



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

Date of reserving Judgment: 6th January, 2026

Date of decision: 6th February, 2026

IN THE MATTER OF:

+ CRL.A. 330/2003

SURENDER @ SONU

.....Appellant

Through: Mr. K.P. Mavi Advocate.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Only two fold arguments have been put forth on behalf of Appellant Surender @ Sonu, first disputing his arrest at the spot and thereby putting a question mark about the complicity of the Appellant and the second limb of the argument is with regard to the applicability of Section 360 of the Code of Criminal Procedure ('Cr.P.C.'). that the Appellant should have been rather must have been considered for grant of the benefit of probation.
2. In support of the latter argument, the learned counsel for the Appellant has placed reliance on the judgment *Hira Lal @ Vicky vs. State*, 2002(65) DRJ 37, to the effect that in case of a youthful first offender, the benefit of probation has to be necessarily extended as was the case with the Appellant herein.



3. Before advertng into the further details, arguments and the counter arguments, it is apt to note the indispensable facts.
4. The incident goes back to 02.01.1999 when three persons i.e. the present Appellant and two of his co-accused, who unfortunately are no more in this mortal world and proceedings qua them already abated, were trying to engage an auto rickshaw to go to Khan Market from Desh Bandhu Gupta Road near Prahlad Market, Karol Bagh. One of the auto rickshaw driver refused to take them and brought the matter to the notice of the complainant/victim herein, who too happens to be a TSR driver
5. The trio who were having an altercation with the TSR driver, came and in a way forcibly sat into the TSR of complainant Mahesh Kumar and not only that they allegedly robbed a sum of Rs. 250/- from the pocket of complainant Mahesh Kumar. It was the accused Satya Prakash, who took out the money, which created a ruckus at the spot, drawing the attention of a Police Patrol from Police Station DBG Road.
6. The intervention by the police trepidated the trio, one of whom tried to escape from the spot and in this process, went into a nearby building and climbed on its roof/terrace. The policemen chased him, one of whom was Constable Ashok Kumar, but unfortunately, the accused Satya Prakash dodged and in this process, Const. Ashok Kumar, according to the Appellant, fell down, whereas, according to the prosecution he was pushed down by accused Satya Prakash. However, all three assailants were neutralized and a case was registered against them under Sections 392/34 IPC. Subsequently, Section 304 IPC was added in the chargesheet, inasmuch as Const. Ashok Kumar succumbed to his injuries and died on 31.01.1999.



7. In the backdrop of the aforesaid facts, the accused persons were charged under Sections 392/34 IPC, whereas, accused Satya Prakash was further charged under Section 186/353 and 304 of IPC also.

8. Through the impugned judgment, all the three accused persons were held guilty under Section 392/34 IPC, whereas accused Satya Prakash, against whom charges under Section 186, 353 & 304 were framed, was held guilty under Section 186, 353 & 307 IPC.

9. During the pendency of the appeals, two of the Appellants Satya Prakash and Sumit @ Bobby, who both had reportedly filed separate appeals, expired and proceedings *qua* them were abated.

10. The only surviving Appellant Surender @ Sonu came up with the contentions as referred hereinabove.

11. Learned Additional Public Prosecutor, while countering the contentions submitted that there is clear cut evidence showing the complicity of the accused Surender @ Sonu and the fact that he indulged into a serious offence at a relatively young age, therefore, notwithstanding the provisions of Section 360 Cr.P.C., the Appellant did not deserve to be considered for the benefit of probation and the learned Trial Court has rightly not extended the said benefit. It is asserted that there is no confusion or mix-up with regard to identity of the Appellant. The complainant was in doldrums *qua* the identity, but arrest of the accused from the spot leaves no doubts.

12. Having taken into account the contentions raised on behalf of the Appellant *qua* the mix-up in the identity and overall circumstances, it is bound to be brushed aside in view of the fact that the Appellant was arrested from the spot itself. Learned Counsel for the Appellant has tried to take mileage out of the fact that complainant Mahesh Kumar was not sure in



himself about the identity of the Appellant in his deposition before the Court. However, this is not going to help the Appellant in any manner for the following two reasons:-

- (a) The complainant has not categorically and comprehensively ruled out the complicity of the appellant. He has merely expressed his being unsure about the Appellant, although, he identified the Appellant as one of those three assailants.
- (b) The apprehension of the accused at the spot itself has come on record in the testimony of two other witnesses apart from PW-3 Mahesh Kumar, i.e. PW-8 HC Suresh and PW-9 SI Dalbir Singh. The appellant has not been able to upstage the testimony of any of the three witnesses so far as the identity and arrest of the appellant Surender @ Sonu on the spot itself is concerned. Therefore it can be safely concluded, as has been by the learned Trial Court, that all three including the Appellant Surender @ Sonu were involved in the incident.

13. It may be correct that Appellant was not the person who actually took out the money but then he definitely was a part of the trio who, in a way overpowered the victim Mahesh Kumar and one of them, that is, Satya Prakash took out the money and X-ray slip from the pocket of victim. The circumstances and the evidence indicate that it was Satya Prakash, who actually robbed the victim. This fact, in any manner, does not give any escape route to the Appellant, to wash off his hands from the episode, in view of his being involved together with other two. Section 34 IPC has been invoked in this context and rightly so.

14. It is not the case of the Appellant that he was not there with the other two and if not with them, then where he was. Nor it is the case of the



Appellant that he had no concern with the other two, or that he had not gone to DBG Road alongwith the other two co-accused on that day. The only contention that he was not apprehended or arrested from the spot stands uprooted in view of evidence on record.

15. In these circumstances, the only inference which can be there is against the Appellant, as such no flaw is found in the judgment or can be attributed to the inferences drawn by the learned Trial Court vis-à-vis Appellant Surender @ Sonu.

16. The other limb of the argument on behalf of the Appellant is confined to the ground of deferred sentence to the Appellant as according to learned Counsel for the Appellant, Section 360 Cr.P.C was to be applied mandatorily qua appellant Surender @ Sonu, being eligible from all angles to be given the benefit of probation, as has been observed in the judgment relied upon by learned Counsel for the Appellant in case titled **Hira Lal @ Vicky's case (supra)**. However, the Counsel for the Appellant is unable to show on record certain integral and indispensable facts vis-à-vis the applicability of Section 360 Cr.P.C. He has asserted that the Appellant was below 21 years of age, first offender having no previous or for that matter post conviction, involvement in any sort of illegal or unlawful activity. These assertions, though advanced, have not found any concrete foothold on the records on which this edifice has been sought to be raised in favor of the Appellant. Although the Respondent/State has not refuted the claim either or asserted anything qua age of the Appellant, his antecedents or post incident involvement in any unlawful or illegal activity.

17. So far as the application of the judgment relied upon is concerned, there is no and there cannot be any quarrel to the proposition laid down as any youthful first offender, who is involved in a comparatively less heinous



offence having a punishment of 7 years or less, should ideally be considered for the grant of benefit of probation. This would not only be an opportunity to the person concerned to mend his wayward ways, but in the long run it would be beneficial to the family of the person concerned and to society as a whole. However, the requirements which need to be addressed and satisfied should be satisfied and cannot ordinarily be dispensed with, unless of course there are cogent reasons inasmuch as the benefit of Probation is not confined to the person of 21 years of age only and can be there for a person who is even beyond that age.

18. In the instant case, the appellant, indeed was a young man in the age group of about 21 years or so at the relevant time, so were the other co-accused, as both of them were in the age group of 26-27 years. So far as the Appellant is concerned, it has not come on record that he has any criminal antecedents, which on the face of it, coupled with his age are sufficient to persuade the Court to extend or to bring him under the umbrella of Section 360 Cr.P.C. especially when the offence for which he has been convicted does not have a punishment of more than 7 years and he has been sentenced for 04 years with fine of Rs. 10,000/-, in default RI for 10 months.

19. However the aforesaid facts, specially the age and antecedents have not been conclusively brought on record for consideration, therefore in such circumstances, how far it would be appropriate to consider the Appellant for the benefit of Section 360 Cr.P.C., is a moot point. Here the probation officer's report comes into play and can be looked into. It reflects that the Appellant has no criminal antecedents, he was a young man in the age group of 21 years to 24 years, was first offender and for that matter nothing adverse is there against him.



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20. Certain essential aspects for being considered for the benefit of probation includes the age, nature of offence and the punishment provided therein and the antecedents, as in that case, he is required to be considered for the grant of benefit of probation, if first time offender. The severity and the manner in which crime was committed, the clean antecedents or say criminal history, impact or potential impact on the victim and society, the circumstances in which the offence was committed, role of the victim, if any, and the rehabilitation potential are some of the most important parameters on which the grant or refusal of the benefit of probation hinges.

21. The primary reason seems to be the immaturity on account of age and lack of parental control resulting into the offence. Therefore, there is still a window available in the correctional jurisprudence. To defer the sentence and give a chance to the Accused/convict to reform himself or take care of his wayward tendencies, is a universally accepted concept as a good number of young people get involved into one or the other violation of law and where, it was found that the violation is not very serious and does not entail a punishment beyond seven years, in case of Indian law, then in that eventuality, a chance is required to be given to the accused/Appellant to resurrect himself from the negativity/criminality and prove himself to be a responsible and socially useful citizen.

22. In the instant case, certain requisites for consideration of the benefit of probation are available, inasmuch as the Appellant-Surender @ Sonu was around 21 years of age, when the incident took place. He had no criminal antecedents and the offence for which he has been punished has a punishment of seven years. There is no complaint post the present incident family, society and neighbourhood are sympathetic and supportive. As such all the requisite ingredients are there.



23. As regards age, there is no proper document, nevertheless, the disclosure statement made by the Appellant dated 03.01.1999, he refers his age as 21 years and in the Nominal Roll received on 23.08.2003, his age has been reflected as 22 years, which fortifies his claim for being 21 years of age at the time of incident, is therefore, acceptable.

24. The contention raised on behalf of the Appellant about his antecedents or for that matter, post conviction conduct, the same has not been countered in a cogent manner by the prosecution. And the probation officer's report also does not reflect anything adverse on this count. Thus, considering all the aforesaid aspects, especially the fact that the Appellant was about 21 years of age when the offence took place in the year 1999 and now he is about 47 years of age, having responsibility of family and kids and has travelled so far in life that too without any involvement in any other criminal/illegal acts. Therefore, the contention on behalf of the Appellant seems to be convincing.

25. In any case, the unblemished record, since 1999 as reflected in the Probation Officer's report, indicates that the reformatory and correctional purpose has already been served. The benefit of probation is meant to give a chance to youthful, naive and chance offenders to mend their wayward tendencies as if the offence was an aberration. The overall behavior or a particular act was result of some momentary impulse. One may realise the consequences and futility of violating law. And not only that if the remorse is felt, and realization also dawns upon the young person to desist from such behaviour in future, then it would be worth giving an opportunity. So the benefit of probation is basically to wean away such young impressionable minds from the path of crime and give them a chance to resurrect themselves from the nadir world of crime.



26. The contention with regard to the extension of benefit of probation has an implicit argument that conviction is not seriously challenged and for that matter, nothing has been argued except for disputing the arrest of the Appellant from the spot. This in itself is not going to upstage the conviction, notwithstanding the fact that the victim PW-3 Mahesh Kumar, always reflected a kind of uncertainty about the identity of the Appellant Surender @ Sonu, wherever reference of Appellant comes in his deposition. That seems natural inasmuch as three people were there who had assaulted the victim at about 9.30 PM in a cold Delhi night of January, 1999 and it was not the Appellant, who had actually robbed the victim or ran in such a manner towards a building as co-accused Satya Prakash ran to draw special attention.

27. Thus, the Appellant does not stand out distinctly in any manner except for, at the most being there, with the co-accused. Therefore, the uncertainty about the identity of Appellant Surender @ Sonu is not unusual. However, that uncertainty goes away when it was brought on record that he was apprehended and arrested at the spot itself, as has been deposed not only by victim Mahesh Kumar, but also by two other police officials namely, HC Suresh and SI Dalbir Singh.

28. As such, while maintaining the conviction under Section 392/34 IPC of the Appellant and taking into account entire gamut of facts and circumstances, including the report of the probation officer too, the Appellant is extended the benefit of probation of good conduct and ordered to be released on furnishing a bond of good conduct in the sum of Rs. 20,000/- with one surety of like amount for a period of two years. It is made clear that in the event of violation of the aforesaid condition of probation, the Appellant shall be liable to be punished for the offence for which he has



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been convicted in the instant case. The bonds be furnished before the Trial Court within a fortnight from today and compliance be reported as well to this Court.

29. Appeal stands disposed of accordingly.

VIMAL KUMAR YADAV, J

FEBRUARY 06, 2026

bj/akc