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

DECIDED ON : 31st MAY, 2013

+ **CRL.A.1407/2011 & CRL.M.B.1978/2011**

MUKESH @ JURRA

..... Appellant

Through : Mr.Rajender Yadav, Advocate.

versus

THE STATE (GOVT. OF N.C.T. OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.
SI A.Singh, PS Mahindra Park.

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

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

1. The appellant- Mukesh @ Jurra challenges judgment dated 01.08.2011 in Sessions Case No.1210/2010 arising out of FIR No.88/2009 under Sections 307/394/397/34 IPC PS Mahindra Park by which he and Karan @ Palak and Deepak were convicted for committing offence punishable under Section 394 read with Section 397 IPC. Vide order dated 12.08.2011, the appellant was sentenced to undergo RI for ten years with fine ₹ 25,000/-.

2. Allegations against the appellant were that on 14.12.2009 at about 08.00 P.M. at Service Road near GTK Depot he, Karan @ Palak and Deepak in furtherance of common intention, voluntarily caused hurt to Sanjay and robbed him of ₹ 5,000/- cash, PAN Card, ATM Card of PNB Bank. It was further alleged that the appellant was armed with deadly weapon i.e knife and used it to cause injuries to Sanjay. The prosecution examined twenty witnesses to substantiate the charge. In his 313 statement, the appellant pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellant and his associates as mentioned previously and sentenced them.

3. The appellant filed CRL.M.C.No.3186/2011 to challenge the findings of the Trial Court on the issue of juvenility. In the present appeal, the appellant took the ground that he was juvenile on the date of incident.

4. The appellant- Mukesh @ Jurra was involved in FIR No.76/2009 under Sections 392/397/302 IPC PS Mahindra Park. He was convicted by the Trial Court on 14.11.2011 and by order on sentence dated 30.11.2011 was sentenced to undergo imprisonment for life with fine ₹ 2,000/- under Section 302 IPC. For offence under Section 392/397 IPC, he was sentenced to undergo RI for seven years with fine ₹ 2,000/-.

The appellant preferred CRL.A.No.202/2012 to challenge the conviction and sentence. The appellant has filed the photocopy of the judgment dated 16.04.2013 of Division Bench headed by HMJ Sanjiv Khanna. The appellant moved an application under Section 7A of the Juvenile Justice (Care & Protection of Children) Act, 2000 in the said proceedings and claimed that he was juvenile i.e. below eighteen years as on 30.11.2009, the date of commission of the offence. The Division Bench vide detailed order dated 16.04.2013 concluded that the date of birth of the appellant was 15.04.1993 as per the School Certificate issued by the school first attended. The appellant was declared juvenile on the date of the offence i.e. the night intervening 30.11.2009/ 01.12.2009. Consequently, the matter was transferred to Juvenile Justice Board. In the instant case, the date of commission of offence is 14.12.2009. Apparently, the appellant was juvenile on the date of commission of the offence.

5. In view of the findings recorded by the Division Bench of this Court in CRL.A.No.202/2012 whereby the date of birth of the appellant was accepted as 15.04.1993 and the said matter was transferred to the Juvenile Justice Board, the present appeal is accepted. The conviction and sentence recorded by the Trial Court are set aside. The

matter is transferred to Juvenile Justice Board. The appellant shall appear before the Juvenile Justice Board on 8th July, 2013,

6. The appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent to Juvenile Justice Board forthwith.

(S.P.GARG)
JUDGE

MAY 31, 2013

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