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

+ CRL. REV. P. No. 341/2012

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Decided on: 6th July, 2012

SANJAY KUMAR & ORS.

..... Petitioners

Through: Mr. B.S. Sharma, Adv.

versus

THE STATE

.....Respondent

Through: Mr. Mukesh Gupta, APP

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (Oral)

1. Petitioners were convicted under Section 386 read with Section 34 of the Indian Penal Code, 1860 ("IPC" for short) by the Trial Court and sentenced to imprisonment for two years with fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for three months. Benefit of Section 428 Cr.P.C. was also given to the petitioners. Aggrieved by the said judgment petitioners preferred an appeal against their conviction and sentence before the Additional Session Judge, Delhi which has been dismissed vide judgment dated 11th June, 2012 whereby conviction as well as sentence awarded by the Trial Court has been affirmed/upheld.

2. It is this judgment which is under challenge in this revision petition.

3. Prosecution story as unfolded is that FIR No. 458/01 under Section 386 read with Section 34 IPC was registered on the complaint of one Onkar Singh (complainant). It is alleged in the FIR that complainant was owner of plot no. B-7, Shankar Garden Colony near Dholi Piau, Delhi. In his absence five persons had visited his house three times and this fact was informed to the complainant by his servant, namely, Rakesh when complainant returned to his house at about 7:30 pm. At about 8:30 pm when complainant was standing outside his house petitioners along with co-accused, namely, Satender @ Pappu and Sanjay @ Pahalwan came there in two cars, that is, Honda City bearing registration no. DL-4SZ- 0032 and Maruti 800 bearing registration no. DL-3C-3908. Satender @ Pappu caught the collar of complainant and told him to sign certain blank papers. He threatened that if complainant did not do so he will be killed. Thereafter, Satender placed four blank papers on the bonnet of Honda City car and commanded the complainant to sign the papers. Sanjay Kumar brandished an iron punch while Sunil, Sanjay @ Pahalwan and Karambir abused the complainant. They forced him to sign four blank papers.

Complainant signed those four blank papers under fear. Thereafter, Satender @ Pappu told the complainant that henceforth the plot of Shankar Garden was their and asked the complainant to vacate the same. When petitioners and co-accused were leaving the spot complainant raised alarm “Pakro Pakro”. A police team comprising of SI Sharat Chandra, Const. Desh Raj, Const. Rambir, Const. Ravinder and HC Rajesh, who were on patrolling duty in the area came there and apprehended the petitioners and co-accused.

4. SI Sharat Chandra (Investigating Officer) seized the four blank papers bearing signatures of complainant from the right hand of Satender @ Pappu. Prosecution examined as many as eight witnesses. Complainant has been examined as PW1. The owner of the Honda City car was examined as PW2, who has deposed that on 13th September, 2001 car was given by him to Sanjay. Owner of Maruti 800 car Punit Kumar Kohli was examined as PW3 who has deposed that he had lent his car to Satender @ Pappu on 13th September, 2001. Police officials, who were on patrolling duty have been examined as PW4 to PW8. PW4 Const. Deshraj has stated that he along with Const. Ravinder, Const. Ramvir, HC Rajesh Tyagi and SI Sharat Chandra were on patrolling duty and when they reached village Nagli Jalib they heard the alarm “Pakro

Pakro”; They reached near the house No. WZ 13 where petitioners and co-accused were apprehended. Both the cars were taken in possession. One metal punch was also recovered from Sanjay and four blank papers bearing signatures of complainant were recovered from Satender @ Pappu. PW5 to PW8 have corroborated these facts. Trial Court has found the testimony of abovementioned witnesses to be trustworthy and reliable. PW1 has not fully corroborated prosecution version. He has not identified the petitioners and co-accused. However, his testimony has supported happening of the incident and that the persons involved were apprehended by the police officials. He deposed that at about 8:30 pm when he was standing outside his house 4/5 boys came there and caught hold of him from behind and asked him to sign certain blank papers and threatened to kill him in case he refused to do so. He signed the blank papers due to fear. He raised alarm “Pakro Pakro”. A police gypsy which was passing through, apprehended the said persons. He has stated that he was unable to see the faces of those persons. Defence counsel argued before the Trial Court that since complainant (PW1) had turned turtle complicity of petitioners in the crime was not proved. This argument was not accepted. By placing reliance on Gurpreet Singh vs. State of Haryana (2002) 8 SCC 18, Trial Court held that such portion of the

statement of a hostile witness which supports the prosecution version can be accepted. Trial Court held that the presence of accused persons on 13th September, 2001 at the spot was fully established in view of statement of police witnesses. Appellate Court has also affirmed this view. It has been held that apprehension of the accused persons from the spot was established from the statements of PW4 to PW8. Recovery of the vehicles from the spot was also established from their statements. As per PW2 and PW3, their vehicles had been lent by them to the persons involved in this case, on that particular day. This evidence was sufficient to conclude the guilt of accused persons.

5. There is no gainsaying that the revisional jurisdiction is supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. Revisional power cannot be equated with the power of an Appellate Court nor can it be treated as a second appellate jurisdiction. Therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. In *K. Chinnaswamy Reddy vs. State of Andhra Pradesh* MANU/SC/0133/1962, Supreme Court

emphasized that revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in a flagrant miscarriage of justice. Concurrent findings had been returned by the courts below, which in my view, cannot be interfered with by appreciating the evidence afresh by this court in exercise of its revisional jurisdiction.

6. In the backdrop of above settled legal position, in my view, the concurrent view of the two courts below returned on a proper and conscious appreciation of evidence cannot be interfered with by a re-appreciation of the evidence in the exercise of revisional jurisdiction. The view taken by the courts below cannot in any manner be said to be contrary to law. The view taken by the courts below holding that even the testimony of a hostile witness to the extent that supports the prosecution version can be accepted is in conformity with the settled legal preposition. PW1 has not denied the incident. He has not even denied that the persons who come there and forcibly obtained his signatures on certain blank papers were apprehended by the police party who were present in the area at that time. It is only on the point of identification that he had turned hostile. Petitioners were apprehended by the police at the

spot. PW4 to PW8 are the members of the police party who have deposed in unison about the apprehension of the petitioners. Be that as it may, I do not find any flagrant illegality or violation of procedure in the approach of the courts below.

7. For the foregoing reasons, I find the present petition being devoid of merits, the same is dismissed.

A.K. PATHAK, J.

JULY 06, 2012/ga