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

+ CRL.A. 22/2010

% **Judgment dated 18th November, 2013**

HARMINDER SINGH Appellant

Through : Mr.Jasbir Singh Malik, Adv.

versus

STATE Respondent

Through : Mr.Feroz Khan Ghazi, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. The present appeal arises out of a judgment dated 27.11.2009 and order on sentence dated 30.11.2009 passed by learned Additional Sessions Judge, Delhi, whereby the appellant, Harminder Singh, has been directed to undergo Rigorous Imprisonment (RI) for seven years with fine of Rs.5,000/- and in default of payment of fine, Simple Imprisonment for four months for the offense punishable under Section 392/34 IPC. It was also directed that benefit under Section 428 Cr.P.C. would be given to the appellant.
2. The necessary facts, to be noticed for disposal of the present appeal, are as under:

“Sushil Aggarwal was doing the chemical business at shop no.2831/212, Tri Nagar, Delhi. He was residing at F-304, Rashmi Apartments, Pitampura, Delhi. He was having account in Bank of Punjab, Sector-8, Rohini. Babu Lal was one of his employee. Sunil Agarwal is his brother. Sushil Aggarwal on 26.4.1999 at about

10/10.15 am along with Babu Lal Sharma went to Bank of Punjab, Sector-8, Rohini, Delhi for withdrawal of Rs.9.55 lakhs on a two wheeler scooter bearing no. DL-8SG-0572. He had withdrawn Rs.9.55 Lakhs from the bank at about 11 am. He had given Rs.65,000/- to Naresh Jain with whom he was having business dealings. He kept Rs.8 lakhs in a yellow colour plastic bag and given to Babu Lal Sharma. He kept balance amount of Rs.90,000/- in a canvas bag and hanged it on the handle of the scooter. The entire money was in the currency notes of denomination of Rs.50/-, Rs.100/- and Rs.500/-. They left the bank on the scooter being driven by the Sushil Aggarwal. They reached in front of Primary School, Outer Ring Road, Sector-8, Rohini and crossed half of the road and they stopped the scooter as one truck was coming from opposite side. In the meantime, one white Maruti car bearing no.DL3 1CD 1652 came from the right side and from the said car two boys came out and two boys were sitting inside the car. Said two boys after putting kattas on the person of Sushil Aggarwal and Babu Lal Sharma snatched both the bags containing Rs.8,90,000/-. Thereafter they run away towards the Peeragarhi Chowk. Sushil Aggarwal got perplexed and also became frightened due to the fear. Sushil Aggarwal along with Babu Lal came back to his house but did not disclose the said facts in his family as the mother was not well. He called his brother Sunil Aggarwal thereafter the matter was reported to the police.

2. SI Manoj Kumar along with Ct. Ram Pal on 26.4.2009, after receipt of DD no.25 went to F-304, Rashmi Apartments, Pitampura where he recorded the statement of Sushil Aggarwal (hereinafter referred to as the complainant). SI Manoj Kumar prepared the

rukka and sent Ct. Ram Pal for registration of the case and on the basis of rukka, FIR bearing no.294/99 u/s 392/34 IPC was got registered at 9.10 pm. SI Manoj Kumar along with complainant and Babu Lal reached at the place of occurrence and prepared the site plan. SI Manoj Kumar searched for the persons who robbed Rs.8,90,000/- but they could not be traced. DD no.11 was also received regarding escaping of 4-5 persons after parking a Maruti car bearing no.DL 1CD 1652 in abandoned condition at C-Block Market, Saraswati Vihar. SI Manoj Kumar also reached there. Crime Team was called.

3. Ct. Ram Pal after registration of the case reached at Outer Ring Road i.e place of occurrence and handed over the rukka and copy of FIR to SI Manoj Kumar. Thereafter SI Manoj Kumar along with Ct. Ram Pal, complainant and Babu Lal came back to the PP Shakti Vihar. The car bearing no.DL 1CD 1652 was also seized. SI Manoj Kumar prepared the portraits of the suspects at the instance of complainant and Babu Lal.

4. Rajiv was arrested on 19.6.1999 by SI Jaidev, Operation Cell, North West District u/s 41.1 Cr.P.C. During interrogation, Rajiv disclosed about his involvement and participation in the offence registered vide FIR no.294/99 u/s 392/34 IPC. The said information was given to SI Manoj Kumar on 20.6.1999 who along with Ct. Mahender visited the Office of Operation Cell, North West District and collected the relevant papers. Rajiv was arrested. The accused Rajiv refused to participate in the TIP. The police remand was granted by the concerned court of Metropolitan Magistrate. The accused Rajiv on 25.6.1999 was taken for further interrogation by SI Manoj Kumar along with Ct. Ram Pal and Ct. Subhash. Accused

Rajiv got recovered the country made pistol stated to be used in the commission of offence from a park situated between A-B Blocks of Saraswati Vihar. The accused Rajiv also led the police party to the place of occurrence and the place where he parked the car bearing no.DL 1CD 1652. The pointing out memos were prepared. The country made pistol along with one live cartridge was seized by the SI Manoj Kumar.

5. Ashwini and Harminder Singh were arrested by HC Kuldeep Singh and HC Ramesh Kumar Operation Cell, North West District on 27.6.1999 vide FIRs no. 435/99 and 436/99 u/s 25 Arms Act, 1959 and their respective disclosure statements were recorded. Ashwini and Harminder Singh disclosed about their participation and involvement in the offence, subject matter of FIR no 294/99 u/s 392/34 IPC. SI Manoj Kumar went to the Office of Operation Cell and collected the relevant documents from ASI Satyavir who conducted further investigation of FIR no.435/99.

6. ASI Naresh Chand posted at AATS, North West District along with HC Mohd. Yasin and HC Om Parkash arrested the Sajjan Kumar on 5.7.99 at about 8.30 pm from Village Sahipur, Shalimar Bagh vide FIR no.492/99 u/s 25 Arms Act, 1959, investigation of which was conducted by HC Rishi Kesh. The disclosure statement of Sajjan Kumar was also recorded in FIR no.492/99 wherein he disclosed his involvement and participation in the commission of offence registered vide FIR no. 294/99 u/ 392/34 IPC. SI Manoj Kumar was informed about the involvement of Sajjan Kumar. SI Manoj Kumar collected relevant papers from HC Rishi Kesh. The further investigation was assigned to SI Anil Kumar for the period w.e.f. 7.7.1991 to 15.7.1991 as SI Manoj Kumar remained on

medical leave. SI Anil Kumar on 8.7.1999 arrested Ashwini, Harminder and Sajjan as they were produced in the concerned court of Metropolitan Magistrate in pursuance of production warrants. The TIP of accused Ashwini, Harminder and Sajjan were conducted at Tihar Jail but they refused to participate in the TIP proceedings despite warning. The police remand was granted. Accused Ashwini, Harminder and Sajjan pointed out the place of incident as well as the place where they left the Maruti car bearing no.DL 1CD 1652 in abandoned condition. The pointing out memos were prepared. The accused Harminder was taken to village Thana Kalan for the recovery of part robbed amount but the recovery could not be effected. Further investigation was again assigned to SI Manoj Kumar. On 11.8.99. complainant Sushil Aggarwal and Babu Lal Sharma identified all the four accused in Tis Hazari Courts Complex. The country made pistol (katta) was recovered at the instance of Rajiv was sent to CFSL, Malvia Nagar. SI Manoj Kumar conducted necessary formalities of the investigation. All the accused after completion of investigation were charge sheeted for the offences punishable u/s 392/397/34 IPC and sent to the court of concerned Metropolitan Magistrate.

7. All the accused were supplied with the copies of charge sheet along with annexed documents in compliance of Section 207 Cr.P.C. Vide committal order dated 17.7.2003 passed by the Metropolitan Magistrate, the case was committed to the court of Sessions and thereafter assigned to this court for trial in accordance with law.

8. Vide order dated 3.9.2003 charge for the offence punishable u/s 392/397/34 IPC was framed against all the accused. The accused

Rajiv was also charged for the offence punishable u/s 25 Arms Act, 1959. The accused pleaded not guilty and claimed trial. The accused Sajjan during the course of trial did not appear and accordingly vide order dated 12.12.2008 was declared as P.O. (Proclaimed Offender).

3. The prosecution examined 23 witness in all.
4. Learned counsel for the appellant on instructions submits that the appellant does not wish to contest the judgment on conviction but prays that the sentence awarded to the appellant be modified to the period already undergone by him.
5. Learned counsel for the appellant submits that since the date of the incident till date the appellant has not been convicted in any other criminal matter and after bail was granted, the appellant has been leading a normal life with his family members, which consists of, his old father, a wife and two minor children. The appellant has also joined the main stream of the society and at this stage if he has to serve further sentence, he is likely to lose his employment, besides, it would have an adverse effect on his family members. It is also stated that the appellant is the sole bread winner of his family. It is, thus, prayed that the order on sentence be modified to the period already undergone.
6. I have heard learned counsel for the parties and considered their rival submissions. In the present appeal, the date of the incident is 26.4.1999. As per the nominal roll dated 14.11.2013, the appellant has already served 04 years, 02 months and 17 days besides remission of 01 year, 04 months and 26 days and the unexpired period is 01 year 04 months and 17 days. Having regard to the fact that the appellant does not have any previous conviction; he has joined the main stream of the society; he has old father,

a wife and two minor children to support; and he is the sole bread winner of his family; and further taking into consideration that in case the appellant is now directed to serve the sentence, not only would he lose his employment but his family would also suffer. Accordingly, present appeal is partly allowed. The order on sentence awarded to the appellant is modified to the period already undergone by the appellant. Bail bond stands cancelled and surety stands discharged.

7. Appeal stands disposed of.

G.S.SISTANI, J

NOVEMBER 18, 2013

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