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

+ CRL.A. 728/2017

DEEPAK

.....Appellant

Through: Ms. Rakhi Dubey, Advocate with
appellant in person.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

+ CRL.A. 749/2017

MUKESH

.....Appellant

Through: Mr. Harsh Prabhakar, Advocate
(DHCLSC) with appellant in person.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

+ CRL.A. 810/2017

JOHNSON

.....Appellant

Through: Ms. Manika Tripathy and Mr. Gautam
Yadav, Advocates with appellant in
person.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.09.2025

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1. The present appeal has been filed under Section 374 (2) Cr.P.C. by the appellants assailing the judgment dated 27.05.2017 and order on sentence dated 02.06.2017 passed by the Ld. ASJ (Central), THC, Delhi in Sessions Case No. 28000/2016 arising out of FIR No. 231/2014 registered at P.S. Subzi Mandi under sections 394/411/34 of the IPC. The appellants were convicted for the offences punishable under Sections 392/394/34 IPC and sentenced to undergo rigorous imprisonment for 3 years with fine of ₹5,000/- each (u/s 392 IPC), and 4 years with fine of ₹5,000/- each (u/s 394 IPC), with both sentences to run concurrently. In default of payment of fine, they were directed to undergo 6 months' simple imprisonment. Benefit of Section 428 Cr.P.C. was extended.

The sentence of appellant/Deepak was suspended on 07.03.2018, that of appellant/Mukesh was suspended on 14.11.2017, and the sentence of appellant/Johnson was suspended on 10.08.2018, all during the pendency of the present appeals.

2. On 18.05.2014 at about 6:10 p.m., the victim Virender Kumar, a TSR driver, was robbed near Phool Mandi, Hamilton Road by three assailants, namely the appellants Mukesh, Deepak and Johnson. In the course of the robbery, Deepak assaulted the victim with a surgical blade, causing injuries to his nose and thigh, while his mobile phone and purse containing ₹900/- were snatched. With the assistance of the victim, all three accused were apprehended. The victim's mobile phone and the surgical blade were recovered from Deepak, while the purse was recovered from Johnson, though no recovery was made from Mukesh.

3. In support of its case, the prosecution examined ten witnesses. PW-6 Constable Phool Kanwar and PW-7 Head Constable Sunder Pal, who were



on PCR duty, deposed about apprehending the appellants immediately after the incident with the assistance of the victim Virender Kumar (PW-8), who also identified the appellants in Court and narrated how he was robbed of his mobile phone and purse, and assaulted with a surgical blade. PW-5 Dr. Ruchita proved the MLC noting injuries on the victim's nose and thigh, while the FSL expert report confirmed that the seized clothes and surgical blade bore blood of group 'A', matching the victim. The rest of the witnesses were formal in nature and deposed as to the various aspects of the investigation.

In their statements recorded under Section 313 Cr.P.C., the appellants denied all incriminating evidence and claimed false implication. It was their defence that there had been no incident of robbery, but rather a quarrel with the complainant, a TSR driver, over the fare demanded, the defence examined DW-1 Hira Lal; however, his testimony was found to be unreliable, and insufficient to displace the consistent ocular, medical and forensic evidence led by the prosecution.

4. Upon consideration of the evidence on record, this Court finds that the prosecution had succeeded in establishing the charges under Sections 392/394/34 IPC against all the three accused persons. The victim (PW-8) had given a consistent and credible account of being robbed of his mobile phone and purse and of having sustained injuries inflicted with a surgical blade. His testimony is found to be duly corroborated by the immediate apprehension of the accused persons with the assistance of PCR officials (PW-6 and PW-7), who also supported the version of the victim and identified the accused as well as the recovered articles. The medical



evidence furnished by PW-5 Dr. Ruchita confirmed the presence of incised injuries on the nose and thigh of the victim, while the FSL report substantiated the prosecution case by establishing the presence of human blood group 'A' on the clothes of the victim as well as on the seized surgical blade. It is noted that while convicting all the accused for robbery and voluntarily causing hurt in committing robbery, the Trial Court specifically examined whether Section 397 IPC was attracted against accused Deepak and he was acquitted of the charge, but remained liable, along with his co-accused, under Sections 392/394/34 IPC.

On a careful consideration of the entire material, this Court concurs with the finding recorded by the Trial Court.

5. At this stage, learned counsel for the appellants, on instructions from the appellants who are present in Court, states that being remorseful and having already undergone substantive sentence, they do not wish to press the present appeal on merits however, pray that they be released on the period already undergone by them.

6. The appellants Gate Passes are handed over and taken on record. The appellant/Deepak is stated to be about 30 years of age, married, with two minor children and an aged mother dependent upon him, and is working as a *halwai* with a caterer. The appellant/Mukesh is around 40 years old, a resident of Madhya Pradesh, who is a divorcee without children, his parents having expired, and he presently lives alone. The appellant/Johnson is approximately 30 years of age and has his wife, mother and sister in his family.



7. Learned APP for the State, on instructions, confirms that the appellant/Deepak is involved in other matters and with this regard handed over a status report which is taken on record.

8. As per the nominal rolls handed over in Court and taken on record, the Appellant/Mukesh has undergone about 2 years 2 month and 10 days of incarceration as on 18.12.2017. His jail conduct has been reported as satisfactory. Appellant/Johnson has undergone about 3 years 3 month and 6 days. His jail conduct is reported to be satisfactory. The Appellant/Deepak has undergone a total sentence of about 2 years and 9 months as on 17.07.2018 His jail conduct has also been described as satisfactory. Although his involvement is shown in six other cases but in none of them, he is convicted except in present case. The other cases are either pending trial or compounded.

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 considered the submissions and the material on record and as per the nominal rolls, all three appellants have already undergone substantial periods of incarceration. In view of these circumstances, coupled with their family responsibilities, while affirming the conviction as recorded by the Trial Court, the substantive sentence imposed upon the appellants is modified to the period already undergone. However, the sentence of fine imposed by the Trial Court, as well as the default sentence in case of non-payment, shall stand maintained.

11. The appeal is partly allowed to the aforesaid extent, subject to the deposit of fine, if any, within four weeks from today, with a receipt submitted to the IO, failing which, they would serve their default sentence.

12. The present appeals are, accordingly, partly allowed and disposed of in the above terms.



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

MANOJ KUMAR OHRI, J

SEPTEMBER 18, 2025

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