

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

% *Date of decision : May 20, 2016*

+ **CRL.A. 1743/2014**

RAJPAL @ HATHI @ SONU Appellant
Represented by: Mr.Rajender Chhabra, Adv.
DHCLSC.

versus

STATE Respondent
Represented by: Mr.Ravi Nayak, APP.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

1. By the present appeal the appellant challenges the impugned judgment dated 4th September, 2014 convicting him for the offence punishable under Sections 365/397 IPC in FIR No.110/2013 registered at PS Kashmere Gate and the order on sentence dated 5th September, 2014 directing him to undergo Rigorous Imprisonment for a period of two years and to pay a fine of ₹5,000/-; in default to undergo Simple Imprisonment for a period of one month for the offence punishable under Section 365 IPC and Rigorous Imprisonment for a period of seven years and to pay a fine of ₹5,000/-; in default to undergo Simple Imprisonment for a period of one month for the offence punishable under Section 397 IPC.

2. DD No.10A was received in the intervening night of 9th/10th May, 2013 at 3:15 AM informing that a red Yamaha motorcycle bearing No.8881 has been taken away from House No.1827/6, Priyadarshini Colony, Yamuna

Bazar. This DD was handed over to SI Hawa Singh, PW-5 who along with Constable Sonu, PW-6 reached the spot at 3.30 AM where Sanjay PW-3 informed him that around 3:00 AM, Rajpal @ Hathi came to his house and stated that PW-3 along with appellant's brother want to get the appellant apprehended by giving secret information to the police to which PW-3 replied that they have neither made any complaint nor given any secret information to the police. Rajpal got furious and asked him to give the keys of the motorcycle or come along with him on the motorcycle. When PW-3 refused, Rajpal snatched the keys of the motorcycle Yamaha Fazer bearing No.DL -S6 M-8881 of red colour and threatened to kill him by pointing the knife if PW-3 tried to follow him. When PW-3 asked Rajpal as to where he was taking the motorcycle, Rajpal told him that he will give back his motorcycle in the morning. PW-3 also stated that since Rajpal had previously threatened to get him involved in a false criminal case so he was afraid that Rajpal might use the motorcycle for some crime and get him involved in a criminal case. Therefore, he informed the police so that he can get his motorcycle back and legal action be taken against the appellant. On the basis of this statement, FIR No.110/2013 under Sections 392/397 IPC was registered. On 15th May, 2013 the motorcycle was seized and the crime team reached the spot and carried out inspection of the motorcycle. On 19th May, 2013 Rajpal was apprehended from Amritsar along with his sister-in-law Ranjita, PW-7. The keys of the motorcycle were recovered from the possession of Rajpal.

3. The police recorded the statement of PW-7 Ranjita under Section 161 Cr.P.C. and also her statement was recorded under Section 164 Cr.P.C. by the learned Metropolitan Magistrate. Charges were framed against the

appellant under Sections 365/397 IPC. Statements of witnesses were recorded and the appellant has been convicted for offences under Sections 365/397 IPC.

4. Learned counsel for the appellant contended that FIR was lodged at the behest of Sanjeev who is the brother of the appellant since the appellant and Sanjeev were having property dispute. Sanjeev in conspiracy with the complainant Sanjay who was his tenant foisted a false case against the appellant. The Learned Trial Court failed to notice the contradictions in the statement of Bhushan Kumar Nayak, PW-4. The Learned Trial Court failed to appreciate that it is not possible for the appellant to drive the motorcycle with a knife in his hand. Furthermore, the alleged weapon was not recovered during investigation, thus creating a doubt in the prosecution story. No finger/palm/chance print of the appellant tallied with the prints on the motorcycle. Presence of Bhushan Kumar Nayak, PW-4 at the relevant time was highly doubtful as PW-3 Sanjay stated that PW-4 was standing downstairs and the appellant forced him to sit on the motorcycle and went away. However, PW-4 stated that the appellant had come to him and told him to come with him.

5. Learned APP for the State on the other hand contends that both PW-3 and PW-4 are victims. Information was sent to the Police immediately. Rajpal absconded after the incident.

6. Sanjay, PW-3 deposed in sync with the statement made before the police, Ex.PW-3/A. He further stated that one boy namely Bhushan, PW-4 was standing downstairs and Rajpal forced him to sit on the motorcycle. He also stated that the motorcycle was registered in the name of his brother-in-law Manoj, PW-2 who had given him to use. In his cross-examination PW-

3 denied to having seen the knife in the hand of the appellant. PW-3 denied the suggestion that he along with the brother of the appellant namely Sanjeev falsely implicated the appellant in the present case as Rajpal was having a property dispute with his brother.

7. Bhushan Kumar Nayak, PW-4 stated that on 9th May, 2013 at about 2:30 to 3:00 AM after hearing some loud noise he came out in the gali and saw the appellant. Rajpal asked him to sit on the motorcycle without raising any alarm and threatened to kill him by showing a knife. Throughout the night, Rajpal drove in the streets of the Delhi and towards Jaipur Highway side and in the early morning Rajpal dropped him at a lonely place ahead of Dhaula Kuan. Rajpal snatched the SIM of PW-4's mobile phone. During the cross-examination this witness stated that Rajpal dropped him near the hospital on Gurgaon road.

8. We need not go into the testimony of Ranjita PW-7 for the reason the charges framed against Rajpal were for offences under Section 365/397 IPC. As regards the offence punishable under Section 365 IPC is concerned in view of the deposition of Bhushan PW-4 who deposed about him being kidnapped after threatening and having been dropped after complete night's drive the offence of kidnapping punishable under Section 365 IPC is made out. The only contradiction pointed out in the statement of Bhushan PW-4 is that in his deposition he stated that he had being dropped at a lonely place ahead of Dhaula Kuan whereas in his statement under Section 161 Cr.P.C. he stated that he was dropped on Delhi Jaipur Highway. The said contradiction is not material to discredit the testimony of Bhushan for the reason the information was lodged immediately when Bhushan was taken away by Rajpal.

9. As regards the offence punishable under Section 397 IPC is concerned we note that Sanjay PW-3 stated in his examination-in-chief that Sanjay had knife in his hand. However, in his cross-examination Sanjay admitted that when the motorcycle was taken he had not seen the knife and Rajpal did not threaten Sanjay with knife while robbing the motorcycle. Thus though offence under Section 397 IPC is not made out as its ingredients are not fulfilled, however Rajpal is liable to be convicted for offence punishable under Section 392 IPC. The conviction of Rajpal is thus modified for offence punishable under Section 365/392 IPC.

10. As per the nominal roll Rajpal has undergone 3 years 4 months of imprisonment. The sentence awarded for offence punishable under Section 365 IPC has already been undergone. Since Rajpal has been acquitted for offence punishable under Section 397 IPC which provides for a minimum sentence of 7 years rigorous imprisonment, the sentence of Rajpal for the offence punishable under Section 392 IPC is modified to the period already undergone. Superintendent Tihar Jail is directed to release Rajpal forthwith if not required in any other case.

11. Appeal is disposed of.

12. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

13. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 20, 2016
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