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

Date of Decision: 7th May, 2015

+CRL.A. 1610/2013 & CrI.M.B.11292/2014 (for releasing appellant on sentence already undergone)

ABRAR S/o SH. BABU Appellant

Through: Mr.N.R.Nariman, Advocate

versus

STATE NCT OF DELHI Respondent

Through: Mr.O.P.Saxena, Additional Public
Prosecutor for the State.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The appellant Abrar in the instant appeal has challenged his conviction under Section 392/34 and 397 IPC and sentence of 3 years rigorous imprisonment and fine of Rs.2000/- in default, to undergo simple imprisonment for three months under Section 392 IPC and imprisonment for 7 years and fine of Rs.3000/- in default to undergo simple imprisonment of three months under Section 397 IPC awarded in sessions case No. 16/11 arising out of FIR No. 249/10 Police Station Kashmere Gate imposed by the learned Additional Sessions Judge, Tis Hazari Courts, Delhi.

2. Succinctly stated, the case of prosecution is that on 22.12.2010 complainant Ashok Kumar was going from Old Delhi Railway Station to

ISBT Kashmere Gate and when he reached near wine shop Kashmere Gate four persons robbed him of his purse and bag on the point of knife and countrymade pistol. When he raised alarm, public persons gathered there and apprehended three accused with the help of police officials. From the possession of accused Abrar one countrymade pistol and two live cartridges were recovered while knife was recovered from accused Riyasat Ali. On receipt of information regarding quarrel, DD No. 29-A was recorded which was assigned to SI Ravinder (PW-10) who reached the spot and recorded the statement of complainant and got the FIR registered. The knife and countrymade pistol were seized. Accused persons were arrested. Fourth accused could not be apprehended. As such, chargesheet was submitted against accused Abrar, Riyasat Ali and Shankar. All the three accused persons were charged for the offence under Section 392/397/34 IPC. Accused Abrar and Riyasat Ali were further charged for the offence under Section 25/54/59 of Arms Act. All the accused pleaded not guilty and claimed trial. During the course of trial, accused Riyasat Ali expired and proceedings abated against him vide order dated 05.06.2013. The fourth accused Charanjeet alias Daboo was acquitted vide order dated 16.08.2011. In order to substantiate the charge, prosecution relied upon as many as 10 witnesses. The case of accused was one of denial simplicitor and it was alleged that they were falsely implicated in this case. Challenging the impugned judgment, the present appeal has been preferred by accused Abrar.

3. The Trial Court judgment has been assailed by learned counsel for the appellant *inter alia* on the following grounds:-

(i) No Test Identification Parade of the accused was conducted. The

complainant was an old person and in fact one of the accused has been acquitted because the complainant could not identify him. Reliance was placed on *Dana Yadav alias Dahu & Ors. vs. State of Bihar* (2002) 7 SCC 295 and *Kanan & Ors. vs. State of Kerala* (1979) 3 SCC 319;

(ii) No public persons were joined despite the fact that the public had apprehended the accused and had informed the police persons. The presence of public at the spot has been admitted by PW-7, PW-9 and PW-10. Therefore, non-joining of independent witnesses is fatal to the case of prosecution. Reliance was placed on *Pradeep Narayan Madgaonkar & Ors. vs. State of Maharashtra* (1995) 4 SCC 255 .

(iii) No finger prints were taken from the pistol as admitted by PW-8, PW-9 and PW-10 which cast a doubt on prosecution version. Reliance was placed on *State of NCT of Delhi vs. Rajiv & Anr.* 2012 SCC OnLine Del 4351.

(iv) As per the case of prosecution, the accused persons were given beatings by the public and as such, they were sent to hospital for their medical examination however no such record has been produced nor their MLC has been filed. Reliance was placed on *State vs. Ashok Kumar Jain* 2014 SCC OnLine Del 4633.

(v) No daily diary entry has been proved regarding departure or arrival entry of any of the police officials.

(vi) The bag and stolen money was not recovered.

(vii) Recording of statement under Section 313 Cr.P.C is not a mere formality. The accused in his statement recorded under Section 313 Cr.P.C disclosed the reasons for his false implication in the case. Reliance was placed on *Chander Dev Rai vs. State (NCT of Delhi)* 2009 (107) DRJ 305

(DB).

(viii) In case the conviction of the appellant is upheld then the appellant be released on the period already undergone as he is suffering from last stage of AIDS. His conduct in jail is satisfactory. Reliance was placed on *Crl.A.No.785/2004 Kishan @ Bablu vs. The State of N.C.T of Delhi* and *Crl.A.No.848/2004 Shiv Raj @ Swaraj @ Suraj vs. State of Delhi*.

4. Per contra, learned Public Prosecutor for the State submitted that all the submissions raised by learned counsel for the appellant were raised before the learned Trial Court and were duly considered. Since the accused were apprehended at the spot there was no requirement of law for conducting their Test Identification Parade. Non-joining of public witnesses is not fatal as besides the police officials there is the testimony of the complainant who had no axe to grind to falsely implicate the accused in this case. The case property could not be recovered since one of the accused managed to flee away from the spot alongwith the robbed articles however mere non-recovery is of no consequence. The appellant has been convicted by a well reasoned judgment which does not call for interference. Furthermore, since the minimum sentence prescribed under Section 397 IPC is 7 years, it cannot be reduced to the period already undergone as such, appeal is liable to be dismissed.

5. I have given my considerable thoughts to the respective submissions of learned counsels for the parties and have perused the record.

6. Before considering the rival submissions of learned counsels for the parties, it will be in fitness of things to have a narration of the material witnesses examined by the prosecution.

7. The most material witness is PW-1 Sh.Ashok Kumar, the

complainant. In the initial complaint Ex.PW1/A made by him to the police at the earliest available opportunity he has unfurled that he is resident of Hoshiarpur, Punjab where he is running a shop of hardware. On 21.12.2010 he had came from Punjab for some personal work. On 22.12.2010 he was going to ISBT via Old Delhi on foot. At about 10.15 pm when he reached near a liquor shop, Kashmere Gate Ritz building four boys gheroed him from back and threatened him to give whatever he has failing which, they will kill him. When he tried to raise alarm, one of them put a pistol on his right side, the other boy put a knife on left side, the third person caught hold of his hands from back while the fourth snatched his bag and removed his purse. His bag was containing clothes and purse was containing Rs.2000/- and some papers. When they tried to run away with the looted articles, some public persons had stopped and they apprehended three boys while the fourth person managed to escape with his bag and purse. In the meanwhile, police officials also came. Thereafter PCR van also came. On enquiry, name of the three apprehended boys were revealed as Abrar who put pistol, Riyasat Ali who threatened him with knife and the third person as Shankar who caught his hand from behind. He also gave description of the fourth boy as aged about 30-35 years, wheatish complexion having height of 5'7" whom he could identify, if shown to him. When the witness appeared in the Court, he reiterated the incident and also identified all the three accused and specified the role played by them. He proved the statement Ex.PW1/A made to the police. He further deposed that from the possession of accused Abrar one countrymade pistol and two live cartridges Ex.P-3 was recovered which were seized vide memo Ex.PW-1/D. Knife was recovered from Riyasat Ali which was seized vide memo Ex.PW-1/E.

8. PW-7 Head Constable Yogender No.341/N alongwith Head Constable Yogender No.766/N was on duty in search of proclaimed offenders in the area of police station Kashmere Gate. On hearing the cries of one person from the side of wine shop Kashmere Gate, they went towards the wine shop and found Ashok Kumar crying in loud voice and exhorting the words “Use Loot Liya Hai”. Some public persons also gathered. On the pointing of Ashok Kumar they ran towards the persons who were running after committing the incident and after chasing them upto a small distance, they apprehended three persons with the help of public persons. In the meantime, PW-8 Constable Sachin who was the Incharge of beat also reached there. He overpowered accused Abrar while Head Constable Yogender No.766/N overpowered accused Riyasat Ali and accused Shankar was apprehended by Constable Sachin with the help of public and complainant Ashok Kumar. However, their fourth associate whose name was revealed as Charanjeet alias Daboo managed to flee away from the spot alongwith the purse containing cash amount and bag of the complainant. On formal search of accused Abrar, one countrymade pistol and one live round was recovered while from search of accused Riyasat Ali, one dagger was recovered. Nothing was recovered in the formal search of accused Shankar. Someone informed PCR at 100 number as such, PW-5 Head Constable Jagelu Ram, incharge of PCR Van Sugar-8 reached the spot where he met Ashok who informed him about his being robbed of Rs.2000/- cash at the point of Katta and knife. He further deposed that public persons were also present and the three persons apprehended by the public who had committed the offence were also present there. He was also informed by Ashok that one person with his bag and cash had run away from the spot. The three accused

persons were taken to Aruna Asaf Ali Hospital for their medical examination in the same PCR Van and they were dropped there and thereafter he came back.

9. On receipt of DD No.29-A regarding some quarrel near Tikona Park, PW-10 SI Ravinder Singh alongwith Head Constable Shailesh reached near Tikona Park in front of wine shop where he found a crowd of people alongwith few police officials and three persons had been apprehended by the police with the help of public persons. Thereafter he carried out the investigation and recorded the statement of the complainant, seized the countrymade pistol and knife, prepared the site plan and arrested the accused persons.

10. The submissions of learned counsel for the appellant that no Test Identification Parade of the accused was conducted and the complainant being an old person could not identify one of the accused which resulted in his acquittal therefore non conducting of Test Identification Parade of even this accused is fatal, same is devoid of merit. None of the judgements *Dana Yadav (supra)* or *Kanan (supra)* are applicable to the facts of the case in as much as observed in *Kanan (supra)*, the idea of holding Test Identification Parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. Further, in *Dana Yadav (supra)*, law relating to identification of accused was analysed thus:

“38. In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for

holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto cannot be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a

rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

11. Things are entirely different in this case in as much as there is ample evidence on record to prove that the accused was apprehended at the spot by the police officials with the help of public. That being so, once the accused were apprehended at the spot, there was no question of conducting his TIP.

12. Although, it is true, that according to the prosecution the police officials succeeded in apprehending three accused with the help of public persons who had gathered at the spot, however, it has come in the testimony of the police officials that none of the public persons agreed to join the police proceedings. It is a common experience that public persons are generally reluctant to join police proceedings. There is general apathy and indifference on the part of public to join such proceedings. This position of law was reiterated in *Aslam & Ors. vs. State, 2010 III AD (Delhi) 133* where it was observed by this Court that reluctance of the citizens to join police proceedings is well known and needs to be recognized. It cannot be disregarded that public does not want to get dragged in police and criminal cases and wants to avoid them because of long drawn trials and unnecessary harassment. In *Manish vs. State, 2000 VIII AD SC 29* also it was held that we cannot be oblivious to the reluctance of the common man to join such raiding parties organized by the police, lest they are compelled to attend police station and Court umpteen times at the cost of considerable

inconvenience to them, without any commensurate benefit.

13. Substantially, similar plea was taken in ***Appabhai and Anr. vs. State of Gujrat*** AIR 1998 SC 696 where it was held as under:-

“11....It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”

14. Hon’ble Supreme Court in ***Krishna Mochi vs. State of Bihar***, (2002) 6 SCC 81 in this regard held as under:-

“It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power. A witness may not stand the test of cross-examination which may sometimes be because he is a bucolic person and is not able to understand the question put to him by the skilful cross-examiner and at times under the stress of cross-examination, certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored. These days it is not difficult to gain over a witness by money power or giving him any other all urence or giving out

threats to his life and/or property at the instance of persons, in/or close to powers and muscle men or their associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent.”

15. In view of the foregoing, although the public persons on hearing the alarm of complainant Ashok managed to apprehend three of the accused persons but did not agree to join the police proceedings but that itself is not fatal to the case of prosecution, more particularly, in the instant case, because besides the police officials whose testimony has been consistent, cogent and reliable, there is the independent witness i.e., complainant Ashok who has substantiated the case of prosecution and given a vivid account of the entire incident specifying the role of each and every accused person. Absolutely no enmity, ill will or grudge has been alleged against the complainant for which reason he would falsely implicate them in this case.

16. Moreover, the testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down as held in ***Karanjit Singh vs. State (Delhi Admn.)*** 2003 5 SCC 291, ***C.Ronald & Anr. vs. Union Territory of Andaman & Nicobar Islands***, (2001) 1 SCC (Crl.) 596. In ***Sunil Clifford Daniel vs. State of Punjab***, (2012) 11 SCC 205, Apex Court referred to ***State of Govt. of NCT of Delhi vs. Sunil and Anr.***, (2001) 1

SCC 652, wherein Court held as under:-

“20.....But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

17. *Pradeep Narayan (supra)* relied upon by learned counsel for the appellant was a case under Terrorist and Disruptive Activities (Prevention) Act, 1987 where arms and ammunition were alleged to have been recovered from the possession of the accused persons, two of the panch witnesses were joined but they were found to be wholly untrustworthy. The fact that the police officers joined them in the raid created doubt about the fairness of the investigation and the manner of recording confessional statements rendered it unreliable as such, the appellants were granted benefit of doubt. In this case also Hon’ble Supreme Court observed that the evidence of police witnesses cannot be discarded merely on the ground that they belong to the

police force and are, either interested in the investigation or prosecuting agency but as a matter of prudence their evidence required to be subjected to strict scrutiny. On the factual matrix of that case, the investigation was not found to be completely fair and, therefore, accused were acquitted. But in the instant case, the testimony of the police officers find substantial corroboration from the complainant himself who is a totally independent witness and is rather the victim and had no axe to grind to falsely implicate the accused persons in this case. That being so, mere non-joining of any independent witness is no ground to disregard the otherwise trustworthy testimony of the complainant duly corroborated by the police witnesses.

18. Non-lifting of finger prints from the pistol does not cast any dent on prosecution case. In *Rajiv (supra)* this was not the solitary ground for acquittal of the accused. This was considered to be one of the factors coupled with various other circumstances which went in favour of the accused for giving the verdict of acquittal.

19. Non placing of MLC of any of the accused persons is again immaterial as it has come on record that when the accused persons were apprehended they were given beatings by the public, therefore, Head Constable Jagelu Ram took them to Aruna Asaf Ali Hospital for their medical examination and dropped them there. That being so, even if the MLC or any record of their taking to hospital is not placed on record same is of no consequence. In *Ashok Kumar Jain (supra)* also non-production of MLC of the accused was not the only ground for his acquittal. In that case keeping in view the improvement in the version of the complainant, non-recovery of weapon of offence, non-recovery of other articles from the spot were also considered for acquitting the accused. However, in the instant case

not only the fact that the accused were apprehended at the spot, even the countrymade pistol and live cartridges were recovered from them which were seized at the spot and proceedings were conducted.

20. Non filing of any daily diary regarding departure or arrival entry does not throw any doubt on the testimony of the police officials. PW-7 and PW-9 were on duty in search of proclaimed offenders in the area of police station Kashmere Gate while PW-8 was a beat constable of the area who had also reached at the spot whereas PW-5, Incharge of PCR Van reached the spot on receipt of call regarding quarrel. Similarly PW-10 Investigating Officer also reached the spot on receipt of DD No.29-A.

21. Non-recovery of bag and stolen money belonging to the complainant cannot come to the aid of this appellant in as much as it is the consistent case of prosecution that although three accused were apprehended at the spot but the fourth accused had managed to escape alongwith the bag and purse of the complainant. He could not be apprehended at that time. It seems that he was arrested later on. That being so, non-recovery of bag and stolen money is not fatal to the prosecution case.

22. As regards recording of statement of accused under Section 313 Cr.P.C, although it is true as held in *Chander Dev Rai (supra)* that examination of accused under Section 313 Cr.P.C is not a mere formality and the answers given by the accused have a practical utility. The statement under Section 313 Cr.P.C, apart from affording an opportunity to the accused to examine incriminating circumstances against him, also helps the Court in appreciating the entire evidence adduced in the court during the trial. It is permissible for the Court to rely on a portion of the statement of accused inconsistent with other evidence against him led by the prosecution,

but his statement has to be considered in the light of the evidence adduced by the prosecution and weighing his statement with the probability of the case. The only plea taken by the accused in his statement under Section 313 Cr.P.C is that he was brought in the morning of 22.12.2010 from his house and no pistol and cartridges were recovered from his possession. However, except for taking such a bald plea no evidence has been led by him to prove that he was brought in the morning of 22.12.2010 from his house. On the other hand, there is voluminous evidence available on record to show that he was apprehended at the spot after he alongwith his associates robbed the complainant of his purse and bag on the point of pistol which was recovered from his possession. Testimony of the complainant was sufficient to establish the case of prosecution against the accused however, in the instant case, the same find corroboration from the testimony of the police officials. As such, the learned Trial Court rightly convicted the appellant for offence under Section 392/34 IPC and 397 IPC.

23. Coming to the quantum of sentence, learned counsel for the appellant submitted that the appellant is suffering from AIDS as such, he be released on the period already undergone. Reliance was placed on ***Kishan @ Bablu and Shiv Raj @ Swaraj @ Suraj*** where the appellants did not contest the appeal on merits but prayed for a lenient view for releasing them on the period already undergone which was allowed. The appellant has been convicted under Section 392/34 IPC and 397 IPC. For the sake of convenience, Section 392 and 397 IPC are reproduced as under:-

392.Punishment for robbery.-Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—
If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

24. A perusal of Section 392 IPC reflects that the imprisonment may extend to 10 years and fine. As such, a discretion is vested in the Court to impose a sentence lesser than 10 years. That being so, the learned Additional Sessions Judge awarded sentence of 3 years and fine under Section 392 IPC. However Section 397 IPC unlike Section 392 IPC does not confer any discretion upon the Court to award a sentence less than 7 years. There is no enabling provision to Court for reduction of sentence by giving special or adequate reasons. Although in the case cited by learned counsel for the appellant a single Judge of this Court has reduced the sentence of the appellant to the period already undergone when the appeal was not contested on merits, however, to my mind, the plea as to reduction of sentence is not tenable. For holding this view, I am fortified by ***Mohinder vs. State of Haryana*** 2013 CrL.L.J 3662. That was a case under Section 18 of Narcotics and Psychotropic Substances Act where the minimum sentence was 10 years rigorous imprisonment and fine. It was pleaded that the appellant was a rustic villager, imposition of sentence of 10 years is on higher side. Repelling the contention, it was held by Hon'ble Supreme Court that in terms of sub-Section (b) of Section 18, imprisonment shall not be less than 10 years. There is no enabling provision to the Court for reduction of sentence by giving special or adequate reasons in the statute. That being so, the request of learned counsel for the appellant was rejected. Under Section 397 IPC also, there is no enabling provision for reduction of sentence by

giving special or adequate reasons. That being so, the request of learned counsel for the appellant for reducing the sentence to the period already undergone deserves rejection and is accordingly rejected.

25. In view of the foregoing reasons, the appeal being devoid of merit is dismissed. Pending applications also stand disposed of.

Trial Court record be sent back along with the copy of the judgment.

Appellant be informed through Superintendent Jail.

(SUNITA GUPTA)
JUDGE

MAY 7, 2015
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