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

+ CRL.A. 271/2005

% *Judgment dated 11.12.2013*

AMAN GROVER Appellant
Through: Mr.Raman Rai Handa, Advocate

versus

STATE Respondent
Through: Mr.Feroz Khan Ghazi, Adv. for State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Challenge in this appeal filed under Section 374(2) of the Cr.P.C. is to the judgment of the trial court dated 4.3.2005 and order on sentence dated 5.3.2005, whereby the appellant has been convicted to undergo RI for six months for the offence punishable under Section 411 IPC and pay fine of Rs.1,000/- in default of payment of fine SI for 15 days.
2. Brief facts of the case as noticed by the trial court are that:

On receipt of DD No.2A dated 2.11.03 SI. K.K. Mishra along with Baney Singh reached the place of occurrence where PCR Van Z 71 was present and its in-charge produced Complainant Ombir Singh before them. The said Ombir Singh stated that he works at an Export factory in Kirti Nagar and on 1.11.03 he was on duty from 9.30 A.M. To 5.30 P.M., thereafter he had worked overtime and finished his duty at about 1 A.M. in the night. He along with one Jainuddin Ansari were going home on their respective bicycles. When they reached near India Govt. Press four

boys on two motor cycles came towards there from the wrong side of the road. Two boys riding one of the Motor Cycles stopped their Motor Cycle in front of them. One of those boys was 5'8' tall and fair complexioned. The other person was about 6 ft. and also fair complexioned. The shorter person felt the pocket of Jainuddin Ansari and asked him to leave. The taller boy caught hold of complainant by his hand and placed a knife on his neck. The other person took out Rs.210/- his I-Card, Election Card and Telephone Diary from his pocket. He also removed his wrist watch of the make Rado. The boys on the second Motor Cycle asked them not to do so. The complainant then noticed PCR Van and signaled it to stop and narrated them the occurrence. The PCR officials made him sit in their Gypsy and when they returned to the spot both the boys were in the process of robbing another cyclist. The complainant pointed out to the PCR officials towards the boys to be their robbers. They both ran away leaving behind their Motor Cycle bearing No.DL 1S L 4390. The other two Motor Cycle riders also ran away. The other victim who was still present at the spot revealed his name as Umesh Kumar. He stated that he had been robbed of Rs.420/- and certain documents.

3. On this statement FIR u/s.392/397/34 IPC was got registered. The ownership of Motor Cycle bearing No.DL 1S L 4390 was verified and found to be that of one S.C. Anand r/o. 7E LIG Flat Hari Nagar. The complainant along with the IO went to the house of above said Anand where accused Deepak Anand was identified by the complainant and he was arrested. He also got recovered some robbed articles. Thereafter some robbed articles were recovered from the custody of Aman Grover. He was also arrested,

Challan u/s. 392/397/411 IPC r/w. 34 IPC was framed against both the accused persons.

4. After complying with provisions of Section 207 Cr.P.C. case was committed to the court of Sessions which in turn was assigned to the court.

5. Charge was framed against both the accused u/s.392/397 r/w. 34 IPC and also u/s.411 IPC. Both the accused pleaded not guilty and claimed trial.

6. Prosecution in support of its case examined 11 witnesses and closed the P.E.”

3. Counsel for the appellant on instructions from the appellant, who is present in court submits that the appellant has already suffered trial for more than 10 years; and at the time of the offence the appellant was a young boy, who had without knowing the consequences landed himself in deep trouble. Counsel further submits that out of six months sentence awarded to the appellant, he has already undergone four and a half months. It has also submitted that taking into consideration the family background of the appellant and also that now the appellant has joined the mainstream of the society, he has no previous conviction and after this incident he has not been involved in any other criminal activity till now, the order on conviction would leave a stigma, the petty amount which is involved in the matter, recourse to section 4 of the Probation of Offenders Act, 1958 should be taken and the appellant should be released on good conduct.
4. I have heard counsel for the parties. In the case of **Sitaram Paswan and Anr. Vs. State of Bihar** reported at (2005) 13 SCC 110, the Apex Court has discussed in detail the applicability of section 3 and 4 of Probation of

Offenders Act and held as under:

“8. Section 4 of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Probation of Offenders Act, 1958 reads thus:

"Section 4 - Power of Court to release certain offenders on probation of good conduct - (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behavior."

For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case,

including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.”

5. In this case even at the time of awarding the sentence the trial court had observed as under:

“I have heard the Ld. Counsels. The robbery in the present case is of very minuscule nature and in all Rs.630 and one wrist watch were robbed. It seems to be a case where young boys not knowing the consequences of their act tried an adventure; which ultimately proved a misadventure and landed them in deep trouble. The fact that both the convicts are young boys and belong to decent family and further for the reasons that robbed articles were not of very high value.”

6. Taking into consideration that the appellant was found with Rs.210/- and one wrist watch, the value of articles and the background of the appellant, the age of the appellant at the time of the offence and taking into consideration that the appellant has no previous history, to meet the ends of justice, the order of conviction is upheld, however, order on sentence is modified. The appellant shall be released on probation of good conduct. The appellant shall maintain peace and good behaviour and shall also furnish a bond of Rs.10,000/-before the concerned ASJ within a period of one month from today.
7. Appeal stands disposed of, in above terms. Trial court record be sent back to the concerned court.

G.S.SISTANI, J

DECEMBER 11, 2013

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