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

+ CRL.A. 646/2005

TITU @ IRFAN

..... Appellant

Through: Mr. Rajiv Bajaj, Advocate.

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, APP for State with
SI Manoj Kumar, PS Jahangirpuri.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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13.06.2018

The appellant is present in judicial custody in relation to FIR N. 198/98, PS Jahangirpuri under Section 302 of the Indian Penal Code, 1860 and Section 25/27 of the Arms Act, 1959 as he is undergoing life imprisonment therein as per the nominal roll dated 11.06.2018 received from the Superintendent Central Jail-10, Rohini, Delhi and is present today in terms of the production warrants issued for his presence as directed vide order dated 12.06.2018 qua the instant appeal, i.e., CRL.A.646/05 that had been filed on behalf of the appellant assailing the impugned judgment dated 25.10.2004 of the Court of the learned ASJ in relation to FIR No. 279/03, PS Jahangirpuri in State Case No. 39/03 whereby the appellant was convicted qua the commission of the offence punishable under Section 392/34 of the Indian Penal Code, 1860 and vide the impugned order on sentence dated 30.10.2004 was sentenced to undergo RI for

CRL.A. 646/2005

page 1 of 4

a period of 5 years, to pay a fine of Rs.1,000/- and in default of the payment of the fine to further undergo RI for a period of 6 months. As per the nominal roll dated 11.06.2018, which was received from the Superintendent Central Jail-10, Rohini, Delhi, the appellant had already undergone the said period of incarceration and had paid a fine of Rs.1,000/- on 06.04.2015 and is presently in custody in view of his being a life convict in relation to FIR No.198/98, PS Jahangirpuri and had been re-arrested in the present FIR on 02.08.2003, having jumped interim bail in the instant appeal.

The presence of the appellant had been directed in terms of the request made on behalf of the learned counsel for the appellant to ascertain whether the appellant wanted to contest the impugned judgment and impugned order on sentence. The appellant in reply to specific Court queries states that he has already undergone the impugned period of sentence imposed upon him and has also paid the fine and does not seek to contest the appeal on merits nor the sentence on merits any more. He further states that he has stated so voluntarily without any coercion from any quarter.

On a perusal of the impugned judgment of the learned Trial Court, which has been received and the consistent testimonies of the prosecution witnesses examined in the form of the testimony of Virender Kumar, i.e., the complainant examined as PW-4, Babloo, brother of the complainant/victim examined as PW-2, Meer Mohd. Sirazul Islam, plumber at the house of the complainant examined as

PW-3 and the testimony of the police personnel recorded in the instant case, specifically PW-6 Constable Jai Bhagwan, PW-7 Constable Ramesh Kumar and taking into account the testimony of PW-8, the then learned MM who conducted the TIP proceedings in relation to the appellant who refused to participate in the same as per Ex.PW8/H, which thus necessitates the drawing of an adverse inference against him, the charge of allegations levelled against the appellant of his having been associated qua the commission of the offence punishable under Section 392/34 of the Indian Penal Code, 1860 inasmuch as the appellant along with other persons with him entered into the house of Virender Kumar PW-4 surrounded him and the plumber who was doing the plumbing work at his house,- started beating them, threatened them to hand over the key of the almirah or else they would kill him, snatched the key of the almirah, opened the almirah and looted a sum of Rs.70,000/- kept in the almirah for giving to someone else and looted gold and silver ornaments, one wrist watch and a mobile phone and whilst leaving, thereatened the complainant that they would kill him and his family members,- standsestablished beyond a reasonable doubt.

In the circumstances, the impugned judgment dated 25.10.2004 and the impugned order on sentence dated 30.10.2004 qua the conviction of the appellant under Section 392/34 of the Indian Penal Code, 1860 and the sentence imposed on him of a period of Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.1,000/- is

CRL.A. 646/2005 *page 3 of 4*

upheld, which sentence as already observed hereinabove has already been undergone by the appellant with the fine having been paid. The appeal is thus dismissed.

Intimation to this effect be sent to the Superintendent Jail, Delhi.

ANU MALHOTRA, J

JUNE 13, 2018/NC