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

Date of Decision : July 12, 2018

+ **CRL.A. 335/2018**

SATISH KUMAR

.... Appellant

Represented by: Mr.Suraj Parkash Sharma,
Advocate

versus

THE STATE GOVT OF NCT OF DELHI

.... Respondent

Represented by: Ms.Meenakshi Dahiya, APP
with SI Abodh Sharma, PS
Preet Vihar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (Oral)

1. Appellant Satish Kumar has been convicted vide impugned judgment dated 9th August, 2017 for offence punishable under Section 120B read with Section 392 IPC and Section 411 IPC and sentenced vide order dated 19th August, 2017 directing him to undergo rigorous imprisonment for a period of 3 years under Section 120B read with Section 392 IPC and a fine of ₹2,000/-, in default whereof to undergo one month simple imprisonment and for offence punishable under Section 411 IPC, rigorous imprisonment for a period of two years and a fine of ₹1,000/-, in default of payment of fine, to undergo 15 days' simple imprisonment.

2. Case of the prosecution hinges on the testimony of the complainant Rekha Jain (PW-1), who deposed that her husband was a kidney patient and

was undergoing dialysis treatment. Her servant Naresh had left for his village due to death of his brother and she was searching for a new servant. In October, 2012, servant of a patient lying on the bed adjoining to the bed of her husband, introduced Satish to her husband for employing him as servant with Rekha Jain. On the next day, Satish came to their house and left at about 8.30 p.m. She paid him ₹300/- and told him that whenever required, she would call him. After about a week or 15 days, Satish telephoned her and suggested a boy for the job of a servant at her house and thereafter sent that boy who started working at the house of Rekha Jain. The work of the boy was not satisfactory and thus he was sent back. After 3-4 days, Satish again called her and sent another boy namely Rohit, who was a resident of Bulandshahar, U.P. to work as servant in the house of Rekha Jain. Later, she came to know that the actual name of Rohit was Manoj. After working for two days, Manoj asked ₹500/- from Rekha Jain on the pretext that he wanted to go to his house as his mother was hospitalized. However, she gave ₹200/- only to him whereafter, Rohit @ Manoj left her house.

3. At about 8.00 p.m. Rohit @ Manoj returned and said that he was afraid of sleeping on the first floor. On this, husband of Rekha Jain asked him to sleep in the drawing room. Rohit @ Manoj kept his belongings outside the gate and slept in the drawing room. In the morning when she woke up and went to the toilet, Rohit @ Manoj entered the toilet from the second door of the toilet which was kept open and which was not within the knowledge of Rekha Jain. Rohit @ Manoj put a knife on the person of Rekha Jain and pressed her mouth with his hand. He threatened her not to raise any alarm otherwise he would cut her into pieces. He also had a

grievance that Rekha Jain did not give her ₹500/-. Rohit @ Manoj removed her gold chain with pendant and four bangles forcibly. In the meantime, her husband called her and Rohit @ Manoj ran away.

4. The role assigned to the appellant Satish as per the case of the prosecution is that he is the one who employed Rohit @ Manoj in the house of the complainant whereafter Rohit @ Manoj committed the robbery. Rohit @ Manoj was convicted for offence punishable under Section 397 IPC and awarded imprisonment for a period of 7 years. In CrI.A.No.965/2017 filed by Manoj Kumar, his conviction for offence punishable under Section 397 IPC has been set aside and he has been awarded imprisonment for a period of 3½ years converting the conviction to one under Section 392 IPC. Pursuant to the arrest of Satish, four gold bangles of victim were recovered, which were duly identified by the victim during her deposition. Thus, from the recovery of bangles, a case under Section 411 IPC is clearly made out against the appellant.

5. With regard to offence punishable under Section 120B/392 IPC, it may be noted that the only ground to draw an inference that Satish was an accomplice is from the fact that Satish got employed Rohit @ Manoj with the complainant. This circumstance alone would not be sufficient to come to the conclusion of a conspiracy between Satish Kumar and Rohit @ Manoj. Thus, the conviction of the appellant for offence punishable under Section 120B IPC and Section 392 IPC is set aside maintaining his conviction for offence punishable under Section 411 IPC. This Court finds no ground to interfere with the conviction or sentence for offence punishable under Section 411 IPC. The appellant is now required to undergo rigorous imprisonment for a period of two years and a fine of ₹1,000/-, in default

whereof to undergo sentence of 15 days simple imprisonment for offence punishable under Section 411 IPC.

6. Appeal is accordingly disposed of. Trial Court record be sent back.

7. A copy of this order be sent to Superintendent, Mandoli Jail for updation of jail record and intimation to the appellant.

Crl.M.B.473/2018

Since the appeal has been disposed of, this application has become infructuous.

Application is dismissed accordingly.

(MUKTA GUPTA)
JUDGE

JULY 12, 2018
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