

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

+ **CRL.A. 1156/2012**

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Reserved on: 5th March, 2013
Decided on: 20th March, 2013

RAJESH @ KARAMBIR

..... Appellant

Through Mr. Ravi Chaturvedi, Ms. Geeta
Nagar, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr. Manoj Ohri, APP with SI Praveen
Attri PS Bawana.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant challenges the judgment dated 26th May, 2012 convicting him for offences punishable under Sections 392/34 IPC and Section 411 IPC and the order on sentence dated 31st May, 2012 whereby he was directed to undergo rigorous imprisonment for a period of five years and a fine of Rs. 1000/- and in default of payment of fine to undergo simple imprisonment for six months for offence punishable under Sections 392/34 IPC and rigorous imprisonment for a period of two years and a fine of Rs. 2000/- and in default of payment of fine to undergo simple imprisonment for three years for offence punishable under Section 411 IPC.

2. Learned counsel for the Appellant contends that the Appellant was arrested in another case and on the basis of disclosure statement, he has been falsely implicated in this case. No recovery has been effected from the Appellant. Further the statement of the complainant and the co-passenger is not corroborated by any public witness. Hence the Appellant be acquitted of the charges framed, or in the alternative, the Appellant who has undergone 4 years 3 months imprisonment and only 9 months imprisonment remains be released on the period already undergone.

3. Learned APP on the other hand contends that PW3, the driver of the car has duly identified the Appellant in the TIP. PW5, the co-passenger has also identified the Appellant in the Court. Robbed articles i.e. laptop and mobile phone have been recovered from the Appellant. The Appellant disclosed about the robbed articles being kept in his house and got the same recovered from there. PW6 and PW12 the employee and wife of PW5 respectively, in whose name the mobile phones were, have deposed about the mobile phones and duly identified them. The Appellant is involved in three other cases being FIR No. 560/2007 registered at PS Bawana, FIR No. 534/2009 at PS Narela and FIR No. 463/2011 at PS Hari Nagar and thus neither the appeal be allowed nor the sentence be reduced to the period already undergone.

4. I have heard learned counsel for the parties. FIR No. 548/2007 under Section 392/397/411/34 IPC and 25 Arms Act was registered against the Appellant on the complaint of Sanjay Chadha. PW3 the complainant in his statement before the Court stated that on 16th October, 2007 he along with his friend Surender Singh had gone to the factory premises of his brother at

DSIDC complex Bawana in a car when the complainant was driving the car and Surender Singh was sitting beside him. After he came out of the factory of his brother, they reached near the crossing and three persons came on a red colour motorcycle from the wrong side and stopped the same in front of their car. As the complainant stopped his car, one person got down from the said motorcycle and asked for the way. The complainant rolled down his window, the second person also reached there and switched off his car and the third person sat on the back seat of his car. The first person asked his friend Surender Singh to occupy the back seat and the complainant was asked to shift from the seat of the driver. The second person who switched off the car sat on the driver seat and told the person sitting on the back side “katta daag de”. The person sitting on the back put a “katta” on his temple and the person sitting on the driver seat told them to handover the cash and other belongings. The complainant had one mobile phone and his friend Surender had two mobile phones. Cash around 10,000- 15,000/- with the complainant and some more cash with his friend Surender along with the laptop in the dicky were handed over to them. Thereafter they were instructed to get down from the car and they drove away with the car. Their companion ran away from the spot on the red colour motorcycle.

5. During the course of investigation TIP proceedings were conducted by PW11 wherein the complainant identified the Appellant in TIP, however failed to identify Manoj Kumar. Co-convict Sanjay refused to participate in the TIP proceedings. The Appellant was also identified by the complainant in the Court. Pursuant to the disclosure, the Appellant led the Police party to his house at Bawana Road where he was living on rent and took them to the

room. The Appellant took out one laptop, one photocopy of the insurance and three Nokia mobile phones. From the disclosure of both the accused one Esteem Car bearing No. HP-03C-1113 was recovered. The insurance papers related to one Lancer car which were not relevant for the present case. The version of PW3, the complainant is duly supported by PW5 Surender Singh his co-passenger. The two mobile phones robbed from PW5 were in the name of his employee PW6 and wife PW12 who appeared before the Court and identified the same.

6. The contention of the learned counsel for the Appellant that no recoveries were made from him is incorrect. As noted above at the instance of the Appellant from his room a laptop and three mobile phones were recovered. Non-joining of the public witnesses has been explained by PW8 S.I. Bhopal Singh the Investigating Officer who stated that he made efforts to call one or two respectable persons for joining the proceedings, however none agreed. Further none of the family members of the Appellant put their signatures on the seizure memo though they were asked to do the same. As regards the contention of the learned counsel for the Appellant that the Appellant was arrested in another case and on the basis of disclosure he has been arrested, PW8 S.I. Bhopal Singh stated that the Appellant Rajesh was first arrested in FIR No. 548/2007 at PS Bawana wherein he made the disclosure regarding this case and thus he was also arrested in this case. No illegality or irregularity has been shown in the proceedings and the arrest pursuant to a disclosure in another case is permitted in law. In view of the overwhelming evidence on record and the testimony of PW3 and PW5 being duly corroborated by other evidence on record, it can be safely held that the

prosecution has proved its case beyond reasonable doubt against the Appellant.

7. As regards the alternative contention of the Appellant that he be released on the period already undergone, it may be noted that as per the nominal roll the Appellant has number of cases pending against him and he has been convicted in three other cases. In FIR No. 560/2007 under Section 394/365/34 IPC at Bawana he was awarded imprisonment for a period of five years; FIR No. 534/2009 under Section 353/186/322 IPC at PS Narela he was awarded imprisonment for 24 months and FIR No. 463/2011 under Section 324/34 IPC he was released on the period already undergone. In view of the earlier convictions, I do not find any reason to release the Appellant on the period already undergone.

8. Appeal is dismissed.

MARCH 20, 2013
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(MUKTA GUPTA)
JUDGE