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

% *Date of Judgment: 07.10.2015*

+ CRL.A. 919/2013  
VEERU

..... Appellant  
Through Mr.Jivesh Tiwari, Advocate.

versus

STATE

..... Respondent  
Through Mr. Tarang Srivastava, APP for  
the State along with SI Chhattar  
Singh.

+ CRL.A. 1379/2013  
VINOD SHARMA @ LALLU

..... Appellant  
Through Mr.Naveen Yadav, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent  
Through Mr. Tarang Srivastava, APP for  
the State along with SI Chhattar  
Singh.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

**INDERMEET KAUR, J.** (Oral)

1        These appeals are directed against the impugned judgment and order on sentence dated 23.05.2013 and 04.06.2013 respectively wherein appellant Veeru and Vinod Sharma @ Lallu have been convicted under Sections 392/34 of the IPC and each of them has been sentenced to undergo RI for a period of 4 years and to pay fine of Rs.3,000/- and in default of payment of fine, to undergo SI 3 months.

2        Nominal rolls of both the appellants have been requisitioned. Nominal roll of appellant Veeru reflects that as on date he has undergone incarceration of 3 years and 2 months which includes the remission earned by him. His jail conduct is satisfactory. Nominal roll of co-convict Vinod Sharma @ Lallu reflects that as on date, he has undergone incarceration of 2 years and almost 11 months including remission. His jail conduct is also satisfactory.

3        At the outset, learned counsel for the appellants submits that the conviction of the appellants is not being challenged on merits but keeping in view the period of incarceration suffered by each of them and they both being young in years and being the first time offenders and no other criminal antecedents, they be released on the period already undergone by them. This submission of the learned counsel for the

Crl. Appeal Nos. 919/2013 & 1379/2013 Page 2 of 5

appellants is noted.

4 The version of the prosecution was based on the testimony of the complainant Amrinder Kumar Yadav who had taken lift in a car in which four boys aged 25-26 were sitting. The complainant was sitting on the rear seat and when the car had reached Brittanica Chowk, one boy sitting on the back seat put a khurki on the neck of the complainant; the other person had caught the complainant's neck. The complainant was searched and his Motorola mobile phone was taken from his pocket as also Rs.1,500/- in cash and a gold chain. It was on the basis of the aforementioned complaint that the present FIR had been registered and charge-sheet had thereafter been filed. Three of the accused persons were arrested which included the present appellants. They had all been arrested after the date of the incident. TIP had been ordered but none had agreed to participate which had led to an adverse inference being drawn against them.

5 Admittedly the two appellants were not the persons who had used the knife; that is why their conviction was founded under Section 392/34 of the IPC. Before the Trial Court, an argument had been propounded by the learned counsel for the appellants that they have been falsely roped

in and their identification for the first time in Court is not a good identification considering the fact that the complainant was not known to them and they having been arrested later on; they had refused TIP for a valid reason and the finding returned by the Trial Judge that TIP proceedings are a substantive piece of evidence is an incorrect proposition as it is not a substantive piece of evidence and only a corroborative piece of evidence.

6 Noting the aforementioned discrepancies as had been argued before the Trial Judge and the finding of the Trial Judge that refusal to participate in TIP is a substantive piece of evidence which is not a correct proposition as refusal to participate in TIP and the subsequent drawing of an adverse inference can only be treated as a corroborative piece of evidence but noting the further submission of the learned counsel for the appellants that the appeals are not challenged on merits and the period of sentence already suffered by each of the appellants (who are both admittedly in the age group of 25-26 years) and they having no other criminal background, this is a fit case to hold that the period of incarceration already suffered by each of the appellants be treated as the sentence imposed upon them.

7       Accordingly, subject to payment of fine, both the appellants be  
released forthwith, if not required in any other case.

8       Appeals disposed of in the above terms.

**INDERMEET KAUR, J**

**OCTOBER 07, 2015**

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