

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

% Decided on: 5th October, 2018

+ **CRL.A. 785/2018**

SUNIL @ GUDDU

..... Appellant

Represented by: Ms. Richa Dhawan, Standing
Counsel, DHCLSC.

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for State with ASI Kailash, PS
Timarpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Admit.
2. By this appeal the appellant challenges his conviction for offence punishable under Section 392 IPC passed by the learned Additional Sessions Judge vide judgment dated 15th January, 2010 and the order on sentence dated 15th January, 2010 directing him to undergo rigorous imprisonment for a period of five years and to pay a sum of ₹5,000/- in default whereof to undergo simple imprisonment for a period of five months.
3. Case of the persecution is based on the testimony of the complainant PW-6 who stated that on 4th August, 2009 at 9.55 PM when he de-boarded the bus at Balak Ram Bus Stand and was going towards his house at Timarpur the appellant caught him, threatened him to take out whatever was in his possession or else it would lead to dire consequences. Terrified by the conduct of the appellant, complainant gave his purse to the appellant, which contained ₹1,000/- currency notes. The appellant ran from the spot

however, the complainant raised noise and in the meantime, SI Sahab Singh who on patrolling duty along with Constable Ashish apprehended the appellant. On the search of the appellant, purse containing currency note of ₹1,000/- was recovered which was seized vide seizure memo Ex.PW-1/B and sealed with the seal of 'SS'. In his deposition the complainant stated that the appellant had threatened him with knife however, since this fact was not stated in the rukka the learned Trial Court felt the same was an improvement and thus did not convict the appellant for offence punishable under Section 397 IPC but for offence punishable under Section 392 IPC.

4. Considering the fact that the complainant has otherwise stood by his statement in Court and the appellant was apprehended near the spot immediately after the incident the recovery of purse and money affected, this Court finds no error in the impugned judgment of conviction. As regards the quantum of sentence is concerned, the appellant filed the present appeal after a delay of 2947 days which was condoned by this Court vide order dated 31st July, 2018. During this period the appellant had undergone sentence of five years rigorous imprisonment awarded to him as per the nominal roll. Appellant is presently in custody in case FIR No.134/2009 under Sections 307/34 IPC registered at PS Timar Pur. Grievance of the appellant in this appeal is that since the appellant is not in a condition to pay the fine amount of ₹5,000/- he is still to undergo the default sentence.

5. Considering that the appellant has completed his custody period and his conviction for offence punishable under Section 392 IPC is upheld this Court deems it fit to reduce the fine amount. Thus upholding the conviction for offence punishable under Section 392 IPC and maintaining the sentence to rigorous imprisonment for a period of five years, it is directed that the

appellant will pay a fine of ₹1,000/- in default whereof he would undergo simple imprisonment for a period of one month.

6. Appeal is accordingly disposed of.

7. Copy of the order be sent to the Superintendent, Central Jail, Mandoli for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

OCTOBER 05, 2018
‘vn’

