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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 968/2017

SHEIKH AYUB

.....Appellant

Through: Mr. Harsh Tanwar, Advocate

versus

STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with
SI Deepak Kumar, PS Janakpuri

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

22.12.2025

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1. The present appeal seeks setting aside of the judgment of conviction dated 21.09.2017 and order on sentence dated 27.09.2017, vide which accused *Sheikh Ayub* was sentenced to undergo RI for a period of 2 years for the offence punishable u/s 325 IPC alongwith fine of Rs. 2000/- and in default of payment of fine to further undergo simple imprisonment for a period of 30 days.

2. The facts as noted by the Trial Court are as under:

“On 21/01/2013 at about 7 pm, complainant Akash @ Akku was going to his residence from market and on the way in Churchwali Gali, he met Dilwar Shah who exhorted him " gali me chaudahokarchalrahahai" and also gave him a slap. When the complainant raised alarm, Dilwar fled away. It has been further alleged that



thereafter at about 7.30 pm when he was strolling-in the gali, Dllwar came along with two other boys namely Ayub Ali and Shahadat @ Pagla, who were already known to him and exhorted "tum hamarerehtekabse dada ban gaye" Ayub caught hold of him and Pagla assaulted him on his right hand hand with a danda." In the meanwhile, Ct. Suresh also reached there on hearing the noise and tried to save him from the clutches of the assailants. Ayub and Pagla exhorted Dilawar @ Dillu to shoot him with pistol. Dillu fired at him with a pistol in an attempt to kill him. The bullet struck against his right leg and Ct. Suresh also sustained injuries. In the meanwhile, all three of them fled away from the spot. Injured Akash @ Akku and Ct. Suresh were removed to BJRM Hospital."

3. On completion of investigation chargesheet was filed and charge was framed under Sections 307/34 IPC against the accused persons. A separate charge was framed under Sections 25 and 27 of Arms Act against the accused *Dilwar Shah @ Dillu*. All the accused pleaded not guilty and claimed Trial.
4. The complainant *Akash @ Akku* was examined as PW-2, though he supported the prosecution case insofar as the injuries sustained by him, however, he turned hostile with respect to the identity of the accused persons and the manner in which he sustained injuries. He stated that on 21.01.2013 at about 7.00 PM, he was coming back to his house after purchasing vegetables. When he was passing through the *Ramleela* Ground, he noticed that around 20-25 public persons were quarrelling with each other and out of curiosity, he stood there and started watching the quarrel. At that time, something struck over his left leg, as a result of which he started bleeding profusely from his left



leg. In the meantime, his elder brother *Vikas* who was also present in the ground, came there, and took him to *BJRM Hospital*, where he was medically examined and remained admitted for about one day. During his hospital stay, he was informed that a bullet had stuck his leg. He stated that the accused person present in Court neither caused any injuries to him nor they were present inside the *Ramleela* ground. He also stated that no quarrel had taken place between them and he had not seen who caused the injuries or with which weapon. He was cross-examined by learned APP, However, nothing could be elicited in the same.

The brother of the complainant/injured was examined as PW-3. He also did not support the case of prosecution and failed to identify the appellants. He was also cross-examined by learned APP and he denied the suggestion that on the query made by him from this brother *Akashtold* him that *Dilwar Shah @ Dillu* had caused bullet injuries to him.

The prosecution had also cross-examined Ct. Suresh as PW-11. He testified that he was beat constable of beat no. 7 and was on patrolling duty in the area. At about 7.00 PM, he reached near *Churchwaligali*, where he saw quarrel taking place wherein accused *Sheikh Ayub* had caught hold of *Akash @akku* and the other accused *Shahdat @ pagla* was assaulting him with a *danda*. When he intervened and tried to separate *Akash @Akku* from the accused person accused *Ayub* and *Shahadat @Pagla*, exhorted to *Dilwar Shah @ Dillu* “*aaj saala pakad me aya hain, maar goli*” and thereafter accused *Dilwar Shah @ Dillu* took out a *Katta* and fired towards *Akash @ Akku* and the bullet stuck over the left leg of *Akash @ Akku*, as a result of which, he fell



down on the ground. He further testified that he had noticed blood oozing out from his left hand and it appeared to him that the said bullet injury had also stuck over his left hand. Till he managed to control himself, the accused managed to run away from the spot. In the meantime, local police officials i.e., *HC. Rajender* and *Ct. Mukesh* reached at the spot and moved removed him to BJRM Hospital. He not only identified the accused person but also identified the weapon of offence i.e. country made katta used in the commission of offence. In the cross-examination, a suggestion was given that injuries suffered by the *Ct. Suresh* was on account of commotion created at the spot and not by accused persons, which was denied. He also denied the suggestion that no firing had taken place on the said date, by that he was identifying the accused persons at the instance of I.O.

The prosecution had also examined *Dr. N.P. Wagmare, Assistant Director (Ballistic)*, PW-6 that he had examined the blood strains on the jeans which had hole on the left side thigh portion, which was marked as H-1. He also examined the country made pistol and proved his report.

5. The MLC of injured *Akash* and *Suresh* were exhibited through *Dr. R.S. Mishra*, who deposed that both the injured were examined by *Dr. Kailash Soni*, the nature of injury suffered by *Akash* was opined to be grievous. He identified the signatures of *Dr. Kailash Soni* at points A, B, C & D on the MLC. The injuries suffered by *Ct. V. Suresh* was opined to be simple. *Dr. Neeraj* appearing on behalf of PW 10 testified that on local examination, he found that the said patient was found having suffered puncture wound over dorsum of hand and puncture wound over dorsum of middle finger. The other witness



examined were police officials who stated about various aspects of investigation.

6. The accused in their statement recorded under Section 313 Cr.P.C claimed false implication; however, no defense evidence was led.

7. However, in the considered opinion of this Court, though the injured *Akash* as well as his brother have turned hostile, despite that, the prosecution case stands proved. In light of the testimony of *Ct. V. Suresh* who had not only witnessed the incident in which *Akash* had suffered injuries but, in the process, also suffered injuries, himself. His presence at the spot stands established. In light of his MLC, the injuries suffered by *Akash* as well as *Ct. V. Suresh* were also in line of the testimony of the victim as the same are opined to be caused by a gun shot.

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 325 IPC.

8. At this stage learned APP for State also refers to the Probation report, that is placed on record states that the accused are not involved in any other case.

9. Learned counsel for the Appellant, on instructions from the appellant, submits that he is not involved in any other case and prays that his case be considered for release on probation.

10. Pursuant to this Court's directions, the said Social Investigation Report (SIR) is submitted by Probation Officer, Rohini Courts in respect of the



appellant has been handed over and taken on record. It records that he is a 46-year-old married man, residing with his three children and grandchildren at C-600, Jahangir Puri, Delhi. The SIR indicates that the appellant is presently working at the Seven Seas Hotel, and earning approximately Rs.12,000/- per month. His home environment is stated to be stable, and he maintains cordial relations with family members, his wife stated that appellant is a good person who takes proper care of her and their family. The SIR also notes that the appellant, during the interview, was balanced and normal. The report records that he suffers from kidney-related ailments, requiring dialysis treatment frequently. Though there are some documents appended to the SIR which states that he was once admitted for shortness of breath, and abdomen pain, however no documents have been provided to substantiate the claim qua kidney ailments. The SIR further notes that the appellant's mother resides separately at a different address and runs a general store shop as her source of livelihood. Appellant comes from an economically weak family background, with a monthly household income of approximately Rs. 30,000/-.The locality is described as densely populated with limited amenities, and locality mainly belonged to people of lower economic class. 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.

11. 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. v. State of Punjab &Anr.,¹ has extended the benefits of the Probation of Offenders Act, 1958 even to convicts who had not completed the mandatory minimum sentence of seven years as prescribed in Section 397 IPC.

12. In the present case, the conviction is under Section 325 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 appellant, provided the circumstances justify such relief.

13. In view of the facts and circumstances of the case, the judgment of conviction and order on sentence are upheld. However, considering the absence of prior criminal involvement and the overall circumstances reflected in the probation report, as well as the legal position qua the applicability of Probation of Offenders Act as iterated above, the appellant is granted the benefit of probation upon furnishing a bond in the sum of Rs. 10,000/- with one surety for his good behaviour for a period of one year, before the learned Trial Court within five weeks from today. In case of non-compliance, the sentence awarded by the Trial Court shall remain in force.

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 awarded by the Trial Court.

14. The appeal and any pending applications, if any are accordingly disposed

¹ 1 (2021) 2 SCC 763



of in the above terms.

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

MANOJ KUMAR OHRI, J

DECEMBER 22, 2025

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