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

+ **CRL.A. 366/2016**

BABU

.....Appellant

Through: Mr. Dinesh Malik (DHCLSC), Mr.
Akash Saini and Mr. Puneet Jain,
Advs.

versus

STATE

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Mohd. Ayyoob, PS Jafrabad

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

10.11.2025

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1. By way of present appeal, the appellant seeks to assail the judgement dated 17.12.2015 and order on sentence dated 21.12.2015 passed by ASJ(FTC), Shahdara, Karkardooma Courts, Delhi, in SC no. 28/2013 arising out of FIR no. 321/2012 registered under Sections 392/397/34 IPC at P.S. Zafrabad, Delhi.

Vide order on sentence, the appellant has been directed to undergo RI for a period of 5 years alongwith fine of Rs. 10,000/- for the offence punishable under Section 392/34 IPC, in default thereof would further undergo RI for 6 months. Further, for the offence punishable under Section 411 IPC he was directed to undergo RI for 2 years. He was acquitted for the offence under Section 397 IPC. The benefit of Section 428 CrPC has been provided to the appellant.



Vide order dated 24.07.2017, the sentence of the appellant was suspended during the pendency of the present appeal.

2. Briefly put, the case of the prosecution is that on 16.12.2012, information was received at PS Jafrabad vide DD No. 3A that 4-5 persons had snatched two gold rings, Rs.13,000 in cash, and a dual-SIM mobile phone near gate of Madarsa at Jafrabad. The information was marked to HC Ram Kumar, who reached the spot near Nahar Kotti Tent Wala School, Jafrabad. He got the complainant, *Bijender Kumar Gupta*, medically examined at Jag Pravesh Chandra Hospital, where his injuries were found to be simple in nature. The complainant did not give his statement at that point of time, stating that he would come to the police station later with the documents of the mobile phone. Later the same day, the complainant appeared at the police station and stated that on 15.12.2012, at about 11:30PM, while he was returning home from Seelampur and had stopped to relieve himself, 3-4 persons aged between 20-30 years caught him. One of them placed a knife on his abdomen, and they robbed him of two gold rings, a dual-SIM mobile phone, and his purse containing a memory card, I-card, visiting card, and Rs.7,400 in cash. They also beat him. Accordingly, the present FIR was registered. On 25.12.2012, the appellant was arrested along with two juveniles, *Shahzad @ Bhura* and *Shahnawaz @ Shanu*, near Welcome Pulia. The stolen mobile phone was recovered from the possession of the appellant. The complainant correctly identified him in the TIP and, in his supplementary statement under Section 161 Cr.P.C., stated that it was the appellant who had placed the knife on his abdomen.

3. In support of its case, the prosecution examined 7 witnesses, the material witness being the complainant, *Bijender Kumar Gupta*, who was



examined as PW-5. DD No. 3A was marked to HC *Ram Kumar*, who also got the complainant medically examined; he was examined as PW-2. SI *M.P. Singh*, who conducted the TIP of the appellant, was examined as PW-6. The remaining witnesses were formal in nature and deposed to various aspects of the investigation.

The statement of the appellant was recorded under Section 313 Cr.P.C., in which he claimed his innocence and stated that he had been falsely implicated.

4. A perusal of the record indicates that the sole testimony of the complainant was cogent, consistent, and inspired confidence. He identified the appellant during the TIP and again in court as one of the assailants who robbed him of his mobile phone, gold rings, and cash. The identification was found to be reliable, as the appellant was not known to the complainant and he was not shown to him beforehand. However, since there was no recovery of the knife allegedly used during the incident, the complainant could not specify which of the assailants wielded it, and the MLC recorded the injuries to be simple in nature, the appellant was acquitted of the charge under Section 397 IPC. Furthermore, the stolen mobile phone was duly recovered from the appellant's possession at the time of his arrest, and its IMEI number matched the complainant's purchase bill, establishing that the phone belonged to the complainant. Consequently, the conviction of the appellant under Sections 392/411/34 IPC is upheld.

5. It is noted that on the last date of hearing, bailable warrants were executed, and the appellant is present in court today. His gate pass has been handed over, taken on record, and he is duly identified by the I.O.

6. At this stage, learned counsel appearing for the appellant submits that



the appellant is remorseful and being fully aware of the consequences, does not wish to press the present appeal on merits. He accepts his guilt and prays that he be released on the period already undergone by him in custody. He further prays that the fine imposed upon him be reduced as he belongs to poor strata of society.

7. Learned APP for the State has also handed over a copy of the status report which is taken on record, according to which the appellant is involved in other cases, but he has not been convicted in any of them.

8. The law regarding 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 Vs. State of Chhattisgarh, reported as **2021 SCC OnLine SC 3683**, and the relevant portion of the same is extracted hereinunder:

““28. 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 endeavor 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.”*

9. The appellant, aged 33 years, is working as an auto driver and is the



sole breadwinner of his family, which comprises his aged mother and two children.

10. The nominal roll of the appellant dated 09.10.2025 reflects that the appellant has undergone about 3 years and 6 months of sentence including remission earned.

11. Having regard to the fact that the incident pertains to the year 2012, and keeping in view of the facts and circumstances noted hereinabove as well as decision in Sonadhar (Supra), the substantive sentence of the appellant in the present appeal is hereby modified to the period already undergone by him. The sentence on default of payment of fine, however, is maintained, subject to payment of fine as modified hereinbelow.

12. Considering their modest means and the totality of circumstances, the fine imposed upon appellant is reduced to Rs.5,000/-, to be paid within 4 weeks before the Trial Court, failing which he will undergo the default sentence. The appellant shall furnish a receipt with the concerned I.O.

13. Subject to deposit of fine amount, the personal bond furnished by the appellant stands cancelled and the sureties are discharged.

14. The present appeal is partly allowed and disposed of in the above terms.

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

MANOJ KUMAR OHRI, J

NOVEMBER 10, 2025/sn