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Saurav Gupta vs State

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Court : Delhi

Decided On : Jan-05-2026

Judge : Hon'Ble Mr. Justice Manoj Kumar Ohri

Appeal No. : CRL.A./1062/2016

Appellant : Saurav Gupta

Respondent : STATE

Advocate for Def. : Ms. Shubhi Gupta

Advocate for Pet/Ap. : Ms. Stuti Gujral, Mr. Miran Ahmad, Mr. Vipin Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 04.11.2025

Pronounced on : 05.01.2026

Uploaded on : 05.01.2026 + CRL.A. 1062/2016 SAURAV GUPTA .....Appellant Through: Ms. Stuti Gujral, Advocate (Amicus Curiae) with Mr. Miran Ahmad, and Mr. Vipin Kumar, Advocates with Appellant in person.

versus

STATE .....Respondents Through: Ms. Shubhi Gupta, APP for State with SI Ashwani Yadav, P.S. Kotla Mubarakpur

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal is directed against the judgment and order on

sentence dated 17.09.2016 passed by the learned Additional Sessions Judge- 02, South-East District, Saket Courts, in SC No. 1832/2016 arising out of FIR No. 195/2014 registered at P.S. Kotla Mubarakpur, whereby the appellant was convicted for the offence punishable under Section 394 IPC and acquitted of the charge under Section 397 IPC. Vide the impugned order on sentence, the appellant was directed to undergo RI for 5 years along with paying a fine of Rs.15,000/-, in default whereof he would undergo SI for 1 year. His sentence was suspended during

 pendency of the appeal vide order dated 03.05.2017.

2. The prosecution case, in brief, is that on 07.03.2014 at about 12:45

AM, the complainant/Saurabh @ Nikhil was allegedly taken by the appellant to the roof of a house in Sewa Nagar, where, after consumption of liquor, the appellant allegedly robbed him of his diamond ring, mobile phone, and cash amounting to Rs.13,000-14,000/-, and inflicted an injury on his face using an ustra. On the basis of the statement of the complainant recorded by the police (Ex. PW-4/A), the subject FIR No. 195/2014 was registered under Sections 394/341/323/506 IPC. While

charges under Sections 394/397/506 IPC were framed against the appellant, the two co-

accused at the time, namely Mohit and Yash, were discharged vide order

dated 22.11.2014.

3. During the course of trial, the prosecution examined 9 witnesses,

including police officials associated with the registration of the FIR, investigation, arrest of the appellant, seizure of case property, and recovery proceedings, as well as a medical witness who proved the MLC of the injured. The prosecution case principally rested upon the testimony of the injured complainant (PW-4), who supported the prosecution version with respect to the occurrence, the identity of the appellant, and the alleged recovery of robbed articles. In addition thereto, the prosecution relied upon the recovery of the complainants mobile phone at the instance of the appellant from the repair shop of PW-7/Puneet Gupta, which factum was supported by the testimonies of PW-7 as well as his father, PW-3, who was a witness to the recovery.

4. The injured complainant (PW-4) deposed that on 07.03.2014 at about 12:45 AM, he was called by his cousin Yash, whereafter he met Mohit and Digitally Signed By:PREM CRL.A. 1062/2016 Page 2 of 11

the appellant. He stated that they consumed liquor at the ground floor of their house. Thereafter, Mohit took the accused aside and had a conversation with him. Subsequently, the appellant came to the complainant and told him that he would make him enjoy that day. The complainant then accompanied the accused to Sewa Nagar, to the roof of a house, where they consumed more liquor. He stated that the appellant forcibly took out his diamond ring, Rs.13,000-14,000/-, and his mobile phone. When the witness protested, the appellant took out an

ustra and hit him on the face with the same. He further stated that he sustained an injury on the left portion of his cheek and was taken by PCR to AIIMS Trauma Centre. His statement recorded by the police was exhibited as Ex. PW-4/A. He also identified his mobile phone (Ex. P-4), two scissor blades (Ex. P-1 & Ex. P-2), and currency notes of Rs.2,600/- (Ex. P-3). In cross-examination, the complainant admitted that Mohit and Yash were his cousins and certain property disputes existed between them. He further stated that that the quarrel took place after consumption of liquor and that he was injured by a half ustra blade, the same kind which is used by barbers in saloons. The police did not seize his blood-stained clothes. The incident took place around 2:00 AM and the quarrel lasted for 5-10 minutes.

5. Rajender Singh, Record Clerk, AIIMS Trauma Centre (PW-8) proved

the complainants MLC No. 415490 dated 07.03.2014 (Ex. PW-8/A) prepared by Dr. Hemraj, which records a laceration on the left angle of the complainants mouth admeasuring 2 cm. The injury was opined to be simple in nature.

6. Pramod Kumar Gupta (PW-3) deposed that the appellant had given a

Samsung mobile phone for repair at his sons shop at 666/667, Subhash Digitally Signed By:PREM CRL.A. 1062/2016 Page 3 of 11 Market, which was later seized by the police vide Ex. PW-3/A.

7. Puneet Gupta (PW-7), who ran the concerned mobile repair shop,

corroborated PW-3s version and stated that the appellant gave him a mobile phone for repairing. Two days thereafter, police officials came to his shop along with Saurabh Gupta and the witness gave the said mobile phone to the police officials.

8. Both PW-3 and PW-7 were cross-examined, but they remained consistent about the recovery of the mobile phone from the concerned repair shop at the instance of the appellant.

9. The I.O. of the case, SI Amrender Kumar (PW-6), deposed about

recording of the complainants statement, preparation of the rukka (Ex. PW- 6/A), the site plan (Ex. PW-4/B), the arrest of the appellant on 13.03.2014, and the recovery of two scissor blades and Rs.2,600/- from the appellants possession, which were seized vide seizure memo (Ex. PW-6/E).

10. Ct. Sanjay Kumar (PW-9) deposed about the appellants arrest and the

recovery of articles from his possession. He admitted in cross-examination that no public witness was joined at the time of the appellants arrest and the subsequent recovery of articles.

11. Ct. Raj Kumar (PW-5) deposed about the recovery of the mobile phone from the concerned repair shop.

12. In his statement dated 06.09.2016 recorded under Section 313

> Cr.P.C., the appellant admitted that he had consumed liquor with the complainant on the date of the incident. He also admitted that he took the police party to the concerned mobile repair shop where he had given the complainants mobile phone for repair, and that the complainants mobile phone was taken into police possession. He denied having robbed the

 complainant, having used an ustra upon him, and the recovery of any scissors from his possession. He claimed false implication and declined to lead defence evidence.

13. Learned Amicus Curiae for the appellant, while assailing the findings

> recorded in the impugned judgment, referred to the testimony of the complainant to contend that once it has come on record that the incident occurred under the influence of liquor, the appellants conviction under Section 394 IPC is unsustainable. It was further contended that the material on record demonstrates that the incident was the result of a

sudden quarrel, rather than a premeditated act of robbery. The prosecutions reliance on the medical evidence in the form of the complainants MLC was also questioned on the ground that the MLC was exhibited through a Record Clerk (PW-8), who had no personal knowledge of its contents. The recovery of the surgical scissors in two pieces is doubted for it not being made in the presence of any public witness. Neither was the alleged weapon of offence, i.e. the blade, sent for forensic examination, nor were the blood-stained clothes of the injured seized, which further weakens the prosecution version. Insofar as the allegation of a diamond ring being robbed is concerned, the same was never recovered and complainant did not bring on record any documentary proof of its ownership. The Trial Court had partly disagreed with the prosecution version as it had disbelieved the involvement of the two co-accused, Mohit and Yash, both of whom were discharged. Learned Amicus has also stated that in the backdrop of admitted family disputes, the possibility of false implication of the appellant cannot be ruled out. In the alternative, learned Amicus, on instructions from the appellant, has submitted that the appellant, having already undergone half of his sentence, be considered for release on

 the period of custody already undergone.

14. Per contra, learned APP for the State submitted that the testimony of

the injured complainant (PW-4) is clear, consistent, and does not suffer from any material contradictions. She submits that though the doctor who medically examined the complainant and prepared the concerned MLC was not examined, the said MLC was exhibited through the testimony of the concerned Record Clerk (PW-8) and stands duly proved in terms of Section 47 Indian Evidence Act. Reliance in this regard has been placed upon the decision of the Division Bench of this Court in Kamlesh Vs. State1; and the decisions of Co-ordinate Benches of this Court in Rakesh & Anr. Vs. State2; Gobind Mishra Vs. State3; and Rajesh Kumar @ Raju

Vs. State4. The appellant did not challenge the authenticity or genuineness of the said MLC as the concerned Record Clerk was not even cross-examined. It is also submitted that the concerned MLC records an injury on the face of the complainant, which lends corroboration to the ocular version narrated by the complainant. It was argued that the non-examination of the doctor is not fatal when the injury itself is not disputed and the complainant has consistently deposed about having sustained an injury. She also placed reliance on the factum of recovery of the complainants mobile phone at the instance of the appellant from the repair shop, proved through the testimony of Saurabh Kumar Gupta (PW-3) and Puneet Gupta (PW-7). It was pointed out that the appellant in his statement recorded under Section 313 Cr.P.C. has himself admitted that he took the police party to the concerned repair

Decision dated 05.01.2023 in CRL.A. 481/2019 Decision dated 18.11.2010 in CRL.A. 164/2001. Decision dated 02.05.2011 in CRL.A. 323/2000. 2007 SCC OnLine Del 277. Digitally Signed By:PREM CRL.A. 1062/2016 Page 6 of 11 shop and that the mobile phone of the complainant was recovered therefrom and seized. Lastly, while handing over a status report, it is submitted that the appellant is a habitual offender with multiple criminal antecedents and prior convictions, who has also been declared a Bad Character by the competent authority.

15. I have heard the learned counsels for the parties and carefully examined the record.

16. As per the case of the prosecution, the incident occurred in the

intervening night of 07/08.03.2014. The complainant has claimed that he met the appellant, who was in acquaintance of his relatives, viz. Mohit and Yash, after which they consumed liquor at the ground floor of the complainants house. Thereafter, the complainant as well as the appellant went to the latters house at Seva Nagar and at the terrace of the said house, they consumed more liquor. The complainant has further claimed that after some time, the appellant threatened him and demanded his

diamond ring as well as his wallet containing Rs.13,000-14,000/-. The appellant then forcibly took out both the diamond ring and the wallet containing the said amount, as well as the complainants mobile phone of the make Samsung Grand. The complainant was also hit with an ustra on his face by the appellant.

17. The first call about the incident was recorded through DD No. 12A.

The subject FIR was also registered on the very same day, based on the aforesaid DD, which recorded that on the terrace of the concerned house, two people had quarrelled. The inquiry of the incident was assigned to SI Amrender Kumar, who has deposed that on receipt of the aforesaid DD, he along with Ct. Rishi Kumar reached the spot, where they found the PCR Van as well as the injured. The injured was removed to AIIMS Trauma Centre,

 where SI Amrender Kumar recorded the statement of the injured. The testimony of Ct. Rishi Kumar, examined as PW-2, is on similar lines as that of SI Amrender Kumar.

18. Neither any dispute nor any contentions were raised on the issue of the identity of the appellant.

19. Learned Amicus Curiae has contended that the incident occurred

under the influence of liquor. However, the factum of the appellant taking away a diamond ring, a wallet containing Rs.13000-14000/-, and a Samsung Grand phone, cannot be lost sight of. The allegation of robbery having been committed by the appellant stands fortified by the recovery of surgical blades from the possession of the appellant as well as the recovery of the robbed mobile phone (Ex. P-4) from the mobile repair shop owned by Puneet Kumar Gupta (PW-7) and his father Pramod Kumar Gupta (PW-3). Both of the aforesaid witnesses have stated that the said mobile phone was given for repair by the appellant at their shop.

The police had done part recovery of the robbed amount through recovery of Rs.2,600/-. PW- 7/Puneet Kumar Gupta deposed that it was the appellant who came to his shop and gave the said mobile phone, i.e. Samsung Grand, for repair of its speaker. He further claimed that after a few days, police officials came to his shop along with the appellant and seized the said mobile. He identified the appellant as well as the mobile phone.

20. Though it has been contended by the learned Amicus that the

prosecution case was partly disbelieved as the co-accused persons were discharged, it is pertinent to note in this regard that the Trial Court had discharged the two co-accused as their names had not figured in the rukka, but only in the supplementary statement of the complainant, despite them Digitally Signed By:PREM CRL.A. 1062/2016 Page 8 of 11 statedly being related to him. As such, this contention has no merit.

21. Section 394 IPC requires that the accused must have caused hurt

while committing the offence of robbery. In the present case, the complainant has claimed that an ustra was used to inflict an injury on his cheek. The MLC of the complainant notes a laceration on the left side of his face. It is also worth mentioning that despite opportunity, there was no cross-examination of the said Record Clerk.

22. In light of the consistent testimony and the positive identification of

the appellant, the alleged defects in the investigation, namely the non- seizure of the blood-stained clothes and the weapon of offence not having been sent to the FSL, are not of much relevance.

23. In view of the above, this Court does not find any reason to interfere with the findings arrived at by the Trial Court.

24. Coming to the alternative plea seeking release of the appellant on the sentence already undergone, it is observed that as per the nominal roll, the

appellant has undergone half of his sentence.

25. The law regarding release of convicts who have undergone more than

> half of their sentence was laid down by the Supreme Court in Sonadhar Vs. State of Chhattisgarh5, 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.

26. The appellant is aged about 35 years, is the sole breadwinner of his

family, and bears the responsibility of taking care of his aged and sick mother. The offence in question pertains to the year 2014 and the present appeal has been pending since 2016; the appellant has suffered the ordeal of a protracted trial. He has already paid the fine of Rs.15,000/- imposed upon him by the Trial Court and the receipt thereof is on record.

27. Keeping in view the facts and circumstances noted hereinabove, the

fine being paid, as well as the decision in Sonadhar (supra), the substantive sentence of the appellant is hereby modified to the period already undergone by him.

28. The personal bond furnished by the appellant stands cancelled and his sureties are discharged.

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

30. A copy of this judgment be sent to the Trial Court and the concerned Jail Superintendent. Digitally Signed By:PREM CRL.A. 1062/2016 Page 10 of 11

31. This Court records its appreciation for the valuable assistance

rendered by the learned Amicus Curiae, Ms. Stuti Gujral, Advocate. MANOJ KUMAR OHRI (JUDGE) JANUARY 05, 2026 pmc Digitally Signed By:PREM CRL.A. 1062/2016 Page 11 of 11

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