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

% *Date of order: June 07, 2017*

+ **CRL.A. 425/2014 & Crl. M(B) 1011/2016**

KHOKHAN

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae

versus

STATE

..... Respondent

Through: Ms. Meenakshi Chauhan, Addl.
Public Prosecutor for State with SI
Sachin Kumar, Police
Station. Amar Colony

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

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The challenge in this appeal is to the impugned judgment of 24th January, 2014 vide which appellant has been held guilty for the offence punishable under Section 392/34 of IPC and under Section 397 of IPC. Although appellant was charged for the offence under Section 411 of IPC but trial court has chosen not to hold him guilty for the offence under Section 411 of IPC as appellant already stands convicted for the serious

offence under Sections 397/34 of IPC. Vide impugned order on sentence of 11th February, 2014 appellant has been sentenced to rigorous imprisonment for seven years with fine of ₹10,000/- for the offence punishable under Section 397/34 IPC with default clause.

The facts as noted in the impugned judgment are as under:-

"I am residing at address mentioned above i.e. C-42, Dayanand Colony, 1st Floor along with my parents. I am working with GE company situated at Sector 43, Gurgaon. Today i.e. 07.12.12, I was returning to my house from my office. At about 8.00 pm, my colleague dropped me near Flyover Modi Mill. I was coming towards my house on foot, having one bag containing laptop make DELL on my shoulder. At about 8.30 pm, when I reached near bus stand on Captain Gaur Marg, C-Block, East of Kailash, two boys came from my behind. One of them was Khokan (accused), who was a having a chhura with him. He put that chhura on my neck and threatened to kill, if I raise an alarm. His associate snatched my laptop, my jacket and cash. Accused Khokan snatched my mobile phone. In between, I saw a police van coming towards us. I got it stopped by raising cry. Both of accused tried to flee away but I as well as those police persons succeeded in overpowering one of them i.e. accused Khokan. Other accused fled away along with my valuables described above. I can identify him, if shown to me."

While relying upon the evidence of complainant-Abhinav Gupta (PW-1), ASI Ram Kishan (PW-4) and ASI Subhash Chand (PW-9),

appellant has been held guilty while negating appellant's stand of false implication. Appellant had not chosen to lead any evidence in his defence.

In pursuance to the production warrant issued against appellant, he had appeared before the Court on the last date of hearing and his Nominal Roll was taken on record and this case was adjourned for today to obtain the trial court record.

With the assistance of learned Amicus Curiae counsel and learned Additional Public Prosecutor for the respondent-State, the impugned judgment and order on sentence as well as the trial court record is perused. The precise submission of learned Amicus Curiae counsel for appellant is that prosecution version is improbable as no prudent person would believe that such a serious incident would take place when PCR van was stationed at a distance of 20 meters from the spot where the incident took place. It is submitted that appellant has been falsely implicated in this case and since the prosecution version is improbable, so appellant deserves to be acquitted.

Learned Additional Public Prosecutor for respondent-State submits that there is no infirmity in the prosecution case and this appeal deserves to be dismissed.

Upon hearing and on perusal of impugned judgment, order on sentence and the record of this case, I find that appellant was

apprehended at the spot soon after this incident and the weapon of offence i.e. the *knife* was recovered from him. The plea now put forth on behalf of appellant has not been put to the prosecution witnesses and so benefit of doubt cannot be extended to appellant. In the considered opinion of this Court, the prosecution version as unfolded by the complainant inspires confidence and I have no reason to take a different view than one taken by the trial court. Finding no substance in this appeal, it is dismissed. The pending application for suspension of sentence is accordingly dismissed.

Appellant be apprised of the fate of this appeal through concerned Jail Superintendent.

JUNE 07, 2017
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(SUNIL GAUR)
JUDGE