

**Rohtash Vs. State**

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**Court :** Delhi

**Decided On :** Mar-24-2014

**Judge :** S. P. Garg

**Appellant :** Rohtash

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON : March 24, 2014 + CRL.A.268/2011 ROHTASH ..... Appellant Through : Ms.Saahila Lambha, Advocate. VERSUS STATE ..... Respondent Through : Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) Crl.M.A.No.4841/2014 Counsel for the appellant does not press the application. The application is dismissed as not pressed. CRL.A.268/2011 1. With the consent of the parties, the appeal is heard on merits as the appellant has undergone five years incarceration.

2. Deepak Kumar @ Deepu, Sanjay, Harish Kumar @ Pintu, Rohtash and Deepak s/o Babu Lal were arrested by the police of Police Station Shahdara in case FIR No.194/04 and sent for trial. Allegations as projected in the charge-sheet against them were that on the night intervening 09/10.06.04, the complainant-Krishan Dev Pathak was robbed by them of his mobile phone make Sony Ericson, `5,200/-, office key and one Delhi Govt.card at knife point when he was travelling in TSR at

Tikona Park, Kabool Nagar, Loni Road, Delhi at around 01.30 a.m. During investigation, some recoveries were effected at their instance. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against all of them in the court. They were duly charged and brought to trial. The prosecution examined 14 witnesses to establish their guilt. In 313 statement, the accused persons denied their involvement in the crime. They, however, opted not to lead any evidence in defence. The trial resulted in their conviction (except accused Deepak s/o Babu Lal) under Section 392 and 394 read with Section 34 IPC and accused Deepak @ Deepu s/o Bharat Singh was further convicted under Section 411 IPC by a judgment dated 16.08.2010 Karkardooma Courts, Delhi. of District Judge-VII/NE-cum-ASJ, Deepak s/o Babu Lal was convicted under Section 411 IPC. By an order on sentence all the accused except Deepak s/o Babu Lal, were awarded RI for ten years each with fine `3,000/- each and Deepak Kumar @ Deepu s/o Bharat Singh was further sentenced to undergo RI for three years with fine `2,000/- under Section 411 IPC and his sentences were to operate concurrently. Deepak s/o Babu Lal was awarded RI for two years with fine `2,000/- under Section 411 IPC. Being aggrieved and dissatisfied, the appellant has preferred the present appeal.

3. During the hearing of the appeal, the appellants counsel on instructions stated at Bar that the appellant-Rohtash has opted to give up challenge to the findings recorded by the trial court on conviction. She, however, prayed to take lenient view as the appellant has undergone the substantive portion of substantive sentence awarded to him. To this, learned APP for the State has no objection.

4. Since the appellant-Rohtash has opted not to challenge the conviction in view of overwhelming ocular evidence coupled with recovery, his conviction is affirmed. Nominal roll dated 07.03.2014 reveals that the period already undergone in custody by the appellant in this case is four year, six months and sixteen days besides remission for one year, four months and nineteen days. His overall jail conduct is satisfactory. It is relevant to note that co-convict-Sanjay preferred Crl.A.No.492/2013 which was decided on 04.02.2014 by HMJ V.K.Jain. While maintaining the conviction under Section 392/394 read with Section 354 IPC, the sentence order was modified and co-convict-Sanjay was ordered to undergo RI for

four years with fine `10,000/-. In the instance case, the appellant has already undergone more than five years incarceration. On parity also, the sentence order requires modification. Considering these facts and circumstances, the period already undergone by the appellant-Rohtash in this case is taken as his substantive sentence.

5. The appeal stands disposed of in the above terms. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order. The appellant-Rohtash be released forthwith if not required to be detained in any other case. (S.P.GARG)  
JUDGE MARCH24 2014 sa

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