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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. A. 265/2016

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Judgment dated 19th April, 2016

MOHD. RABOOL

..... Appellant

Through : Mr. Smrat K. Nigam and Mr. Abhimanyu
Walia, Advocates.

Versus

STATE

..... Respondent

Through : Ms. Aashaa Tiwari, APP for the State with
Inspector Parveen Kumar, SHO, PS-
Prashant Vihar.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

Crl. M.(B) 577/2016

1. Present application stands disposed of in view of the following order
passed in the main appeal.

2. Application stands disposed of.

CRL. A. 265/2016

3. Present appeal has been preferred by the appellant under Section 374
read with Section 482 of the Code of Criminal Procedure impugning
the judgment dated 28.01.2016 whereby the Additional Sessions
Judge-04 (North), Rohini Courts, Delhi in Session's Case No. 154/1
held the appellant guilty for the offence punishable under Sections 411
of the Indian Penal Code and vide order dated 18.02.2016 sentenced
him to undergo simple imprisonment for three years and to pay a fine
of Rs.2,500/- and in default of payment of fine simple imprisonment.

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for two months for the offence under Section 411 of the Indian Penal Code.

4. The prosecution case in a nutshell is that on 02.02.2010 at about 2:00 p.m., Raju, domestic help of Sh. Praveen Thakur, husband of the deceased, came to Smt. Anjali and informed her that he had come to collect the lunch for Praveen Kumar but Smt. Mamta Thakur (since deceased) was not opening the door despite ringing the doorbell on which Smt. Anjali sent her maid servant to call the house of Sh. Praveen Thakur on intercom. After sometime, Smt. Anjali was informed by her maid that intercom had been picked up by male person who told her that boy should be sent after 15-20 minutes to collect the lunch. On this Smt. Anjali got suspicious and rushed to the house of Sh. Praveen Kumar and found blood lying on floor of drawing-cum-dining room and also found the dead body of Smt. Mamta Thakur lying in a pool of blood in the bedroom. Suddenly, accused Gulshan Taneja came from the back and locked her inside the bathroom. After few minutes, Kumari Vidhi Thakur, daughter of Sh. Praveen Kumar came inside the house and opened the door of the bathroom. Police was called at the spot. It was revealed that cash amount of Rs.8,00,000/- and jewellery articles had been robbed from the house. One blood stained knife was found lying beneath the bed in the bedroom. Another knife having no blood stain was also found below the sofa in the drawing room. During investigation, on 05.02.2010 Special Staff arrested the accused Mohd. Rabool from Rohini, Sector-1, Delhi who made a disclosure that on 02.02.2010, he along with co-accused Gulshan Taneja went to Friends Tower Apartment, Sector-9, Rohini, Delhi. He remained present

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outside the said apartment whereas co-accused Gulshan Taneja committed the crime. Two gold bangles and cash amount of Rs.41,940/- were recovered from the accused Mohd. Rabool. On an secret information accused Gulshan Taneja was also apprehended from the Patna Railway Station, Patna.

5. To bring home the guilt of the accused and to prove its case, the prosecution examined 33 witnesses in all. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein he reiterated his innocence and examined one witness in his defence.
6. Mr. Nigam, learned counsel for the appellant at the outset submits that he has instructions not to press the present appeal on merits by which he has been convicted under Section 411 of the Indian Penal Code and to contest the quantum of sentence, which has been awarded to him; that out of the sentence of three years awarded to the appellant, he has already undergone two years three months and twelve days as on the date of filing of the appeal, besides he has earned remission; that the appellant belongs to a poor family and he is the only bread winner of his family; that the appellant is a married man and has three minor children (two daughters and one son) with nobody to support the family; that the appellant is a first-time offender and has no criminal background; that so far as sentence of three years is concerned, the same is harsh and disproportionate to the guilt of the appellant and hence, leniency may be shown to the appellant by imposing the sentence already undergone by him.
7. Per contra, Ms. Aasha Tiwari, learned counsel for the State contends that the appellant has committed an offence under Section 411 of the

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Indian Penal Code by receiving stolen goods knowingly which was looted by accused Gulshan Taneja after committing a murder, therefore, no leniency may be shown to the appellant so far as imposition of sentence is concerned.

8. The appellant has been convicted under Section 411 Indian Penal Code, which reads as under:

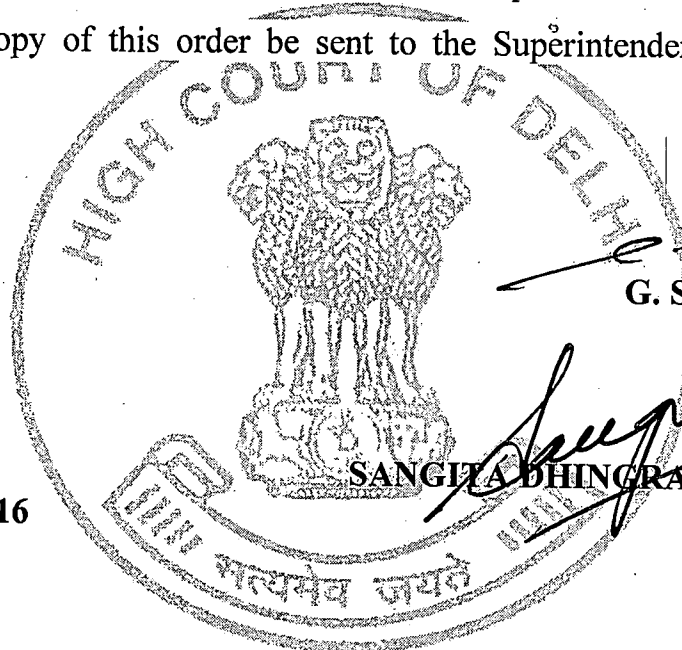
"411. Dishonestly receiving stolen property -

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

9. The Trial Court has returned the finding against the appellant after proper appreciation of the evidence available on record. The pieces of evidence ultimately connecting the appellant with the partly robbed articles i.e. two bangles belonging to the deceased and cash amount of Rs.41,940/- have been seized from his possession. These bangles were identified by PW5 Praveen Thakur during the Test Identification Parade as belonging to the deceased. Hence, we find no reason to interfere in the impugned judgment. Moreso, appellant also does not wish to challenge the same.
10. So far as the aspect of sentence is concerned, as per the nominal roll of the appellant, the appellant has already spent two years three months and twelve days in incarceration besides remission earned. The appellant is a young man aged about 36 years having the entire responsibility of his family including three minor children. The appellant has a clean antecedent and is not involved in any other criminal case. His overall jail conduct is satisfactory. Keeping in view the totality of the facts and circumstances of the case, we are of the

considered view that the interest of justice shall be served if the sentence awarded to the appellant is reduced to that of the period already undergone. Accordingly, the sentence awarded to the appellant under Section 411 of the Indian Penal Code is reduced to the period already undergone by him and also to pay a fine as directed by the Trial Court.

9. Resultantly, the present appeal is partly allowed. The appellant is in jail. He shall be released forthwith unless required in some other case.
10. Let a copy of this order be sent to the Superintendent, Tihar Jail, Delhi.



G. S. Sistani
G. S. SISTANI, J

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SANGITA DHINGRA SEHGAL, J

APRIL 19, 2016
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