the complainant's statement, an FIR under Sections 393/394/397/34 IPC and 25/27/54/59 Arms Act was registered. The accused were arrested on the spot, and a pistol with a live cartridge was recovered.

Vide order dated 21.12.2015, charges were framed against both accused under Sections 341/393/394/34 IPC, while accused Dinesh Bhati was additionally charged under Sections 397 IPC and 25/27 Arms Act.

4. During the course of trial, the prosecution examined 26 witnesses in total. The material witnesses included; PW-1 Mukammil (Complainant/Injured)



who deposed about the occurrence, identified both accused, and described how Dinesh fired at him and struck him with the pistol, while Krishan accompanied him during the robbery attempt. PW-14 Mani Ram and PW-16 Arif – who corroborated the complainant’s version to the extent of seeing the accused having a scuffle with the complainant, hearing the gunshot go off and being apprehended by the public. PW-10 Dr. Neha (JPC Hospital) who medically examined the complainant and opined the injury on the head as “simple” caused by a blunt object. PW-3 Sh. Puneet Puri (Ballistic Expert) who proved that the firearm was in working condition and that the cartridge case matched the pistol seized. PW-22 SI Arvind Kumar (Investigating Officer) who detailed the recovery of the weapon, preparation of sketch, seizure memos, and the arrest of both accused. Other witnesses were formal witnesses who deposed with respect to various aspects of the investigation and police officials who supported the arrest, recovery, and FSL procedures.

The accused were examined under Section 313 Cr.P.C., wherein they denied all allegations and claimed false implication. No defence witness was examined.

5. Upon an appreciation of the evidence, the learned Trial Court held that the prosecution had successfully proved that the accused persons, acting in furtherance of their common intention, attempted to commit robbery upon the complainant. The Court found the complainant’s testimony trustworthy, consistent, and corroborated by the medical and ballistic evidence. It was observed that though there were minor discrepancies between PW-1 and PW-16 regarding whether the shot was fired at the complainant or in the air, the



same were held immaterial since both confirmed the use of a firearm during the incident. The injury found on PW-1's head, the recovery of the country-made pistol, and the seizure of live cartridges cumulatively established the guilt of the accused beyond reasonable doubt.

This Court finds no infirmity in the reasoning or appreciation of evidence by the Trial Court and therefore, concurs with the decision.

6. The nominal roll on record indicates that the appellant has undergone a total sentence of about three and a half years, including remission. The fine amount is recorded as unpaid.

7. The appellant is present in person and is duly identified by the I.O. Learned counsel for the appellant submits that he has already served the major portion of his sentence. It is prayed that the sentence may be modified to the period already undergone as on instructions from the appellant he submits that he does not wish to press the appeal on merits.

8. Learned APP for the State has handed over a status report indicating previous involvements of the appellant which is taken on record.

9. The aforesaid report on previous involvements indicates that the appellant had been named in a few other cases registered at P.S. Shahdara, Khajuri Khas, and Sonia Vihar. Most of those cases are pending trial some have an acquittal and the ones which have convictions are prior in time.

10. 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.”

11. I have perused the Trial Court record and the impugned judgment. The Trial Court has based its findings on the consistent testimony of the injured witness, duly corroborated by medical and ballistic reports. The sequence of events - the firing of the pistol, injury to the complainant, and the immediate apprehension of both accused at the spot - were conclusively established.

12. However, considering that the appellant has already undergone more than three years of incarceration, the sentence imposed upon him deserves to be modified to the period already undergone. Applying the principle laid down in *Sonadhar* (supra), and keeping in mind the nature of the offence, the appellant's age, and socio-economic background, this Court deems it appropriate to modify the substantive sentence accordingly.



13. Consequently, while upholding the conviction of the appellant Krishan @ Kishan, the sentence is modified to the period already undergone. The appellant shall, however, deposit the fine amount of Rs. 2,000/- before the Trial Court within four weeks from today and furnish the receipt thereof to the concerned IO. In default of payment, he shall undergo the default sentence as imposed by the Trial Court.

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

15. 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

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