

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

Judgment reserved on : 09.12.2019

Date of decision : 11.03.2020

+ CRL.A. No.288/2019 & CRL.M.(BAIL) 496/2019, CRL.M.A. 5777/2019

JOHNY SINGH

..... Appellant

Through: Mr. Aditya Wadhwa, Advocate.

Versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for State with SI Arvind
Kumar, PS MS Park.

+ CRL.A. 856/2019 & CRL.M.(BAIL) 1300/2019,
CRL.M.A.31898/2019

RAVI KASHYAP

..... Appellant

Through: Ms. Richa Dhawan, Advocate.

Versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for State with SI Arvind
Kumar, PS MS Park.

+ CRL.A. 708/2019 & CRL.M.(BAIL) 1030/2019,
CRL.M.A.12065/2019

DEEPAK

..... Appellant

Through: Mr. Amit Singh Chauhan,
Advocate.

Versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for State with SI Arvind
Kumar, PS MS Park.

+ CRL.A. 484/2019 & CRL.M.(BAIL) 675/2019, CRL.M.A. 7746/2019

KALU

..... Appellant

Through: Mr. Sanket Gupta, Advocate.

Versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for State with SI Arvind
Kumar, PS MS Park.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

**CRL.M.A.5777/2019, CRL.M.A.31898/2019, CRL.M.A.12065/2019
& CRL.M.A. 7746/2019 (Condonation of delay)**

1. These are applications filed by the appellants herein namely Johny Singh, Ravi Kashyap, Deepak and Kalu respectively, who all are presently incarcerated in jail seeking condonation of delay in filing the appeal. In the interest of justice, the applications are allowed and the delay is condoned.

2. The applications stand disposed of.

CRL.M.(BAIL) 496/2019 in CRL.A. No.288/2019

CRL.M.(BAIL) 1300/2019 in CRL.A. 856/2019

CRL.M.(BAIL) 1030/2019 in CRL.A. 708/2019

CRL.M.(BAIL) 675/2019 in CRL.A. 484/2019

3. In as much as, all the appellants herein namely Johny Singh, Ravi Kashyap, Deepak and Kalu respectively are in custody, vide

order dated 02.09.2019 it was directed that the appeals are taken up for hearing and thus, the applications seeking suspension of sentence call for no further action and are disposed of accordingly.

CRL.A. No.288/2019, CRL.A. 856/2019, CRL.A. 708/2019 & CRL.A. 484/2019

4. The appellants of CRL.A.288/2019, CRL.A.856/2019, CRL.A.708/2019 & CRL.A.484/2019 assail the impugned judgment dated 15.10.2018 in Sessions Case No.44561/2015 in relation to FIR No.2/2010, PS Mansarovar Park of the Court of the learned ASJ-02, North East, KKD Courts, Delhi vide which all the four accused/appellants herein were held guilty for the offence punishable under Section 395 r/w Section 34 of the Indian Penal Code, 1860 and were convicted in relation thereto. The said four accused/appellants also assail the impugned order on sentence dated 23.10.2018 in the said case, whereby they have all been sentenced to Rigorous Imprisonment for a period of seven (7) years for the said offence punishable under Section 395 r/w Section 34 of the Indian Penal Code, 1860 with a fine to the tune of Rs.2,000/- each and in default of the payment of the said fine to further undergo Simple Imprisonment for a period of three months.

5. Whereas the accused/appellants namely Ravi Kashyap, Deepak, Kalu have all deposited the said fine as indicated vide the impugned order on sentence itself, the fine was however, not deposited by the appellant Johny Singh.

6. The FIR in the instant case was registered on 13.11.2010 at 1.10 hours. The information in relation to the incident was given to ASI Ram Singh vide DD No.54B who was on emergency duty from 8.00 PM to 8.00 AM on 12.11.2010 at PS Mansarovar Park which information was given to him telephonically that at the Shahdara Railway Station near “*railway godam ke pass MM sahab k sath koi haadsa ho gaya h*” and on receipt of the said call, he along with Constable Johny reached the police post Shahdara where Sh. Satypal Singh Premi i.e. the complainant, the MM concerned met the police personnel and gave his written complaint in relation to the incident. The said complaint Ex.PW2/A of Sh. Satya Pal Singh Premi, Judicial Magistrate, Aligarh is to the effect that he was coming to Delhi by Howrah Kalka Mail and as the train stopped just before the Shahdara Station due to non-clearance of signal, he climbed down before the platform and after the train passed by, then, 4-5 persons restrained him, of whom one of them had a knife in his hand and they threatened to kill him and took his mobile phone of the make Nokia, a wrist watch of the make Titan and Rs.4500/- cash by putting him in danger without his consent and they mishandled him and after taking all his articles, they ran away.

7. The complainant through his complaint Ex.PW2/A dated 12.11.2010 has stated that the time of the incident was approximately about 9.50 PM and that he could identify the culprits when shown to him.

8. The Investigation Officer ASI Ram Singh in his testimony has stated that he received DD No.54B at about 11.00 PM and reached the

spot at about 1.15 AM where they met no one and stated further that he had gone to the police station along with the complainant and had prepared the pointing out memo at the instance of the complainant and *inter alia* stated through his examination in chief that he made an endorsement on the complaint of the complainant examined as PW-2 Sh. Satya Pal Singh Premi and also got the case registered by sending the rukka through Constable Johny who came back to the spot and handed over the rukka and copy of the FIR to him and thereafter the statement of Sh. Satya Pal Singh Premi i.e. the complainant was recorded by him and thereafter he along with Constable Johny came back to the police station and recorded the statement of Constable Johny.

9. Constable Johny who was examined as PW-10 corroborated the prosecution version in relation to having gone along with ASI Ram Singh to the Shahdara Railway Station where they met the complainant who gave his written complaint on which the Investigation Officer made an endorsement and gave the rukka to him and after getting the FIR registered, had brought the documents to the Shahdara Railway Station Mal Godam and handed over the same to ASI Ram Singh. *Inter alia* he stated that he left the spot with the rukka for the police station at about 12.50 AM and had reached the police station at about 1.05 AM and left the police station with the rukka and the computerized copy of FIR at about 1.35 AM but denied that he had not joined the investigation of the case.

10. PW-1 ASI Jaiveer Singh in his testimony has stated that on 13.11.2010 he was posted at PS Mansarovar Park and his duty hours

were from 12 mid night to 8.00 AM and testified to the receiving of the rukka at about 1.10 AM from Constable Johny sent by ASI Ram Singh on which he registered the FIR No.2/2010 under Sections 382/34 of the Indian Penal Code, 1860.

11. The complainant Sh.Satya Pal Singh Premi who was examined as PW-2 in his deposition on oath stated to the effect that on 12.11.2010 whilst posted as a Judicial Magistrate at Aligarh, he was coming to his home at Delhi in the Hawara Kalka Mail and at about 9.50 PM, the train halted before the Shahdara Station due to non clearance of signal and he thus, climbed down from the train in the hope that he would reach his home from the Shahdara Station and as he climbed down, the signal got cleared and the train left the platform and at that time 4-5 boys approximately of the ages of 25-27 years old surrounded him and one of them had a knife with him and threatened to kill him and that those persons snatched his mobile make Nokia bearing No.9891261721, wrist watch of the make Titan and Rs.4,500 cash by putting him in danger and thereafter, they all ran away, whereafter he came to the Shahdara railway station and made a call at number 100 and the police reached there and he, PW-2 made his written complaint Ex.PW2/A and thereafter he led the police to the place of the incident and the site plan Ex.PW2/B was prepared by the Investigation Officer at his instance qua which he stated that it bore his signatures at point A. He has further stated that he was informed subsequently by the police of the date and time of conducting the judicial TIP of the accused persons and thus, he had gone to the Central Jail, Tihar where the TIP of the accused persons was

conducted and the complainant identified his signatures on the TIP proceedings of the accused persons namely Shahbudin (since deceased) and Kalu which are Ex.PW2/C & Ex.PW2/D respectively and he *inter alia* identified the accused Kalu in the judicial TIP as being one of the persons amongst the culprits and further stated that he had also identified the other accused persons i.e. the appellants herein namely Ravi Kashyap and Deepak as being the persons amongst the culprits who had snatched his mobile phone, watch and cash amount.

12. *Inter alia* the witness PW-2 stated that he could identify the fourth accused person if shown to him and has also stated that one of the accused whom he identified in the TIP was not present in the Court but that he could identify him, if produced. This witness also produced his Titan watch which was snatched by the appellants, which was later on released to him on superdari, the same is Ex.P1. This witness is indicated to have also given the receipt of his mobile phone the make Nokia 5130C-2 with IEMI No.351508043519757 and has further stated that he had inadvertently given his present mobile phone number at the time of his examination in chief.

13. On being cross-examined, PW-2 i.e. the complainant has stated that the train was halted 100-150 meters before the main platform and has stated that the accused persons came out of the bushes at the place where he had climbed down and that he had made his written complaint at Shahdara railway station and had visited the PS Mansarovar Park many times but he had never seen the accused persons in the police station and that he does not remember the exact date when he went to the Tihar Jail, Delhi for the TIP and had stated

that it was after about 10-15 days of the incident. He *inter alia* stated that he identified two of the accused persons there and that he came to know subsequently that three accused persons refused to participate in the TIP.

14. Sh. Ankur Jain, Ld. JSCC/ASCJ/GJ (NE) District, KKD Courts, Delhi was examined as PW-4 and has stated in his testimony that on 07.12.2010, an application Ex.PW4/A moved by SI Sachin Kumar, PS M.S.Park was marked to him by Sh. Lokesh Kumar Sharma, Ld. ACMM and it was fixed for 16.12.2010 and further stated that on 16.12.2010, SI Sachin Kumar produced the accused/appellant Ravi Kashyap @ Laddu in a muffled face and he was identified by SI Sachin Kumar and on being asked by him i.e. by PW-4, the accused/appellant Ravi Kashyap @ Laddu had refused to participate/join the TIP proceedings and thereafter he recorded his statement and signed the same. He has further stated that he has also made a certificate regarding the correctness of the said statement. *Inter alia* this witness testified that the TIP proceedings qua the accused/appellant Ravi Kashyap i.e. Ex.PW4/B bore his signatures at points A, A1, A2, A3 & A4. This witness i.e. PW-4 also stated that on 29.11.2010, another application was moved for conducting of the judicial TIP of the accused persons namely Johny Singh, Deepak, Kalu and Shahbuddin was marked to him by Sh. Lokesh Kumar, the learned ACMM and that the same was listed for 27.11.2010. This witness has further testified to the effect that on 27.11.2010 he went to Central Jail No.7 for conducting of the TIP of the accused persons

and the Assistant Superintendent, Jail had produced all accused persons before him one by one.

15. The investigation of the case is indicated to have been conducted further by ASI Hari Ram who was examined as PW-6 and in his testimony on oath testified to the effect that on 17.11.2010 he was posted at PS Mansarovar Park and on that day he had arrested the accused namely Shahbuddin who has since expired in FIR No.7/2010 under Section 25 of the Arms Act, PS Mansarovar Park in which the said accused made a disclosure statement regarding his involvement with other co-accused persons in the instant case i.e. in relation to FIR No.2/2010, PS Mansarovar Park, which disclosure statement Ex.PW6/A was recorded by ASI Hari Ram on which accused Shahbuddin signed and thus, ASI Hari Ram informed SI Sachin of this information and the accused Shahbuddin (since expired) was then arrested by SI Sachin Kumar in the present case. The investigation further conducted by SI Sachin Kumar on 17.11.2010 itself indicates that the investigation in relation to FIR No.2/2010, PS Mansarovar Park was entrusted to him by the previous Investigation Officer as he had gone on leave and that at about 5.15 PM when he, SI Sachin Kumar was present in the police station, ASI Hari Ram informed him that he had arrested the accused Shahbuddin @ Sabu s/o late Sh. Bundu Khan in FIR No.7/2010 under Section 25 of the Arms Act and also testified in relation to the disclosure statement having been informed to have been so made of [having been made by the accused Shahbuddin (since expired)] and thus, SI Sachin Kumar then interrogated the accused Shahbuddin (since expired) in the instant case

pursuant to which he made a disclosure statement and then Shahbuddin was arrested by SI Sachin Kumar in the instant case and pursuant to his disclosure statement, the accused Shahbuddin (since expired) led the police party comprising of SI Sachin Kumar examined as PW-11, ASI Hari Ram examined as PW-6, HC Krishan Pal examined as PW-5, Constable Sanjeev examined as PW-7 to the Maal Godam, Shahdara Railway Station and pointed out towards the railway track near the maal godam as being the spot where he, along with his other accused associates had robbed one person during the night time and the pointing out memo Ex.PW6/L was prepared whereafter, the accused Shahbuddin (since deceased) disclosed that his other co-associates would come to the Shahdara Railway Station in a train which would depart from Loni at 8.00 PM and though SI Sachin Kumar asked some employees of the maal godam to join the investigation/ raiding party, they refused to join the same and 1-2 passersby were also asked to join the raiding party but they did not join the same and thus, SI Sachin Kumar along with other staff took their positions near the maal godam at the railway track and at about 9.00 PM, a train arrived there and three passengers along with other several passengers got down and those three persons stood aside near the railway line and started smoking and the accused Shahbuddin (since expired) then pointed out to those three persons whilst saying that they were involved in the present case and thereafter, the said persons were apprehended by the police party who on asking revealed their names as Johny Singh, Kalu and Deepak appellants of CRL.A. No.288/2019, CRL.A. 484/2019 and CRL.A. 708/2019 respectively

and thereafter, they were all interrogated and during their interrogation all admitted their involvement in the instant case along with another accused namely Laddu and accused Shahbuddin (since expired), whereafter, all these persons i.e. Johny Singh, Deepak and Kalu were arrested, then their personal searches were conducted, and their disclosure statements were also recorded, and thereafter, they led the police party to the place of occurrence and pointed out the spot and thereafter, all the accused persons along with police officials went in search of the case property and of the fifth accused namely Laddu, but neither the case property could be recovered nor was the accused Laddu arrested.

16. It was *inter alia* testified by SI Sachin Kumar that when the said accused persons were arrested, their faces were muffled with the pieces of cloth and that the accused Shahbuddin was already in a muffled face when he left the police station with the police officials and that thereafter all the accused persons in muffled faces were brought to the police station. *Inter alia* SI Sachin Kumar stated that he recorded the statement of ASI Hari Ram and that all the accused persons arrested were sent with the police personnel to the GTB Hospital for their medical examination and subsequently they were brought to the police station after getting their medical examination conducted and they were all put up into the lock up of PS Shahdara whilst giving instructions to the Santri as well to the accused persons to keep them in a muffled face and on the next morning, the accused persons were taken out from the lock up of PS Shahdara in muffled face and the accused persons led the police party to Nand Nagri and

Sriram Nagar, Shahdara in search of the fifth accused person namely Laddu and the case property, but neither the accused Laddu was arrested nor could the case property be recovered and thus, all the accused persons were produced before the Court concerned in a muffled face and the accused Johny Singh was remanded to one day police custody while the other accused persons were remanded to judicial custody.

17. *Inter alia* SI Sachin Kumar testified to the effect that during the police custody remand, the accused Johny Singh led the police party to Nand Nagri in search of the fifth accused Laddu in a muffled face but the accused Laddu could not be traced out and thereafter, the accused Johny Singh was brought to the police station and put in the lock up of PS Shahdara, Delhi and on the next morning i.e. on 19.11.2010, the accused Johny Singh was taken out from the lock up of PS Shahdara and thereafter, he led the police party to his house i.e. House No.791, Vikas Nagar, Loni, U.P. and from his house, he had got recovered one wrist watch of the make Titan with a golden colour frame of the dial and chain from the 'Taand' of the backside of the room of his house whilst saying that this was the same watch which was robbed by them and that thereafter, the said recovered wrist watch was put in a match box and the said match box was converted into a parcel with the seal of SKV and the parcel was taken into possession vide memo Ex.PW5/D and after use, the seal was handed over to Ct.Krishan Pal and thus, the accused Johny Singh was brought to the police station. The case property was stated to have been deposited by the Investigation Officer with the MHCM and the accused was produced

before the Court concerned in a muffled face and from there he was remanded to judicial custody.

18. *Inter alia* SI Sachin Kumar testified to the effect that on 18.11.2010, he moved an application before the Court concerned for conducting the judicial TIP of the accused persons, which was fixed for 27.11.2010 and on 27.11.2010, the judicial TIP of all the accused persons was conducted at the Tihar Jail, wherein, the accused Johny Singh and the accused Deepak refused to participate in the said proceedings, whilst the accused Shahbuddin (since expired) and accused Kalu were identified by the complainant in the said proceedings.

19. The Investigation Officer SI Sachin Kumar has further stated that on 03.12.2010, the accused Kalu, Shahbuddin and Deepak were remanded in police custody for recovery of the case property and during the police custody, the accused persons led the police party to Loni and on reaching there, they went to the police post of Loni and from there one Constable accompanied them and then the accused persons led them to a house situated at New Vikas Nagar, Loni and on reaching at the said house, one person was standing in the said house who was pointed out by the accused persons as being that Laddu who was thereafter apprehended and on their asking, revealed his name as being Ravi Kashyap @ Laddu and thereafter he was arrested from there vide an arrest memo Ex.PW8/A and his personal search was also conducted and thereafter, the accused Ravi Kahsyap @ Laddu was interrogated and he made his disclosure statement Ex.PW8/C and thus, the search of the robbed mobile was carried out in his house but no

mobile phone could be recovered and thereafter, the accused Ravi Kashyap @ Laddu in a muffled face along with three accused persons was brought to the police station and thereafter his medical examination was got conducted at the GTB Hospital and thereafter he was put in the lock up of PS Shahdara in a muffled face and on the next day, the accused Ravi Kashyap @ Laddu in a muffled face along with other three persons were produced before the Court concerned and they were remanded to judicial custody, whereafter, on 07.12.2010, the Investigation Officer moved an application for conducting of the TIP of the accused Ravi Kashyap @ Laddu which was fixed for 16.12.2010 and on 16.12.2010, all the accused persons were brought from the judicial custody in the Court concerned and at that time the accused Ravi Kashyap was in a muffled face on which date the accused Ravi Kashyap @ Laddu on being produced before the Link MM for the purpose of judicial TIP, refused to participate in the same.

20. The Investigating Officer further stated that the robbed mobile phone was put on surveillance but was not used, so no clue was found about the said phone and thereafter, after the completion of the investigation, the charge sheet was filed.

21. The record thus, indicates that apart from the recovery of the wrist watch effected from the house of the accused Johny Singh on 19.11.2010, none of other robbed articles were recovered and thus it is the avowed contention of the appellants that the prosecution version is wholly infirm and not consistent in relation to material particulars and that the identification of the appellants by the complainant was wholly

infirm, in as much as, the accused persons i.e. the appellants herein had been shown to him at the police station and that there were ample opportunities for the appellants to be shown to the complainant.

22. Reliance is *inter alia* placed on behalf of the appellants on the verdict of the High Court of Madhya Pradesh in ***“Jairam and Ors. Vs. State of Madhya Pradesh through P.S. Rajpur, District- Badwani (M.P.)” 2015 SCC OnLine MP 1203*** to contend to the effect that there was no sample of the seal which is stated to have been affixed by the Investigating Officer on the mobile phone placed on the record and thus, the alleged seizure of the wrist watch of the make Titan from the house of the accused Johny Singh could not be held to have been proved as held by the Trial Court.

23. Reliance is also placed on behalf of the appellants on the verdict of the Hon’ble Supreme Court in ***“Bhagwan Singh Vs. The State of Rajasthan” (1976) 1 SCC 15*** to contend that in as much as, there were no public witnesses joined in the investigation, the charges framed against the appellants cannot be held to have been substantiated. Reliance was also placed on behalf of the appellants on the verdict of the Hon’ble Supreme Court in ***“Sans Pal Singh Vs. State of Delhi” (1998) 2 SCC 371*** to contend to similar effect that in the absence of public witnesses being joined by the public personnel, the veracity of the testimonies of the prosecution witnesses was rendered wholly circumspect. Reliance was also placed on behalf of the appellants on the verdict of this Court in ***“Rohit @ Rahul @ Minto Vs. The State (Govt. of NCT of Delhi)” 2011 SCC OnLine Del 1794*** to contend to the effect that it was sufficient for the appellants to indicate the

possibility of the complainant having seen the appellants before the TIP and in such circumstances, where justifiable grounds are put forth by an accused to refuse to participate in the TIP, no adverse inference can be drawn against the accused for in such instances, the identification of the appellants in Court by the complainant after years of the incident (the complainant was examined on 13.08.2013 in relation to an incident on 12.11.2010),- was wholly insufficient. Reliance was also placed on behalf of the appellants on the verdict of this Court in ***“Tain Singh Vs. State (Delhi Admn.)” 1986 SCC OnLine Del 4*** to contend to the effect that it is a settled law that the accused is not to prove conclusively that he was shown to the prosecution witnesses before he declined to participate in the identification parade and it is enough if he brings on record cogent circumstances to show that he was or could have been shown to prosecution witnesses while he was in police custody or when he was produced in Court for remand and it was observed vide paragraph 4 of the said verdict to the effect:-

“4. In the present case it was for the Investigation Officer of police station Defence Colony to have ensured after having been informed by police station Parliament Street of the arrest of the appellant that he (appellant) is not produced in Court on 29th March, 1984 in unmuffled face.”

24. Reliance was also placed on behalf of the appellants likewise on the verdict of the Hon’ble Supreme Court in ***“State of Maharashtra and Ors. Vs. Sukhdeo Singh and Ors.” AIR 1992 SC 2100*** with observations therein to the effect that where the direct

evidence regarding the identity of the culprits comprises of identification for the first time after a considerable time in Court or identification at the TIP in the case of total strangers, it would not be safe to place implicit reliance on the evidence of witnesses who just had a fleeting glimpse of the person identified, and who had no particular reason to remember the person concerned if the identification was made for the first time in Court.

25. *Inter alia* it was submitted on behalf of the appellants that there was no sufficient light at the spot of the incident i.e. near the Shahdara Station at about 9.50 PM, the time of the alleged occurrence and that this aspect was not refuted by SI Sachin Kumar who in his cross examination had stated that there was no electric pole near the Mall Godown, in as much as, it has been submitted on behalf of the appellants that the specific roles and acts committed by the accused persons have not been spelt out in the testimony of the complainant PW-2 which itself thus, negates the veracity of the testimony in relation to the identification of the accused persons as being those who had committed the crime.

26. On behalf of the State, the learned Additional Public Prosecutor however, submitted that the testimonies of the prosecution witnesses were consistent and cogent in relation to all material particulars and brought forth categorically the occurrence as testified by PW-2 i.e. the complainant as also the arrest of the accused persons and also of the accused persons namely Shahbuddin (since expired) and Kalu and Ravi Kashyap @ Laddu having declined to participate in the TIP proceedings despite they having repeatedly been produced before the

learned Trial court only in muffled faces. The State also submitted to the effect that the accused persons namely Shabuddin (since expired) and Kalu were identified by the witness PW-2 i.e. the complainant during the TIP conducted at the Tihar Jail, Delhi and furthermore, the refusal of the co-accused Johny Singh, Ravi Kashyap and Deepak who had at all times initially before the remand to judicial custody been produced in muffled faces before the Trial court, to participate in the judicial TIP, necessitates the drawing of an adverse inference against them.

27. It has further been submitted on behalf of the State that it is significant that the complainant examined as PW-2 in his testimony on oath has categorically identified the accused persons as being the perpetrators of the crime with another co-accused who had since been reported to have expired i.e. Shahbuddin. *Inter alia* it was submitted on behalf of the State that the factum that the wrist watch had been sealed with the seal of SKV during the course of investigation sufficed in the circumstances to bring forth the absence of any plantation thereof. It was also submitted on behalf of the State that the testimony of SI Sachin Kumar in cross examination itself categorically stated that there was light coming from the mall godam and nearby colonies at the spot.

28. On a consideration of the rival submissions that have been made on behalf of either side, it is essential to observe that as rightly held by the learned Trial Court, through the testimony of the complainant who has identified the four accused persons in Court as being those along with another co-accused who has since expired being the persons who

were the perpetrators of the crime on the date 12.11.2010, the identity of the accused, i.e., the appellants herein, stands wholly established. In as much as, as regards the accused Kalu, he has been categorically admittedly been identified by the complainant during the judicial TIP along with co-accused Shahbuddin (since expired) against whom the proceedings have already abated, which is a circumstance in support of the prosecution version in relation to the veracity of the complainant's testimony qua identification of the accused persons involved in the commission of the crime as well, as laid down by the Hon'ble Supreme Court in ***"Mulla and Another Vs. State of Uttar Pradesh"*** (2010) 2 SCC (Cri) 1150 with specific observations in paragraph 42 of the said verdict, which reads to the effect:-

"42. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in court, it should not form the basis of conviction."

it is essential to observe that vide paragraph 55 of the said verdict, it has been laid down to the effect:-

"55. The identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said

occurrence. Therefore, the following principles regarding identification parade emerge:

(1) an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses;

(2) this condition can be revoked if proper explanation justifying the delay is provided; and

(3) the authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses.”

29. In the instant case, the TIP having been conducted on **27.11.2010** in relation to the accused namely Johny Singh, Deepak, Shahbuddin and Kalu when Johny Singh and Deepak refused to participate in the TIP whilst accused Shahbuddin and Kalu were identified by the complainant in the judicial TIP, after their arrest on **17.11.2010** with the application having been filed by the Investigation Officer SI Sachin Kumar immediately thereafter on **18.11.2010** for conducting of the TIP, thus, has essentially to fall within the ambit of having been sought to have been conducted as soon as possible to avoid any mistake on the part of the witnesses, especially as the incident was of the date **12.11.2010**. Even qua the accused Ravi Kashyap @ Laddu who was arrested on **03.12.2010**, an application seeking his judicial TIP was filed on **07.12.2010** by the Investigating Officer after he had been remanded to judicial custody, the day after his arrest having been produced in a muffled face before the Court after having also been placed in a muffled place in the lock up of PS Shahdara on the date of his arrest, also indicates that the application

was filed by the Investigating Officer soon after the arrest of the accused Ravi Kashyap @ Laddu.

30. Taking into account the factum that the accused namely Shahbuddin (since expired) had been brought out from PS Shahdara in a muffled face when taken out for search of the other co-accused persons, coupled with the factum that the accused persons namely Deepak, Kalu and Johny Singh when arrested, were all brought to the police station in a muffled face, coupled with the factum that the Investigating Officer has categorically testified to the effect that after their medical examinations were conducted, the said accused persons were put into the lock up of PS Shahdara with specific instructions to the Santri and to the accused persons to keep their faces muffled and that the next morning the accused persons were taken out from the lock up of PS Shahdara in muffled faces and had so led the police party to Nand Nagari and Sriram Nagar, Shahdara in search of Laddu @ Ravi Kashyap, coupled with the factum that they were all produced before the Court in a muffled face at the time when they were remanded to judicial custody with the accused Johny Singh having been remanded to police custody for one day on the date 18.11.2010 with Johny Singh having been taken out in police custody in a muffled face to trace out the co-accused Laddu @ Ravi Kashyap and of having thereafter been brought to the Court in a muffled face from where he was remanded to judicial custody, coupled with the factum that the accused Ravi Kashyap @ Laddu on his arrest on 03.12.2010 was brought in a muffled face in the police station and was put in the lock up of PS Shahadara also in a muffled place after his medical

examination conducted at the GTB Hospital with the accused Ravi Kashyap @ Laddu having been produced in a muffled face before the Court on 04.12.2010 after his arrest on 03.12.2010 also in a muffled face, necessitates the drawing of an adverse inference in the circumstances against the accused persons who refused to participate in the judicial TIP as it is not brought forth on the record that there was no probability of the accused persons having been shown to the complainant by the police personnel.

31. Furthermore, the testimony of the complainant in the instant case is categorical and cogent in relation to the identification of the accused persons as being the perpetrators of the crime along with the co-accused who has since expired namely Shahbuddin, and as laid down thus by the Hon'ble Supreme Court in **“Raju Manjhi Vs. State of Bihar” AIR 2018 SC 3592** vide paragraph 15 thereof to the effect:-

*“15. The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration (see **Kanta Prashad v. Delhi Admn.** [Kanta Prashad v. Delhi Admn., AIR 1958 SC 350 : 1958 Cri LJ 698] and **Vaikuntam Chandrappa v. State of A.P.** [Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340 : 1960 Cri LJ 1681]).,*

coupled with the factum that there has been a recovery of the wrist watch belonging to the complainant of the make Titan from the accused Johny Singh, appellant of CRL.A. No.288/2019, the testimonies of the prosecution witnesses on the record suffice to bring forth the guilt of the accused in the commission of the offence punishable under Section 395 r/w Section 34 of the Indian Penal Code, 1860.

32. It is essential to observe that the witness PW-2 had identified the appellants Ravi Kashyap @ Laddu and Deepak as being amongst the culprits who snatched his mobile phone, watch and cash amount and categorically testified to the effect that one of the accused persons whom he had identified in the TIP proceedings was not present in Court (with the co-accused Shahbuddin having already expired before the testimony of the complainant was recorded), that the testimony of the complainant being categorical to the effect that he had never seen the accused persons at the police station though, he did state that he visited the PS Mansarovar Park many times, coupled with the factum that there is not a whisper of a suggestion in the cross examination of PW-2 the complainant, that the complainant had been shown the accused persons by the police personnel at the police station, coupled with the factum that the witness PW-2, the complainant has categorically stated that he did not see any of the accused persons at the police station, the identity of the accused persons as being the perpetrators of the crime, stands wholly established and thus, the specific statement in relation to the aspect as which accused threatened the complainant with a knife and which of them snatched the mobile,

watch and the cash amount, coupled with the wrist watch having recovered from the co-accused Johny Singh, in the facts and circumstance of the instant case,- the guilt of the appellants has been proved beyond a reasonable doubt as rightly concluded by the learned Trial Court vide the impugned judgment convicting the appellants under Section 395 r/w Section 34 of the Indian Penal Code, 1860.

33. The status report in terms of order dated 09.12.2019 in all four appeals has been submitted on behalf of the State under the signatures of Insp. Mangesh Tyagi, SHO, PS Mansarovar Park, as per which the accused/appellants namely Johny Singh, Ravi Kashyap, Deepak and Kalu are not involved in any other case apart from the present FIR i.e. FIR No.2/2010, PS Mansarovar Park with the nominal rolls received from the Superintendent Jail, Tihar Delhi qua all the four accused/appellants of their satisfactory conduct in the jail. In the circumstances, thus it is considered appropriate to reduce the sentence of Rigorous Imprisonment from a period of **seven (7) years** as imposed vide the impugned order on sentence dated 23.10.2018 to Rigorous Imprisonment for a period of **three (3) years** qua each of the appellants i.e. Johny Singh, the appellant of CRL.A. No.288/2019, Ravi Kashyap, the appellant of CRL.A. No.856/2019, Deepak, the appellant of CRL.A. No.708/2019 and Kalu, the appellant of CRL.A. No.484/2019 with the benefit of the period of detention already undergone by them being set off in terms of Section 428 of the Cr.P.C., 1973.

34. As observed elsewhere hereinabove, the impugned order on sentence indicates that the accused/appellants Deepak, Kalu and Ravi

Kashyap have paid the fine as imposed vide the impugned order on sentence which has not been paid by the convict/appellant Johny Singh and thus, in terms of the impugned order on sentence, in the event of non deposit of the fine of Rs.2,000/- as imposed vide the impugned order on sentence, the said convict/appellant namely Johny Singh shall further undergo the default sentence of Simple Imprisonment for a period of three months.

35. Thus, whilst the conviction of the appellants under Section 395 r/w Section 34 of the Indian Penal Code, 1860 in relation to FIR No.2/2010, PS Mansarovar Park, is upheld; the sentence imposed on them vide the impugned order on sentence is modified as directed hereinabove to the effect that the appellants shall undergo Rigorous Imprisonment for a period of three years qua the offence punishable under Section 395 r/w Section 34 of the Indian Penal Code, 1860 in relation to FIR No.2/2010, PS Mansarovar Park with the fine being deposited of Rs.2,000/- each and in the event of default of the payment of the same, to undergo Simple Imprisonment for a period of three months.

36. Copy of this order be sent to the Superintendent Jail, Tihar, Delhi.

37. The appeals CRL.A. No.288/2019, CRL.A. No.856/2019, CRL.A. No.708/2019 & CRL.A. No.484/2019 are disposed of accordingly.

ANU MALHOTRA, J.

MARCH 11th, 2020

‘Neha Chopra’