



2025:DHC:10210



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

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Date of Decision: 17.11.2025

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CRL.A. 395/2017

SALIM

.....Appellant

Through: Mr. Rashid Hasmi Advocate
alongwith appellant

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
With SI Rajesh Kumar, PS Mukherjee
Nagar, SI Hemant Kumar, PS
Jafrabad

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 08.12.2016 and the order on sentence dated 14.12.2016, passed by the learned ASJ-02 (North-East), Karkardooma Courts, Delhi in Sessions Case No. 37/12, arising out of FIR No. 35/2010 registered at P.S. Jafrabad under Sections 382/34 IPC. By the impugned judgment, the appellant Salim was held guilty of the offence punishable under Section 392/34 IPC, and was acquitted of the charge under Section 397 IPC, the co-accused Dildar was acquitted of all charges.

2. Vide the order on sentence dated 14.12.2016, the appellant was sentenced to undergo four years' Rigorous Imprisonment and to pay a fine



of Rs.5,000/-, and in default, to further undergo three months' Simple Imprisonment, for the offence under Section 392 IPC. The Trial Court directed that the appellant be given the benefit of Section 428 Cr.P.C.

3. During the pendency of the present appeal, the sentence imposed upon the appellant was suspended by this Court vide order dated 16.08.2017, and the appellant was accordingly released on bail.

4. The prosecution case, briefly stated, is that on 09.02.2010, complainant Riazuddin (PW-1) was allegedly robbed of Rs.5,000/-, two State Bank cards, two SIM cards, two credit cards, one driving licence and a few MCD papers, near Chouhan Bangar Pulia. It is the case of the prosecution that appellant Salim, along with co-accused Dildar, waylaid the complainant, and that Salim took out a "*churi*" and threatened to kill him. The complainant thereafter informed the police by calling 100 number.

5. In support of its case, the prosecution examined six witnesses. PW-1, the complainant, narrated the details of the alleged incident. PW3 runs a shop near the place of incident who stated he knows nothing of such incident and that he doesn't know anyone named Salim. He was stated to have turned completely hostile. PW-5 H.C. Ramzan Khan and PW-6 ASI Krishan Pal deposed regarding arrest and recovery proceedings. PW-4 SI Sumitra Devi proved registration of the FIR and the relevant DD entries. The remaining witnesses were formal or police witnesses.

6. In his statement under Section 313 Cr.P.C., the appellant denied all incriminating circumstances and claimed false implication. No defence evidence was led.

7. The Trial Court, upon appraisal of the evidence, held that the complainant had identified the appellant in Court as one of the assailants and



accepted the prosecution version to the extent that the robbery had been committed by two persons. Accordingly, the appellant was convicted under Section 392/34 IPC, while being acquitted of the charge under Section 397 IPC.

8. Upon re-appraisal of the record, this Court finds no reason to interfere with the conclusions of the Trial Court insofar as the conviction under Section 392/34 IPC is concerned.

9. Learned counsel for the appellant, on instructions from the appellant, submits that the appellant is not involved in any other case. He further submits that the appellant does not wish to press the appeal on merits and confines his prayer to seeking release on probation. It is submitted that the fine amount imposed by the Trial Court has not yet been deposited, however, the appellant undertakes to deposit the same within the period stipulated by this Court, in the event he is granted the benefit of probation.

10. Learned APP for the State, Ms. Shubhi Gupta, on instructions, confirms that the appellant is not found involved in any other criminal case. She further submits that the Probation Officer's report, which has been handed over, mentions the name "Shamim"; however, she states that this is a typographical error and that it in fact refers to the present appellant, Salim. She also clarifies that the address noted in the report differs from that in the memo of parties and the nominal roll as the appellant had shifted his residence three years ago, and the address in the report is his present one.

11. Pursuant to this Court's directions, the Social Investigation Report (SIR) submitted in respect of the appellant Salim records that he is a 51-year-old married man, residing with his wife and four children at A-1064 A, 3rd Floor, A Block, Rajiv Nagar, Delhi, where he has been living for the



past three years. The house is registered in his brother's name. The SIR indicates that the appellant has been working at the Ghazipur Murga Mandi for nearly 15 years, earning approximately Rs.12,000/- per month, and previously ran a fruits and vegetable *rehdi*. His home environment is stated to be stable, and he maintains cordial relations with neighbours and relatives, both of whom have described him as a calm, civilized and generous. The SIR also notes that the appellant, during the interview, was balanced and normal. The report records that he suffers from kidney-related ailments, blood pressure issues and diabetes, however no documents have been provided to substantiate this claim. The SIR further notes that the appellant comes from an economically modest but stable family background, with a monthly household income of approximately Rs. 15,000/—Rs. 18,000/-, supplemented by small earnings of his children. His wife works from home as a seamstress. The locality is described as densely populated with limited amenities, but neighbours have spoken positively about the appellant's conduct. The Probation Officer concludes that the appellant has no criminal antecedents, possesses positive social support, and shows good prospects of rehabilitation, and therefore finds him suitable for release on probation under supervision.

12. The nominal roll of the appellant dated 10.11.2025, reflects that the appellant has undergone a total custody period of about 1 year and 6 months, including remission. It also records that the appellant is not involved in any other criminal case. The fine imposed by the Trial Court has not yet been deposited.

13. 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.”

14. Pertinently, in the present case, Section 392 IPC, under which the appellant stands convicted does not prescribe any mandatory minimum



sentence. The punishment provision permits the Court to award imprisonment, fine, or both. It is well settled that the provisions of the Probation of Offenders Act, 1958 operate in harmony with the penal statute, and that the benefit of probation may be extended in all cases where the law does not expressly prohibit its application or mandate a compulsory minimum term of incarceration. In the absence of any statutory bar in respect of Section 392 IPC, this Court retains full discretion to consider the grant of probation, provided the circumstances of the case warrant the exercise of such discretion.

15. Having regard to the appellant's clean antecedents, the favourable observations recorded in the Social Investigation Report, the supportive statements of neighbours, his family circumstances, and the absence of any adverse material in the nominal roll, this Court is persuaded to adopt a reformatory approach. Although the fine amount of Rs. 5,000/- imposed by the Trial Court has not yet been deposited, the appellant shall deposit the same within four weeks from today before the Trial Court and furnish proof of such deposit to the IO concerned.

16. Accordingly, while upholding the impugned judgment of conviction dated 08.12.2016 and the order on sentence dated 14.12.2016, the substantive sentence of imprisonment 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 of the like amount, to the satisfaction of the Trial Court, within four weeks from today. The appellant shall maintain peace and good behaviour during the period of probation and shall not commit any offence.



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17. The appellant shall remain under the supervision of the concerned Probation Officer for a period of one year, and shall report before the Probation Officer once every month. It is made clear that in the event 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 appellant shall be liable to undergo the remaining portion of the substantive sentence as originally awarded by the Trial Court.

18. The appeal stands disposed of in the above terms.

19. The bail bonds furnished on behalf of the appellant, shall stand cancelled upon payment of fine and sureties accordingly be discharged.

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

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 17, 2025

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