

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

**RESERVED ON : 10<sup>th</sup> July, 2013**  
**DECIDED ON : 22<sup>nd</sup> August, 2013**

**+ CRL.A.1040 /2012**

MOHD.SALEEM ..... Appellant  
Through : Mr.Mukesh Kalia with  
Mr.Hari Sharan Singh, Advocates.

**VERSUS**

STATE ..... Respondent  
Through : Mr.M.N.Dudeja, APP for the State.

**CORAM:**  
**MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Mohd.Saleem (the appellant) challenges correctness of the judgment dated 01.08.2012 in Sessions Case No.60/2009 arising out of FIR No.435/2007 registered at Police Station I.P.Estate by which he was held guilty and convicted for the offence under Section 392/34 IPC. Vide separate order dated 01.08.2012 he was sentenced to undergo Rigorous Imprisonment for five years with fine ₹25,000/-.

2. Allegations against the appellant-Mohd.Saleem were that on 06.09.2007 at around 07.00 P.M., he with his associates Mohd. Nasir @  
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Pehlwan, Mohd.Shahnawaz @ Shanu and Mohd.Nazim committed robbery and deprived Nema Ram and Saravan of their bag containing cash ₹6,05,000/-, cheques and other documents when they were travelling in TSR No.DL 1RC 4424 near ITO fly over, Ring Road. It is further alleged that Mohd. Nasir @ Pehlwan was armed with a knife and Nema Ram and Saravan were injured during the process of committing robbery. Daily Diary (DD) No.31A (Ex.PW-1/A) was recorded on 6<sup>th</sup> September, 2007 at 08.40 P.M. at Police Station I.P.Estate on getting information that five assailants had snatched ₹2 lacs after showing knife and giving beatings. The investigation was assigned to SI Ramjeet who with Constable Rajbir went to the spot. After recording Ram Kishore's statement (Ex.PW-4/A), he lodged First Information Report. On 01.06.2009 SI Ravinder Singh apprehended Mohd. Nazeem and Mohd.Saleem when they arrived at Okhla Mandi on their motorcycle No.DL 3SAL 8814. Pursuant to their disclosure statements, Mohd.Nasir was arrested and was found in possession of motorcycle bearing No.DL 6SX 6352. His disclosure statement led to the arrest of Shahnawaj from the area of DDA Flats, Kalkaji, Delhi. The Investigating Officer moved applications for conducting Test Identification Proceedings. However, all the accused declined to participate in it. The Investigating Officer recorded statements

of witnesses conversant with the facts. On completion of investigation, a charge-sheet was filed in the court against the four assailants. They were duly charged and brought to trial. The prosecution examined 25 witnesses to establish their guilt. In their 313 statements, they pleaded false implication. After hearing the learned counsel for the parties, the Trial Court by the impugned judgment acquitted Mohd. Nasir @ Pehlwan, Mohd.Shahnawaz @ Shanu and Mohd.Nazim of all the charges. Mohd.Saleem was convicted and sentenced under Section 392 IPC. Being aggrieved, he preferred the appeal. It is worthwhile to note that State did not challenge the acquittal of co-accused persons.

3. Mohd.Nazim and others were acquitted of all the charges as the material prosecution witnesses did not identify them in the court. Mohd.Saleem was convicted as PW-8 ( Maan Singh), TSR Driver, identified him in the court to be one of the assailants who had snatched the bag from the passengers. The prosecution examined PW-4 (Ram Kishore) who was travelling along with Sarvan and Nema Ram in the TSR when the incident of robbery took place. Though he supported the prosecution regarding the incident of robbery in detail, however, he was unable to identify the accused to be the assailants who robbed Nema Ram and Sarvan Kumar or injured them. In his court statement, he expressed

inability to identify the accused persons. Additional Public Prosecutor cross-examined him after seeking court's permission. However, in the cross-examination nothing material emerged to establish the identity of the accused as assailants. He categorically denied that the accused present before the court were the assailants. He was specific to assert that the four accused present in the court shown to him were not the assailants. PW-5 (Nema Ram) also did not identify the accused persons as the perpetrators of the crime. He admitted that he had not given description of the culprits to the police as the incident took place in a short span of one minute and it was dark that time. He was certain that the accused present in the court was not involved in the incident. Cross-examination of learned Additional Public Prosecutor, after court's permission, did not yield any positive result. Similar is the testimony of PW-6 (Sarvan Bhati). PW-8 (Maan Singh) was examined on 23.03.2010 and did not identify the assailants except Mohd.Saleem. About the other accused persons, his assertion was that he was neither able to identify nor able to confirm their presence and involvement in the incident as it had happened in a short span of time. It appears that the Trial court held Mohd.Saleem guilty because PW-8 (Maan Singh) identified him in the court as one of the assailants. The incident took place on 06.09.2007. Statement of PW-8 (Maan Singh) was

recorded under Section 161 Cr.P.C. on 06.09.2007 itself. He did not give description of the assailants to the police. He was not acquainted with the accused prior to the incident. Admittedly, the occurrence lasted for about one minute; he was unable to identify the other three assailants. Hence, identification by him of the appellant in the court after a gap of three years becomes doubtful. The present appellant was not apprehended or arrested at the instance of this witness. Mohd.Nazim and Mohd.Saleem were apprehended on 01.06.2009 after a gap of about 18 months and that too at the instance of secret informer. No robbed article was recovered from their possession or at their instance. None of the passengers in the TSR including the victims had noted down the number of the motorcycle on which the assailants had reached the spot and fled. On 01.06.2009 Mohd.Nazim and Mohd.Saleem were in possession of motorcycle bearing No. DL 3SAL 8814 which was registered in the name of the appellant. None of the witnesses deposed that it was the motorcycle which was used in the incident. Motorcycle No. DL 6SX 6352 recovered at the instance of the accused Mohd. Nasir @ Pehlwan was not taken as incriminating circumstance. After the arrest of all the accused persons on 01.06.2009, the Investigating Officer moved application for conducting TIP (Ex.PW23/A). However, the accused persons refused to participate in it.

The three others who declined to participate in the TIP were given benefit of doubt as they were not identified by the victims in the court. PW-22 (SI Ravinder Singh) got the investigation of this case on 01.06.2009 at about 09.00 A.M. It is strange that all the assailants involved in the incident of robbery who were untraceable for the last about 18 months were arrested on 01.06.2009 soon after the investigation was assigned to SI Ravinder Singh. When he had moved the application to conduct TIP, even the victims were not present in Delhi for their identification. PW-4 (Ram Kishore), PW-5 (Nema Ram Bhati), PW-6 (Sarwan Bhati) and PW-7 (Trilok) all hailed from the district Jodhpur, Rajasthan. Even after their arrest, the assailants were not shown to them for their identification. PW-8 (Maan Singh) admitted in the cross-examination that he was kept for four days at police station IP Estate and was not associated in the investigation thereafter. He did not explain as to why he was detained for four days in the police station. He further admitted in the cross-examination that he was unable to remember the exact number of persons involved in the incident as he was attentive towards his right side and did not know how many assailants were there on the left side. Since PW-8 (Maan Singh) has admitted that the occurrence lasted for about one minute only, it is highly risky to convict the appellant on the sole

identification of PW-8 (Maan Singh) after a delay of three years when he had not given any description of the culprit in his statement under Section 161 Cr.P.C. It appears coincidence that PW-2 (Omveer Sharma) admitted in the cross-examination that the appellant was known to him because he used to purchase potatoes from their shop quite sometimes ago and was operating from Shop No.87, Okhla Sabzi Mandi. The Investigating Officer recorded this address in the arrest memo. However, no investigation was carried out as to till which time the appellant carried out his business in the said premises.

4. In the light of the above discussion, I am of the considered view that the prosecution has failed to establish the appellant's involvement in the commission of the offence beyond reasonable doubt. When the other three assailants who allegedly shared common intention with the accused were acquitted on the same set of evidence, in my view the conviction of the appellant under Section 392/34 IPC only on the vague identification of PW-8 (Maan Singh) for the first time in the court cannot be sustained and is set aside. The appeal is allowed. The conviction and sentence of the appellant are set aside. The appellant be released forthwith, if not required in any other case.

5. A copy of the order be sent to Jail Superintendent, Tihar Jail.  
Copy be also sent to the accused/appellant through Jail Superintendent.  
Trial Court record along with copy of this order be sent back to the Trial  
Court.

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

**August 22, 2013**  
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