



2026:DHC:918



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

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Judgment Reserved on: 03.02.2026

Judgment pronounced on: 05.02.2026

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CRL.A. 993/2017

MOHD. SALMAN

.....Appellant

Through: Ms. Pallavi Shamia Kansal, Mr.
Saurabh Kansal and Mr. Suraj Kr.
Jha, Advocates.

Versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the
State with SI Mohd. Ayyob

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) read with Section 383 of the Code of Criminal Procedure, (the Cr.Pc) the first accused in S.C No. 41/2024 on the file of the learned Additional Sessions Judge (FTC), E- Court, Shahdara Karakardooma, Delhi challenges the conviction entered and sentence passed against him for the offences punishable under Sections 394 read with Section 34 of the Indian Penal Code (the IPC) .

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2. The prosecution case is that on 11.06.2013 at about 11:30 PM at Shiv mandir vali Gali No. 10, Maujpur Delhi, the accused persons two in number, in furtherance of their common intention, robbed the mobile phone and an amount of ₹ 700/- from PW1 and in the process voluntarily caused hurt to him. Hence, as per the charge sheet, the accused persons are alleged to have committed the offences punishable under Sections 394, 411 read with Section 34 IPC

3. On the basis of Ext PW4/A FIS of PW4, given on 12.06.2013, Crime no.167/2013, Jaffrabad Police Station, that is Ext PW2/A FIR was registered by PW2, Head Constable. PW 7, Sub Inspector conducted investigation into the crime and on completion of the same filed the charge sheet/final report alleging commission of offences punishable under the above mentioned sections.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to



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them as contemplated under 207 Cr.Pc. After hearing both sides, the trial court as per order dated 01.09.2014, framed a charge under Sections 392, 394 read with section 34 IPC, which was read over and explained to the accused persons to which they pleaded not guilty.

5. On behalf of the prosecution, PWs 1 - 7 were examined and Exts P-1, PW1/A-C, PW2/A-D, PW4/A-G, PW5/A-C, PW6/A, PW7/A-C, CW/X, CW/X1 were marked in support of the case.

6. After the close of the prosecution evidence the accused persons were questioned under Section 313(1)(b) Cr.Pc, regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence.

7. After questioning the accused under Section. 313 (1) (b) CrPC, compliance of Section 232 CrPC was mandatory. In the case on hand, no hearing as contemplated under Section 232 CrPC



is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him. No oral or documentary evidence was adduced by the accused.

8. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 18.08.2017 held the accused persons guilty of the offences punishable under Section 394 read with Section 34 of the IPC and hence sentenced both of them to undergo rigorous imprisonment for a period of 5 years for the offences and to fine of ₹ 2,500 each and in default of payment of fine to undergo simple imprisonment for a period of three months



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each. The sentences have been directed to run concurrently.

Aggrieved, the 1st accused has preferred the present Appeal.

9. It was submitted by the learned counsel/amicus for the appellant/first accused that he does not wish to press the appeal and prays that the substantive sentence of imprisonment may be confined to the period undergone by him. He has further placed reliance on the judgment dated 16.10.2025 in CRL A 1168/2017 passed by a Coordinate Bench of this Court, which appeal has been filed by the second accused in the case. The said appeal was partly allowed whereby the substantive sentence of the second accused was modified to the period already undergone by him. The sentence of fine was confirmed. The learned counsel has submitted that in terms of the relief granted to the second accused, the appellant/1st accused's appeal may also be allowed on the ground of parity.



10. The learned Additional Public prosecutor has not objected to the submissions made and to relief sought by the counsel for the appellant/1st Accused.

11. Heard both sides

12. In light of the judgment dated 16.10.2025 in Crl A 1168.2017 relating to the 2nd accused and in light of the direction contained in (c) of paragraph 28 of the judgment of the Hon'ble Supreme Court in **Sonadhar v State of Chattisgarh, 2021 SCC OnLine SC 3682**, the substantive sentence of the appellant/1st accused who as per the nominal roll, dated 21.08.2025 has already undergone about 2 years 2 months and 8 days out of the total sentence of 5 years is confined to the period already undergone by him. The sentence of fine is confirmed. The appellant/1st accused shall pay the fine amount within a period of 4 weeks before the trial court concerned, a failure of which shall lead to the appellant/1st accused to serve the default sentence of 3 months of simple imprisonment as sentenced by the trial court.



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13. In the result, the appeal is partly allowed as stated aforesaid.

14. Applications(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

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