

SC No.:101/2018
FIR No.: 437/2017
PS Kashmere Gate
State Vs Manoj @ Deepu @ Deepak & Anr

16.05.2020

This order of sentence is being pronounced during the continuation of the lockdown on account of Covid 19 in view of order of Learned District & Sessions Judge (HQs) bearing order No.: 8188-8348/DJ/Covid-19/ Lockdown/Pronouncements/2020 dated 03/05/2020.

Present: Mr. Manoj Garg, learned Substitute Addl.PP for the State.
Both the convicts are produced from respective jails through Cisco Webex.
Mr. Yatinder Kumar, learned LAC for both the through virtual means via Cisco Webex.

Vide my separate order on sentence, convict No-1 Manoj @Deepu @ Deepak is sentenced to rigorous imprisonment for 7 years alongwith fine of Rs. 1,000/- within 30 days from today failing which he shall further undergo SI for 15 days.

Convict No.2 Deepu Kumar is sentenced to imprisonment already undergone by him so far alongwith fine of Rs.,1000/- within 30 days from today, failing which he shall further undergo simple imprisonment for 15 days. File be consigned to Record Room.

(Naveen Kumar Kashyap)
ASJ-04(Central)Delhi/16.05.2020

IN THE COURT OF SH. NAVEEN KUMAR KASHYAP
ADDITIONAL SESSIONS JUDGE-04: CENTRAL:
TIS HAZARI COURTS: DELHI

Sessions Case No.:101/18
CNR NO.-:DLCT01-001888-2018

STATE

Vs.

1. Manoj @Deepu@ Deepak

S/o Sh. Sunil Kumar
R/o Village-Kharagbanni,
PS-Babubarhi,
Distt.-Madhubani, Bihar

2. Deepu Kumar

S/o Puranmasi Kumar
R/o Village-Farenda
PS Maharaj Ganj,
Distt.- Gorakhpur, UP.

Case arising out of:-

FIR No.	: 437/2017
Police Station	: Kashmere Gate
Convicted U/s	: 392/397/411/34/ IPC

ORDER ON THE POINT OF SENTENCE

This order of sentence is being pronounced during the continuation of the lockdown on account of Covid 19 in view of order of Learned District & Sessions Judge (HQs) bearing order No.: 8188-8348/DJ/Covid-19/ Lockdown/Pronouncements/2020 dated 03/05/2020.

Present: Mr. Manoj Garg, learned Substitute Addl.PP for the State.

Both the convicts are produced from respective jails through cisco Webex.

Mr. Yatinder Kumar, learned LAC for both the through

virtual means via Cisco Webex.

1. Fresh previous conviction report of both the accused received through electronic mode. Print out of the same be taken. The same is perused. As per such previous conviction report, there is no previous conviction of both the accused persons.
2. Ld. APP stated that having regard to nature of offence and the manner in which same is committed, the convicts be granted exemplary punishment and that convicts does not deserve any leniency.
3. On the other hand, it is already stated by the convict No-1 Mr. Manoj @ Deepu @ Deepak as well as by Convict No-2 Deepu Kumar, as also by their Ld. counsel that *convict are first time offender; they are aged about 24 years; if convicts are sentenced for a longer period of imprisonment then their future will spoiled to a greatest extent. It is further stated that convicts belongs to a poor family and their financial status is not very good. It is prayed that one opportunity may be granted to the convicts to reform as, if they remains in the jail, then there are chances they may turn into a hard core criminal as they would be having the company of such hard core criminals and habitual offender in the jail.*
4. I have heard both the sides through VC and gone through the record. The words "for that end" in Section 390 clearly mean that the hurt caused must be with the object of facilitating the committing of the theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by the theft. Further as the provision itself provides when the highway robbery is committed, deterrent punishment is called for.
5. In the instant case, the offence was committed on a public road. There is no dispute that it was not a highway. It is also not in dispute that the offence was committed during sunset and sunrise that is, at about 7:30 p.m.
6. At this stage it can be seen from the language of Sections 392 of IPC provide for imprisonment 'and' fine. In fact, after specifying

particular term of imprisonment, section uses the words 'and shall also be liable to fine'. In such circumstances, it is imperative to impose both the sentences i.e. imprisonment as well as fine. Thus, there has to be punishment of imprisonment in respect of these offences, and in addition, the convict is also liable to pay fine. Therefore, awarding the punishment of imprisonment is a must and there cannot be a situation where no imprisonment is imposed at all.

7. The law prohibits certain acts and/or conduct and treats them as offences. Any person committing those acts is subject to penal consequences which may be of various kinds. Mostly, punishment provided for committing offences is either imprisonment or monetary fine or both. Imprisonment can be rigorous or simple in nature. Why are those persons who commit offences subjected to such penal consequences? There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

8. Whereas in various countries, sentencing guidelines are provided, statutorily or otherwise, which may guide Judges for awarding specific sentence, in India we do not have any such sentencing policy till date. The prevalence of such guidelines may not only aim at achieving consistencies in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well, namely, whether the purpose of awarding punishment in a particular case is more of a deterrence or retribution or rehabilitation, etc. In the absence of such guidelines in India, the courts go by their own perception about the philosophy behind the prescription of certain specified penal consequences for particular nature of crime. For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the

mind of the court in awarding a particular sentence. However, that may be a question of quantum.

9. What follows from the discussion behind the purpose of sentencing is that if a particular crime is to be treated as crime against the society and/or heinous crime, then the deterrence theory as a rationale for punishing the offender becomes more relevant, to be applied in such cases. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. Thus, even when there is a settlement between the offender and the victim, their will would not prevail as in such cases the matter is in public domain. Society demands that the individual offender should be punished in order to deter other effectively as it amounts to greatest good of the greatest number of persons in a society.

10. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalised judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying 'the law can hunt one's past' cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified

answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society.

11. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence.

12. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

13. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind. The present offences are not even covered under plea bargain scope.

14. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Subsection (2) of Section 235,



Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

16. In the present case, Both the convicts are young man. They comes from a poor family. Both are first offenders.

But it is also proved in present case that convict No-1 ,Mr. Manoj @Deepu @ Deepak robbed the victim/complainant /PW-2 at night at about 7:30 pm on a main public road. That convict ^{Manoj}~~Nikhil~~ was part of 3 persons who robbed the PW-2. Further in the present case, the crime is committed against public at large ,and PW-2 is the particular victim in present case. But such victim could be any member of public at large. Further the offence u/s 392 carries a maximum imprisonment of 14 years. Not only that as far as Convict No-1 Manoj @Deepu @ Deepak , he is also convicted u/s 397 IPC . Section 397 IPC prescribes a minimum imprisonment of 7 years.

17. Thus in the facts and given circumstances of this case , the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used, the manner in which it is used , that victim mobile phone is recovered and no other monetary loss occurred to the victim and all other attending circumstances, convict No-1 Manoj @Deepu @ Deepak is sentenced to **rigorous imprisonment for 7 years. He is further directed to pay a fine of Rs.,1000/- within 30 days from today, failing which he is sentence to simple imprisonment for 15 days.**

18. Further it is clarified that having regard to the facts of present case and the finding given in the main judgment, as Convict No-1 is already sentenced u/s 397 r/w 392 IPC, there is no occasion to pass and sentence u/s 411 IPC against him .

19. As far as Convict No 2, Deepu Kumar is concerned, He is

convicted only u/s 392 r/w 34 IPC.

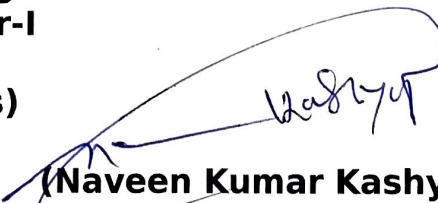
Having regards to facts and given circumstances of this case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the manner in which it is used , that victim mobile phone is recovered and no other monetary loss occurred to the victim and all other attending circumstances, **Convict No 2, Deepu Kumar is sentenced to imprisonment already undergone by him so far . He is further directed to pay a fine of Rs.1000/- within 30 days from today, failing which he is sentence to simple imprisonment for 15 days.**

20. The convict No-1 be given benefit u/s 428 IPC of imprisonment undergone during investigation and trial and above sentence be reduced to that extend accordingly.

21. As no monetary loss occurred to the victim and even the mobile phone is recovered immediately after the robbery , apart from releasing the mobile phone victim to him , this court do not find any further need to compensate him, including having regard to weak economic conditions of the accused side.

22. Further a copy of this order be also sent to convict through jail superintendent concerned through electronic mode.

**Announced in the presence of
counsel for both the parties
through Cisco Webex in a meeting
which was hosted by Co-ordinator-I
appointed by the
Ld. District & Sessions Judge(HQs)**


(Naveen Kumar Kashyap)
ASJ-04(Central)Delhi/16.05.2020