

\$-21

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

DECIDED ON : 25th JULY, 2013

+ **CRL.A. 1297/2012 & CRL.M.A. 9585/2013**

SAMEER @ SONU & ANR. Appellants

Through : Mr. Deepak Vohra, Advocate.
Appellants are present in JC.

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP.

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

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

1. Sameer @ Sonu (A-1) and Raj Kumar (A-2) challenge a judgment dated 30.03.2012 of learned Additional Sessions Judge in Sessions Case No. 122/2011 arising out of FIR No. 158/2007 PS Civil Lines by which they were convicted under Section 395 IPC and sentenced to undergo RI for five years with fine ₹ 5,000/- each.

2. Allegations against the appellants were that on 26.06.2007 at about 03.15 A.M. at Outer Ring Road near CNG Pump, Chandgiram

Akhara, Delhi they with their associates Vikram @ Ganja, Ashok and Amit committed dacoity of 28 bags of plastic raw material (plastic dana) loaded in Tempo No. DL-1LH-4864 driven by Jahangir Ali. Vikram @ Ganja was armed with a knife and it was used by him while committing dacoity. Saleem @ Khan was arrested for receiving robbed articles under Section 412 IPC. During the course of investigation, statements of the witnesses conversant with the facts were recorded. The accused persons were arrested. After completion of investigation, a charge-sheet was submitted against the appellants. The prosecution examined fourteen witnesses. In their 313 statements, the appellants pleaded false implication. After considering the rival contentions of the parties and appreciating the evidence on record, the Trial Court, by the impugned judgment, held the appellants guilty for the offence mentioned previously and sentenced them accordingly. Being aggrieved, they have preferred the appeal.

3. During the course of hearing, appellants' counsel on instructions from them (they were present in custody pursuant to production warrants) stated at Bar that they have opted not to challenge their conviction under Section 395 IPC and accept it voluntarily. He however, prayed to take lenient view as the appellants have already

undergone substantial period of sentence awarded to them and are not previous convicts.

4. I have heard the learned counsel for the parties and have examined the record. Since the appellants have not opted to challenge findings of the Trial Court on conviction under Section 395 IPC, their conviction stands affirmed.

5. The appellants were sentenced to undergo RI for five years with fine ₹ 5,000/- each. Raj Kumar's nominal roll dated 17.05.2013 reveals that he has already undergone three years, three months and eight days incarceration as on 17.05.2013. He also earned remission for four months and two days. Nominal roll further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. It is further stated that he was working as a waiter in a restaurant and is to take care of his one year old daughter. Sameer @ Sonu's nominal roll dated 18.10.2012 reveals that he has already spent two years, eight months and nine days in custody as on 18.10.2012. He also earned remission for one month and nineteen days. The period undergone has since increased to more than three years. Nominal roll further reveals that he is not a previous convict and is not

involved in any criminal case. His overall jail conduct is satisfactory. He is married and has four children to take care of them.

6. Taking into consideration these mitigating circumstances, the substantive sentence of the appellants – Sameer @ Sonu and Raj Kumar is reduced from five years to four years. Other terms and conditions of the sentence are left undisturbed.

7. Appeal stands disposed of in the above terms. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

JULY 25, 2013

tr