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

+ **CRL.A. 876/2017**

TUSHAR

.....Appellant

Through: Mr. Kunal Malhotra, Advocate with
appellant in person.

versus

THE STATE GNCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Sumit PS Vikaspuri

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

12.12.2025

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1. By way of present appeal, the appellant seeks to assail the judgement dated 19.11.2016 and order on sentence dated 21.11.2016 passed by ASJ-05, Tis Hazari Courts, Delhi, in SC no. 97/2015 arising out of FIR no. 98/2012 registered under Sections 392/397/411/34 IPC & 25/54/59 Arms Act, 1959 at P.S. Vikas Puri, Delhi.

2. Vide order on sentence, the appellant has been directed to undergo RI for a period of 4 years alongwith fine of Rs.4,000/- for the offence punishable under Section 392/34 IPC, in default thereof would further undergo SI for 15 days. The benefit of Section 428 Cr.P.C. has been provided to the appellant.

Vide order dated 15.11.2017, the sentence of the appellant was suspended during the pendency of the present appeal.

3. Briefly put, the case of the prosecution is that on receipt of DD No. 7B, SI Nar Singh, along with Ct. Amit Kumar, reached Outer Ring Road, underpass, Paschim Vihar, Delhi, where the complainant met them along with SI Rohit of PS Mianwali Nagar and other police staff. SI Nar Singh



recorded the statement of the complainant, wherein he stated that he was employed at Crown Plaza Hotel, Sector-10, Rohini, Delhi, and on 15.04.2012 at about 01:00 AM, after finishing his duty, he was returning to his residence at Vashisht Park, Pankha Road, Delhi, on his personal motorcycle bearing No. DL-4SBC-2821. At about 01:30 AM, when he reached Kesho Pur Sabzi Mandi red light, Vikas Puri, he stopped his motorcycle as a truck was coming from the opposite direction. At that time, three persons arrived on a motorcycle and stopped in front of him. One of them, who was seated on the rear, got down, placed a sharp object on his abdomen, and demanded money. Upon the complainant stating that he had no money, the said person threatened him with a knife and forcibly snatched his black-coloured Spice mobile phone (Model M-67) from the pocket of his shirt and also broke and removed his golden chain from his neck. Thereafter, all three accused fled from the spot on their motorcycle bearing No. DL-5S-ND-4934 after taking a U-turn towards Peeragarhi. The complainant further stated that in the meantime, a Swift Dzire car bearing No. DL-2C-AN-2688 arrived from behind. He signaled the car to stop and narrated the incident to the driver, who disclosed his name as *Rajeev Sharma*. The complainant then sat in the car and they started chasing the accused persons. On reaching near Radisson Hotel, Paschim Vihar, the complainant made a call to the police from the mobile phone of *Rajeev Sharma*. Shortly thereafter, a police vehicle arrived, and the complainant narrated the incident and gave the description of the assailants. In the meantime, the three accused were again seen coming on their motorcycle. The complainant and the police personnel chased them, whereupon the accused took a U-turn from Meera Bagh red light and attempted to flee towards Peeragarhi. The police vehicle overtook



their motorcycle, as a result of which the 3 accused fell down. When they tried to escape, they were apprehended. Their names were revealed as *Tank @ Arif, Tushar @ Mohan* and *Sonu*. From the possession of appellant, the complainant's golden chain was recovered from the right pocket of his pant.

4. In support of its case, the prosecution examined 10 witnesses. The material witness was the complainant, *Jitender Prakash Verma*, who was examined as PW-1. *Rajiv Sharma*, an independent public witness who had assisted the complainant immediately after the incident and witnessed the chase and apprehension of the accused, was examined as PW-2. The remaining witnesses were formal in nature and deposed with respect to various aspects of the investigation.

5. A perusal of the record indicates that the testimony of the complainant is cogent, consistent, and inspires confidence. His version regarding the manner of commission of the robbery, the use of a knife by the co-accused, and the role played by each of the accused stands duly corroborated by the testimony of PW-2. The appellant was correctly identified by PW-1 and PW-2. The recovery of the complainant's broken gold chain from the possession of appellant stand proved through the consistent depositions of the prosecution witnesses, including the IO. The recoveries were soon after the incident pursuant to the apprehension of the appellant. The defence plea of false implication has remained unsubstantiated.

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 392/34 IPC.

6. At this stage, learned counsel for the appellant, Mr. Kunal Malhotra,



Advocate, who is also representing the co-convict-Tariq @ Arif may be appointed to represent him in the matter. It is ordered accordingly.

He further, on instruction from the appellant, who is present in court, is identified by the I.O., submits that he is remorseful and being fully aware of the consequences, does not wish to press the present appeal on merits. He prays that since the appellant having undergone more than half his sentence, be released on the period already undergone by him in custody.

7. Learned APP for the State has handed over a status report which is taken on record. As per which, the appellant has other involvements, but are pending trial.

8. The nominal roll of the appellant 09.12.2025 is on record, which reflects that the appellant has undergone about 2 year and 2 months and that his conduct in jail has been noted as satisfactory.

9. 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."

10. The appellant is 35 years of age, working as a cab driver and is the sole breadwinner of his family, and bears the responsibility of his aged father, wife, and two minor children. The matter has been pending since 2012 and the appellant has not been convicted in any case.

11. 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 alongwith the default sentence, however, is maintained. The appellant shall deposit the fine amount before the Trial Court within 2 weeks, failing which he shall undergo the default sentence.

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

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

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

MANOJ KUMAR OHRI, J

DECEMBER 12, 2025/dh