



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

% Date of Decision: 08.12.2025

+ **CRL.A. 833/2017**

SUDESHWAR YADAV

.....Appellant

Through: Ms. Alpana Pandey Advocate
alongwith appellant in person

versus

STATE (GOVT OF NCT) OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Satish Kumar, PS Shahbad Dairy

+ **CRL.A. 834/2017**

VIJAY YADAV

.....Appellant

Through: Ms. Alpana Pandey Advocate
alongwith appellant in person

versus

STATE (GOVT OF NCT) OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Satish Kumar, PS Shahbad Dairy

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeals arises from a common judgment of conviction dated 14.07.2017 and the order on sentence dated 29.07.2017 passed by



ASJ-04(North), Rohini Courts, Delhi in Sessions Case No. 57914/2016 arising out of FIR No. 245/2010, registered under Sections 382/34 IPC at P.S. Shahbad Dairy, Delhi.

2. Vide the impugned order on sentence, the appellants were each convicted for the offence punishable under Section 392/34 IPC and sentenced to undergo RI for a period of 3 years alongwith fine of Rs.5,000/- each in default whereof to undergo SI for a period of 2 months. The benefit of Section 428 Cr.P.C. was granted to both the appellants.

The sentences of the appellants were suspended during pendency of the present appeals by this Court, vide order dated 29.08.2017.

3. Briefly put, the case of the prosecution is that on 12.11.2010, upon receipt of DD No. 3-A regarding the extortion of a truck, IO ASI Anil Kumar reached Main Bawana Road along with Ct. Wazir, where they met *Rukumuddin*, who complained that his truck loaded with chemicals had been robbed by four boys. On the basis of his statement, the present FIR was registered under Section 382/34 IPC. On 23.11.2010, on receipt of secret information, the I.O. along with other staff apprehended accused *Dinkar Ray*, *Rajesh Kumar Yadav*, *Sudeshwar Yadav*, and *Vijay Yadav* from the front of NDPL Office, Prahladpur, Main Bawana Road.

4. In support of its case, the prosecution examined 15 witnesses to prove its case. The most material among them was the complainant, *Rukmudeen*, who was examined as PW-1. *Raj Kumar Bansal*, who was examined as PW-2. *Shamim*, a public witness, who was examined as PW-4. The remaining witnesses were formal in nature and deposed as to various aspects of the investigation.

In their statement recorded under Section 313 Cr.P.C, the appellants



claimed innocence and false implication.

5. A perusal of the record indicates that the testimony of the complainant is cogent, credible and inspires confidence. The complainant correctly identified both the appellants in Court. He categorically identified appellant/*Sudeshwar* as the person who snatched his mobile phone and purse. This stands corroborated by the recovery of the robbed mobile phone from appellant/*Sudeshwar*'s possession, the IMEI number of which matched the bill seized during investigation, thereby linking him to the offence. Though no stolen articles were recovered from appellant/*Vijay*, the recovery of 210 stolen chemical jars at the instance of all the accused, including appellant/*Vijay*, further demonstrates their common participation.

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 Section 392/34 IPC was upheld.

6. Learned counsel for the appellants, on instructions from the appellants who are present in Court and have handed over their gate passes, which are taken on record, submits that the appellants do not wish to press the appeal on merits and confine their prayer to seeking release on probation. It is prayed that the benefit of Section 4 of the Probation of Offenders Act, 1958 be extended to them. It is further submitted that the fine imposed on both appellants already stands paid, as recorded in the order on sentence, wherein the payment of fine amounting to Rs.5,000/- each has been paid.

7. Learned APP for the State submits that the probation reports are also accompanied by SCRB reports stating that appellants are not involved in any other case.



8. Pursuant to this Court's directions, the Social Investigation Report of the appellants has been received from concerned DPO Bhagalpur Bihar and has been forward through Probation Officer, Rohini Courts, Delhi.

As per the report concerning appellant/*Sudeshwar Yadav*, he is about 45 years of age, uneducated, and resides at Village-Umesh Nagar, Tartar, Khagdiya, Bihar. His family comprises of his aged father, wife and two children. The report further records that the appellant is the sole breadwinner of his family and earns his livelihood by doing labour work. Further, it notes that the appellant is not involved in any case.

As per the report concerning appellant/*Vijay Yadav*, he is about 48 years of age, uneducated, and resides at Village-Umesh Nagar, Tartar, Khagdiya, Bihar. His family comprises of his aged father. The report further records that the appellant earns his livelihood by doing labour work. Further, it notes that the appellant is not involved in any case.

Both the appellants are reported to be of poor economic background and having been facing trial since 2010. They are stated to be of normal social behaviour. Their families and neighbours have spoken positively about their conduct and expressed a favourable opinion regarding their reformation and adjustment in society. The Probation Officer has stated that there is a possibility of rehabilitation and reformation in respect of both the appellants.

9. 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.”*

10. From above, it is pertinent to note that Section 392/34 IPC does not prescribe any minimum sentence. The IPC, having been enacted prior to the coming into force of the Probation of Offenders Act, must be read harmoniously with the latter statute. The bar on the application of the Act arises only where a special statute enacted after 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause. In the present case, the conviction is under Section 392 IPC read with Section 34 IPC. Given that even otherwise, the offence does not carry a mandatory minimum sentence, the Court retains discretion to extend the benefit of probation to the appellants, provided the circumstances justify such relief.



11. 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 appellants have been living peacefully in society, has maintained a stable occupation, and are the sole breadwinners of their respective families. The Probation Officer's report further affirms their good conduct, normal social behaviour, and positive inclination towards reformation.

12. 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 appellants is modified to the extent that they 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. They shall maintain peace and good behaviour and shall not commit any offence during the period of probation.

13. The appellants shall remain under the supervision of the concerned Probation Officer for a period of 6 months and shall report before the Probation Officer once every month. In case 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 concerned appellant shall be liable to undergo the sentence as awarded by the Trial Court.

14. The appeals and all pending applications, if any, stand disposed of in the above terms.



15. 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.

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

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 08, 2025/dh