



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

% Date of Decision: 25.08.2025

+ **CRL.A. 11/2016**

LUX @ SIKANDER

.....Appellant

Through: Mr.Saurabh Kansal, Mr.Raghav,
Mr.Pratham and Mr.Manish Kumar, Advocates
versus

STATE

.....Respondent

Through: Ms.Shubhi Gupta, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal filed under Section 374(2) Cr.P.C., the appellant has assailed the judgment of conviction dated 21.07.2014 and order on sentence dated 02.08.2014 passed by the ASJ-02, South-East District, Saket Courts in SC No. 01/13 arising out of FIR No. 253/2012 registered under Sections 307 IPC, P.S. Ambedkar Nagar.

Vide the impugned judgment and order on sentence, the appellant was convicted under Section 308/34 IPC and sentenced to undergo rigorous imprisonment for four years along with fine of Rs. 10,000/-, and in default of payment of fine, to further undergo simple imprisonment for six months. The benefit of Section 428 Cr.P.C. was given to the appellant.

Vide order dated 08.01.2016, the appellant was granted suspension of sentence during pendency of this appeal.

2. Briefly put, the facts as recorded by the Trial Court in the impugned judgment are: -



“As per case of prosecution on 19.08.2012 at 12.45 AM an information was received in Police Station Ambedkar Nagar about some boy having been stabbed, in front of Batra Hospital, New Delhi. It was recorded as DD No. 4A and was marked to SI Dara Singh for necessary action. SI Dara Singh alongwith Ct. Devender reached at the spot. No eye witness met him there. In between, IO received DD No. 6B. He went Batra Hospital and injured Sandip getting treatment there. IO collected MLC of said injured. The patient was unfit for giving statement. Dr. handed over one mobile phone Nokia No. 9654156185 and a leather purse containing cash Rs. 20/-. IO seized all these articles. He (IO) made endorsement, on the basis of which FIR in this case was registered, for offence punishable under Section 307/34 IPC. During investigation, IO examined one Jumma s/o Abdul Rehman, stated to be eye witness of the incident, who stated that he took the injured to the Batra Hospital in his TSR. The injured (Sandeep) told that 3-4 boys came to him and demanded his mobile phone, when he refused to hand it over to them, they quarrelled with him. One of them stabbed him by knife in his chest. The injured was known as Sandeep. On 1.9.2012 Aman a juvenile, Lux @ Sikandar (present accused), Vivek @ Monti (another juvenile) & Rishabh s/o Mahesh were arrested in case FIR No. 265/12 P.S. Ambedkar Nagar by SI Devender. All these accused disclosed their involvement in case in hands. IO of this case formally arrested said accused. The victim could not identify accused Rishabh, Aman & Vivek while accused Lux @ Sikandar refused to participate in TIP. After completion of investigation, charge sheet was filed by the police indicting accused Lux @ Sikandar for offence punishable under Section 307 IPC.”

3. In order to prove its case, the prosecution examined nine witnesses. PW-1 Jumma, the auto driver, deposed that he had taken the injured Sandeep to Batra Hospital. PW-2 Sandeep, the injured himself, testified that on 18.08.2012 he was attacked by four boys near F-Block, Dakshin Puri, and identified the appellant as one of the assailants. PW-5 Dr. Gaurav proved the MLC of the injured showing grievous stab injuries exhibited as PW5/A. The other witnesses, being formal and police witnesses, proved registration of FIR, preparation of rukka, and other routine aspects of the investigation.

In his statement under Section 313 Cr.P.C., the accused denied the incriminating evidence and claimed false implication. He did not lead any



defence evidence.

4. On behalf of the accused, it was argued that the case was false, and the injured himself admitted in cross-examination that he could not confirm whether the accused was one of the assailants. It was urged that refusal to participate in TIP was duly explained that he had refused to participate in the TIP on the advice of the Superintendent of the Children's Home, and in the absence of reliable identification, the accused was entitled to acquittal.

5. The prosecution, on the other hand, submitted that the injured's testimony, corroborated by medical evidence, proved the guilt of the accused beyond doubt. It was further contended that refusal to participate in TIP was an incriminating circumstance, and that the Trial Court had already taken a lenient view by convicting under Section 308 IPC instead of Section 307 IPC.

6. The Trial Court, after carefully considering the submissions and evidence on record, held that the prosecution had proved beyond reasonable doubt that the appellant was one of the assailants who assaulted and stabbed the injured Sandeep when he refused to hand over his mobile phone. The Court relied on the testimony of the injured (PW-2), which was found consistent and trustworthy, and observed that refusal to participate in the Test Identification Parade by the accused was an incriminating circumstance. The medical evidence, including the MLC (Ex. PW-5/A), corroborated the ocular version by noting a grievous stab wound, and it was further recorded that the treating doctor had removed a knife stuck in the chest of the injured. While convicting the appellant, the Trial Court observed that the incident arose out of an attempt to forcibly rob the victim of his valuables and not out of any intention to kill him. The injuries, though



grievous, were not of such nature as to inevitably cause death in the ordinary course. Accordingly, the Court held that the appropriate conviction would be under Section 308/34 IPC, attempt to commit culpable homicide not amounting to murder, and not under Section 307 IPC. The appellant's conviction is upheld.

7. At this stage, learned counsel appearing for the appellant, on instructions, submits that the appellant does not wish to press the present appeal on merits and prays that the appellant be released on the period already undergone. He further submits that the appellant is not involved in any other case and is a young, unmarried boy who has the responsibility of looking after his two younger sisters and his parents, his father being frequently unwell.

8. 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.'

9. Having regard to the aforesaid facts and the law discussed as above and keeping in view the nominal roll dated 11.12.2015, which reflects that the appellant has undergone 2 years 4 months and 16 days of incarceration with remission of 4 months and 17 days, it is evident that he has already served a substantial portion of his sentence of 04 years. This Court is, therefore, of the opinion that the ends of justice would be met if the sentence awarded to the appellant is reduced 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.

10. The appeal is partly allowed to the aforesaid extent, subject to deposit of the fine amount as directed by the Trial Court to be released to the victim as compensation.

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

MANOJ KUMAR OHRI, J

AUGUST 25, 2025/na