



2025:DHC:11438



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

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Date of Decision: 10.12.2025

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CRL.A. 521/2017

JOGINDER

.....Appellant

Through: Ms. Neha Kapoor and Mr Kaushal
Mehta, Advocates.

versus

STATE

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Anil PS Seemapuri, Delhi.

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 01.03.2017 and the order on sentence dated 20.03.2017, passed by the learned ASJ(NE), Karkardooma Courts, Delhi in Sessions Case No. 44278/15, arising out of FIR No. 91/2009, P.S. Seema Puri, Delhi. By the impugned judgment, the appellant was held guilty for the offences punishable under Sections 392/34 IPC read with Section 397 IPC, Section 411 IPC and Section 25 of the Arms Act, 1959.

2. Vide the order on sentence, the appellant was sentenced to RI for a period of 7 years alongwith fine of Rs.500/-, in default SI for 6 months for the offence punishable under Section 392/34 IPC read with Section 397 IPC. He was further sentenced to undergo RI for a period of 1 year for the offence punishable under Section 25 of the Arms Act. Further, he was sentenced to



undergo RI for a period of 3 years for the offence punishable under Section 411 IPC. All sentences were directed to run concurrently, with benefit of Section 428 Cr.P.C.

During the pendency of the appeal, the sentence imposed upon the appellant was suspended vide order dated 04.06.2020.

3. Briefly put, the case of the prosecution is that on 14.03.2009, DD No. 31B was received at about 7:28PM through PCR reporting that two boys on a Pulsar motorcycle had robbed Rs.10,000/- at gunpoint near Chintamani Namkeen, behind Sahani Motors, and fled after leaving their motorcycle at the spot. The DD was assigned to ASI Kishan Pal, who reached the location with the police staff and found a motorcycle parked there. The complainant and his associate were also present. The complainant stated that earlier that evening, around 6:25 PM, he and his associate had gone to a factory at A-44, Dilshad Garden, Delhi, on their scooter (DL-6S-K-8062, Bajaj Chetak) to collect payment for 5 tons of copper sold on 13.03.2009, as instructed by their employer, *Arun Kumar Jain*. They allegedly collected Rs.10,00,000/- in denominations of Rs.1,000/-, Rs.500/- and Rs.100/-, placed the cash in the scooter's dickey, and locked it. At about 7:15 PM, when they reached near Chintamani Restaurant and took a turn, a Pulsar motorcycle bearing registration no. DL-7S-AH-3917, with three boys riding on it, intercepted their scooter. The riders took their scooter containing the cash and fled towards Dilshad Garden Metro Station, leaving behind their own motorcycle at the spot. They also allegedly snatched *Dharamvir's* mobile phone. On the basis of the complainant's statement, the *rukka* was prepared and the present FIR came to be registered.



4. In support of its case, the prosecution examined 20 witnesses, including the eye-witness, *Dharamvir Singh*, who was examined as PW-3, one of the victims of the robbery. *Arun Kumar Jain*, the employer and owner of the robbed amount, examined as PW-2. *Digambar Singh*, who proved the handing over of Rs.10,00,000/- to the victims shortly before the incident, was examined as PW-5. The rest of the witnesses were formal in nature and deposed as to various aspects of the investigation.

The appellant was examined under Section 313 Cr.P.C., wherein he denied all incriminating circumstances and claimed false implication. He did not lead any defence evidence.

5. A perusal of the record indicates that the testimony of PW-3 is cogent, credible, and inspires confidence. He correctly identified the appellant during TIP as well as before the Court. His testimony regarding the manner of robbery and use of deadly weapons stands duly corroborated by PW-2 and PW-5, who confirmed handing over the said amount shortly before the incident. It is further noted that the robbery of the scooter and cash is corroborated by the recovery of a substantial portion of the robbed amount of Rs.7,50,000/- at the instance of the appellant from his residence, alongwith documents relating to the robbed scooter. The motorcycle used in the commission of the offence was also traced to the appellant, who failed to offer any explanation as to how it was left at the spot of occurrence. Additionally, a country-made pistol and live cartridge was recovered from the personal search of the appellant, and the recovery stands proved through the consistent testimonies of PW-11, PW-12 and PW-13. The Court has noted that the use of the weapon during the robbery.



Having considered the material placed on record, this Court concurs with the findings of the trial court and finds no grounds to interfere with the same are made out. Consequently, the conviction of the appellant is upheld qua the offence under Sections under Sections 392/34 read with 397 IPC, Section 411 IPC and Section 25 of the Arms Act.

6. Learned counsel for the appellant, on instructions from the appellant, submits that the appellant does not wish to press the present appeal on merits and confine his prayer to the modification of sentence and release on probation. It is submitted that the appellants has clean antecedents, has remained on bail and has misused the liberty so granted. It is further noted that the fine amount imposed by the Trial Court is deposited, as reflected in the nominal roll.

7. On 06.11.2025, this Court, noting the submission of learned counsel for the appellant that the appellant is not involved in any other case and that, without prejudice to the rights and contentions of the appellant on merits, a probation report be requisitioned, directed the I.O. to inform the concerned Probation Officer to file the probation report. The matter was thereafter listed for 25.11.2025. However, since 25.11.2025 was declared a holiday, the matter was taken up on 26.11.2025. Even on 26.11.2025, the probation report had not been filed, the I.O. was directed to communicate a copy of the order to the concerned Probation Officer as well as to Mr. Sharad Kumar, Chief Probation Officer, who was directed to appear in person or to join the proceedings through VC.

8. Today, a set of additional documents has been handed over in Court, including a communication dated 24.11.2025, wherein the concerned Probation Officer states that the order directing submission of the probation



report in respect of the appellant was received only on 24.11.2025. The said documents are taken on record. On the other hand, learned APP for the State submits that the order directing filing of the probation report was communicated on 11.11.2025 to Mr. Vishal Baliyan, Nodal Officer, for the said purpose.

9. Mr. Sharad Kumar, the Chief Probation Officer, who has joined the proceedings through VC, submits that he shall look into the issue and take appropriate action. He further assures the Court that henceforth probation reports shall be filed in a timely manner and no such default shall occur in future.

10. Learned APP for the State submits that the status report on previous involvements has already been placed on record as per which the appellant is not involved in any other case.

11. The nominal roll for appellant dated 03.11.2025 is already on record, which reflects that he has undergone about 4 years and 8 months of custody including remission earned. The conduct of the appellant is noted as satisfactory.

12. Pursuant to this Court's directions, the Social Investigation Report is received from DPCO, Ghaziabad has been handed over today in the Court, which is taken on record. As per the report, the appellant is 41 years old, residing at C-110, Janakpuri, Gali no. 05, Sahibabd, Ghaziabad, with his family consisting of his aged mother, wife and two sons. The appellant is working as an auto driver earning approximately Rs.15,000/- per month. The report further records that the and that the physical and mental condition of the appellant is normal. The SIR concludes that the Probation Officer has stated that there is a possibility of rehabilitation and reformation of the



appellant.

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. In the present case, although the appellant was convicted under Section 25 of the Arms Act, which carries a statutory minimum sentence. The nominal roll of the appellant implies that the appellant has already



undergone sentence under Section 25 Arms Act and Section 411 IPC and the only sentence that remains to be undergone is under Section 392/34 read with Section 397 IPC.

The surviving sentence now relates only to the offence under Section 392 IPC, which does not prescribe any minimum punishment. While Section 397 IPC provides a minimum sentence of seven years, there is no express statutory bar excluding the application of the Probation of Offenders Act, 1958, and the Act, being a later and reform-oriented legislation, operates harmoniously unless specifically excluded. Courts have recognised that where the mandatory sentence under a special statute stands already satisfied and the material reflects genuine prospects of reform, probation may be considered even in cases involving Section 397 IPC. Consequently, with the Arms Act requirement already undergone and no statutory prohibition applicable to Section 392/397 IPC, the discretion under Section 4 of the Probation of Offenders Act remains available for consideration

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

16. 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 appellant is modified to the extent that they



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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 be satisfaction of the Trial Court within four weeks from today.

17. The present appeal and all pending applications, if any, stand disposed of in the above terms.

18. A copy of this judgment be communicated to the Trial Court which shall communicate a copy of this order to the concerned Probation Officer, through the concerned IO/SHO for necessary compliance.

19. A copy shall also be communicated to the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 10, 2025/dh