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

DECIDED ON : 24th MAY, 2013.

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CRL.A. 195/2011

SHER SINGH @ BACHHU Appellant
Through : Mr.Vivek Sood, Advocate.

Versus

STATE (N.C.T. OF DELHI) Respondent
Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Open Court)

1. The appellant- Sher Singh challenges judgment dated 08.12.2010 in Sessions Case No.510/2006 arising out of FIR No.258/2004 registered at PS Alipur, by which, he was convicted under Sections 395/397/34 IPC and sentenced to undergo RI for ten years with fine ₹ 10,000/-.

2. Allegations against the appellant and his associates were that on 15.07.2004, he and his associates robbed Manish Gupta and caused injuries to him. The present appellant was identified to be the person who was armed with rod and hit Manish Gupta. One black and white TV make

Sony, suitcase containing clothes, cash, gold and silver jewellery were found missing from the house. DD (Daily Diary) No.2A was recorded at PS Alipur. SI Rakesh Kumar lodged First Information Report. During the course of investigation, the appellant and his associates were arrested in case FIR No.354/2004 PS Alipur. They made disclosure statements about commission of crime in this case. The appellant- Sher Singh got recovered a chain pursuant to his disclosure statement. His associates also got recovered the robbed articles. Applications were moved for Test Identification Proceedings. The appellant and his associates refused to take part in Test Identification Proceedings. After investigation, they all were sent to trial. The prosecution examined sixteen witnesses. In their 313 statements, the assailants pleaded false implication. After considering the rival contentions of the parties, the Trial court, by the impugned judgment, held the present appellant- Sher Singh guilty for committing offence under Section 392 read with Section 397 IPC. Amar Singh and Rajinder Singh were convicted under Section 392 IPC. Sanjeep and Laxman were convicted under Section 411 IPC.

3. During the course of arguments, learned counsel for the appellant on instructions from Sher Singh stated that the appellant has opted not to challenge the conviction under Sections 395/397/34 IPC. He

however, prayed for modification of the order on sentence as the appellant had already undergone substantive sentence for more than nine and a half years.

4. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellant has opted not to challenge the findings of the Trial Court on conviction under Sections 395/397/34 IPC, the order on conviction of the Trial Court stands affirmed.

5. Regarding order on sentence, it reveals that the appellant was sentenced to undergo RI for ten years with fine ₹ 10,000/- under Section 392/397 IPC. Nominal roll dated 23.05.2013 reveals that the appellant has already undergone 8 years, 7 months and 16 days incarceration as on 23.05.2013. He also earned remission for 10 months and 26 days. The unexpired portion is now only 5 months and 18 days. The overall conduct of the appellant is satisfactory. Earlier, he was convicted in case FIR No.510/2003 and was awarded imprisonment for life. He is on bail in the said case. In FIR No.354/04 under Section 25 Arms Act PS Alipur, he was awarded RI for 5 years. He has completed the substantive sentence. No criminal case is pending against him. Though the appellant has no clean antecedents, in the interest of justice and the fact that the appellant has

been already undergone substantial period of substantive sentence which is more than nine and a half years, the order on sentence is modified and the appellant- Sher Singh is ordered to be released for the period already undergone by him in this case. He shall pay fine ₹ 10,000/- and failing to pay fine he shall undergo SI for 15 days. The appeal stands disposed of in the above terms.

CRL.M.B.601/2013

Pending application for bail stands disposed of being infructuous.

**(S.P.GARG)
JUDGE**

MAY 24, 2013
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