

FIR No. 174/12
PS Mayapuri
State Vs. Rajiv

(At 11:15 AM)

23.07.2020(PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING ID
919211305)

Present: Ld. APP for the State.

Ld. Counsel Sh. S. D. Tiwari for the accused did not turn up in the Video conference (meeting ID No. 919211305) despite having been intimated by Ahlmad Sh. Ravi Khatri in his mobile phone no. 9910712720.

Put up for purpose fixed on 27.07.2020.



(PANKAJ ARORA)
M.M-03 (West), THC, Delhi

FIR No. 192/13
PS Mayapuri
State Vs. Sameer Minz

(At 11:45 AM)

23.07.2020(PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING ID
919211305)

Present: Ld. APP for the State.

Ld. Counsel Sh. D. D. Sharma for the accused did not turn up in the Video conference (meeting ID No. 919211305) despite having been intimated by Ahlmad Sh. Ravi Khatri in his mobile phone no. 9313864289.

Issue b/w against the accused person in the sum of Rs. 10,000/- and notice to his surety for the NDOH.

Put up on 27.07.2020.



(PANKAJ ARORA)
M.M-03 (West), THC, Delhi

IN THE COURT OF SH. PANKAJ ARORA, MM-03, West/THC, Delhi.

STATE VS. Raj Dass & Ors.

FIR No. 74/17

PS: MAYA PURI

U/S: 394/411/34 of IPC

ID No.	: 3702/17
Date of commission of offence	: 02.04.2017
Date of institution of the case	: 02.06.2017
Name of the complainant	: Sh. Sanjay
Name of accused and address	: 1) Raj Das, S/o Sh. Dev Ram Das, R/o Vega Bond, Swargashram, Hari Nagar, Delhi. 2) Dashrath, S/o Sh. Misri Lal, R/o Jhuggi No. 334, Kali Basti, Uttam Nagar, Delhi 3) Ramu, S/o Tanka Bahadur R/o Shop No. BE-371, Hari Nagar, Delhi
Offence complained of or proved	: U/s 394/411/34 of IPC
Plea of the accused	: Pleaded not guilty
Final order	: Accused Raj Dass & Dashrath convicted u/s 394 of IPC and accused Ramu convicted u/s 411 of IPC
Date of judgment	: 23.07.2020

J U D G M E N T

1 The case of the prosecution in brief is that on 02.04.2017 at about 1.30 p.m., at Sat Guru Ram Singh Marg, Opp., Grand Dream Banquet Hall, Phase-I, Delhi within the jurisdiction of PS Maya Puri, the accused persons namely Raj Das, Dashrath & Ramu had caused hurt to the complainant Sanjay by hitting him while committing robbery of cash Rs. 500/- and mobile phone from the possession of complainant. On the basis of complaint of Sh. Sanjay, the present FIR came to be registered. The accused Ras Dass was arrested at the spot. Robbed currency notes of Rs. 500/- were

recovered from him. At the instance of the accused Ras Dass, the accused Ramu was arrested and one of the robbed mobile phone was recovered from the possession of the accused Ramu. On 05.04.2017, the accused Dashrath was arrested, on the basis of secret information, from Salvage Park. Three mobile phones were recovered from his possession. At the instance of the accused Dashrath, one Juvenile was also arrested. Further proceedings qua that juvenile were conducted at the JJB concerned. After completion of necessary formalities, charge sheet was filed in this Court. Cognizance of the offence was taken. Charge for the commission of offence under Section 394/411/34 of IPC. was framed against the accused persons, to which they pleaded not guilty and claimed trial.

2. The prosecution examined 7 witnesses in support of its case, which are as follows:-

1) HC Ravinder is the Duty Officer, who was examined as PW-4, who registered present FIR No. 72/17 which is Ex. PW-1/A & made the endorsement on the rukka which is Ex. PW-1/B and issued Certificate U/s 65B of Indian Evidence Act and recorded DD No. 18A and 21A which are Ex. PW1/C & PW-1/B respectively. The witness was not cross-examined despite having given the opportunity.

2) Sh. Sanjay is the complainant in the present case, who was examined as PW-2. He deposed that in the month of April 2017, he was going to Kirti Nagar between 2 PM to 3 PM while he was going through Mayapuri road on foot, three persons came from the park, one of them held him from behind and other two persons were carrying wooden Dandas. One of them had hit him through a brick on his head. Two boys had taken his two mobile phones and Rs.500/- from his pocket and one of the boy was apprehended by public at the spot. Accused Raj Dass and Dashrath were correctly identified by the witness. However, witness stated that accused Ramu was not present at the spot and third person who was involved in the present incident was juvenile at that time.

He further deposed that some one had called at 100 number and police official reached at spot. Police officials took him to Deen Dayal Hospital and accused who was apprehended at the spot was taken to police station. After getting the treatment from DDU hospital, he went to his home. He was called by the police officials in the police station in the evening hours. All three accused persons were present at PS and he identified all of them correctly. Police officials had also shown him his mobile make 'I Tel' which he had correctly identified. The witness has correctly identified his signatures on seizure memo Ex. PW2/A prepared by the IO of his mobile phone, his statement PW2/B recorded by the IO, site plan Ex. PW2/C prepared at his instance at PS and seizure memo Ex. PW2/D of two wooden Dandas and one brick .

He further deposed that he got released his mobile phone on Superdari through his uncle as ownership of phone belongs to him. The Superdaranama is Ex. PW2/E. At this stage, witness has produced one mobile of make I Tel. The witness has correctly identified the accused persons and case property i.e. his mobile phone and two wooden Dandas and one brick recovered during investigation. During his cross-examination by Ld. APP for the State, he voluntarily stated that accused Raj Dass was later apprehended by the police officials and he had identified him in the PS. Accused Dashrath was also there when he reached in the PS and he had identified him as the same person who had attacked on him. He stated that Ramu was not arrested in his presence. He admitted the suggestion that accused Raj Dass and accused Dashrath were arrested in his presence. He further admitted the suggestion that accused persons had hit him with wooden sticks also. He stated that accused Ras Dass had hit him with wooden stick and accused Dashrath had hit him with brick. During his cross-examination by Sh. K.K. Singh, Ld. LAC for the accused for the accused Raj Dass & Dashrath, he stated that he had signed all the documents in PS. **He further stated that he had seen five note of one hundred denomination, first time that day in the court.** During his cross-examination by Sh. N.K. Sharma, Ld. Counsel for the

accused Ramu, he stated that he has seen accused Ramu first time that day in the court.

3) Ct. Rajender is investigating police official, who accompanies the IO during arrest proceedings of accused Dashrath in the presence of complainant and he was examined as PW-3. He has correctly identified the accused Dashrath. The witness was cross-examined but nothing material came out in his cross-examination.

4) PW-4 Sh. Maya Ram Yadav is the owner of recovered robbed mobile phone, who got released the mobile phone on superdari vide superdaginama which is Ex. PW-4/A. The witness was not cross-examined despite having given the opportunity.

5) Dr. Varun Singh was examined as PW-5, who examined the patient and prepared the MLC No. 2448, which is Ex. PW-5/A. During his cross-examination, he stated that he tendered his opinion on the basis of X-Ray, X-Ray Report & clinical examination report. He admitted the suggestion that he has not expressed on the MLC whether injury was self inflicted. He voluntarily stated that for this purpose, a medical board requires to be constituted and he was not the competent person to give any such opinion by himself.

6) ASI Om Prakash was examined as PW-6. He deposed that On 02.04.2017, he was posted at PS Maya Puri at ASI. On that day, he was performing emergency duty in the area of PS Maya Puri. On receipt of DD No. 18A, he along with ASI Dineshan went to Opposite Grand Dream Banquet Hall, Satguru Ram Singh Marg. On reaching there, they found that some public person had caught hold the accused Raj Das and complainant was in injured condition. Thereafter, IO took the accused to PS and sent the complainant to DDU Hospital through PCR Van. Thereafter, IO handed over the custody of the accused to me and IO left the PS for Hospital. After sometime, IO along with complainant came to

PS Maya Puri. After reaching at PS, IO registered the case and IO along with complainant as well as with accused went to the aforesaid place. There, IO prepared site plan at the instance of complainant which is already Ex. PW-2/C. IO also seized one brick & two wooden (Dandas) rods vide seizure memo. Thereafter, IO along with complainant and accused Ras Dass went to BE-Block, Shop No. 371 where the accused Ras Dass disclosed that he sold out all mobile phones to the accused Ramu there the accused Raj Das identified the accused Ramu. IO seized the mobile phone vide seizure memo, which is already Ex. PW-2/A. Thereafter, he along with IO, accused as well as complainant went to PS Maya Puri.

He further stated that thereafter, IO recorded his statement. Case property was deposited in Mal Khana. He further stated that on 07.04.2017, secret informer gave the information to the IO that the accused Dashrath would come at Salvage Park and can be apprehended if raided. Thereafter, he along with IO/ASI Dineshan & Ct. Rajender proceeded to Salvage Park. On reaching there, secret informer pointed out towards one person sitting on the bench and that persons tried to flee away from the spot after seeing the police party and he was chased and apprehended by IO. On his cursory search, three mobile phones were recovered which were seized vide seizure memo, which is Ex. PW-6/A. IO interrogated the accused Dashrath and he disclosed that the third accused who was involved in the incident was Rahul and he can be found in the old building, opposite Grand Banquet Hall. The accused Dashrath was arrested vide arrest memo, which is already Ex. PW-2/G. Thereafter, they along with the accused Dashrath went to that old building where at the instance of the accused Dashrath, they apprehended the accused Rahul. Since the accused Rahul was found to be juvenile, JWO SI Yogesh was called from PS for conducting

the proceedings against the accused Rahul. Thereafter, the accused Rahul was taken to PS where IO recorded his statement. The witness has correctly identified all the accused persons. The witness was cross-examined on behalf of accused Raj Dass but nothing material came out in his cross-examination. The witness was not cross-examined on behalf of accused Dashrath and Ramu despite having given the opportunity

7) ASI Dineshan is witness to the same fact on which PW-6 ASI Om Prakash has already deposed. During his cross-examination, he stated that he enquired from public persons to join the investigation but none of them agreed. He reached at hospital at about 2.50 p.m. He did not remember when reached at PS. He did not serve any notice upon the public persons to join the investigation. After reaching at the spot, he recovered two Dandas and one brick. The witness was not cross-examined on behalf of accused Dashrath and Ramu despite having given the opportunity

4) Thereafter, statement of accused U/s 313 of Cr.P.C. was recorded, wherein all the incriminating facts were put to the accused persons. The accused stated that he has been falsely implicated in the present case and he was innocent. Accused persons opted not to lead defence evidence.

5) This Court has heard the arguments and perused the record.

It is observed that only eye-witness got examined by prosecution is PW-2 Sh. Sanjay. He has correctly identified the accused persons namely Raj Dass & Dashrath. He categorically deposed that in the month of April 2017, he was going to Kirti Nagar between 2 PM to 3 PM while he was going through Mayapuri road on foot, three persons came from the park, one of them hold me from behind and other two persons were carrying wooden

Dandas. One of them had hit him through a brick on his head. Two boys had taken his two mobile phones and Rs.500/- from his pocket and one of the boy was apprehended by public at the spot. In his cross-examination by Ld. APP for the State, he had explained specific role of accused Raj Das and Dashrath by stating that the accused Raj Dass had hit him with wooden stick and the accused Dashrath had him with brick. The testimony of PW-2 is corroborated with MLC Ex. PW-5/A, wherein it is specified that the nature of the injury sustained by the injured Sh. Sanjay is grievous in nature on orthopedic angle. The complainant (PW-2) has also identified his signature on the seizure memo of the recovered mobile phone which is Ex. PW-2/A. The testimony of PW-2 is incosonance with the statement Ex. PW-2/B recorded by the IO. PW-2 has also identified the recovered mobile phone which is Ex. P-1. He also identified the weapons i.e. two Dandas & brick, by which the accused persons had beaten the complainant. Since the complainant had categorically stated in his examination in chief dated 22.02.2018 that the accused Ramu was not present at the spot and third person who was involved in the incident was juvenile at that time, therefore, the prosecution has failed to prove the charges for the offence punishable under Section 394 of IPC 'qua' the accused Ramu. Nevertheless, the prosecution has proved the fact that the accused Ramu was found in possession of the stolen mobile phone belonging to the complainant which was seized vide seizure memo, which is Ex. PW-2/A and the same was also identified by the complainant in his deposition dated 22.02.2018. There is nothing on record to indicate as to who is the owner of two mobile phones recovered from the possession of the accused Dashrath vide seizure memo, which is Ex. PW-6/A. Thus, the prosecution has failed to prove the charges for the offence punishable under Section 411 of IPC against the accused Dashrath.

It is pertinent to note that PW-2 Sh. Sanjay had stated in his cross-examination that he had seen five notes of Rs. 100/- in denomination, first time in the court that day i.e. on 22.02.2018. Thus, the recovery of currency notes from the possession of the accused Dashrath is doubtful. As such, this

Court is of the opinion that the prosecution has failed to prove charges for the offence punishable under Section 411 of IPC against the accused Raj Dass.

5. All the prosecution witnesses have deposed about the incident fully in consonance with the facts mentioned in the charge sheet. Nothing material came out in their respective cross-examination. There is no reason to disbelieve the testimony of the prosecution witnesses. The prosecution has proved the fact that the accused namely Raj Dass & Dashrath had caused hurt to the complainant Sanjay by hitting him while committing robbery of cash Rs. 500/- and mobile phone from the possession of complainant. It is also proved that accused Ramu had dishonestly received or retained stolen mobile phone belonging to the complainant, knowing or having reason to believe the same to be stolen property. All the requirements of section 394 & 411 of IPC are satisfied. The testimony of prosecution witnesses comes out to be clear, convincing, trust-worthy & inspires confidence of this Court. Accordingly, accused namely Raj Dass & Dashrath are hereby convicted for the commission of offence under Section 394 of IPC and they are acquitted from charges punishable u/s 411 of IPC. accused namely Ramu is hereby convicted for the commission of offence punishable under Section 411 of IPC and he is acquitted from charges punishable u/s 394 of IPC. The convicts be heard on the point of sentence on 29.07.2020.

Announced in the virtual Court vide cisco webex meeting ID **919211305** ,
On 23rd, July, 2020.

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(Pankaj Arora)
MM-03/West/THC/Delhi
23.07.2020

FIR No. 74/17
PS: Maya Puri
State Vs. Raj Dass & Ors.
U/s 394/411/34 of IPC
23.07.2020

**(PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING ID
NO. 919211305.)**

Present: Ld. APP for the State, present through video-conferencing (Cisco Webex "Meeting ID No. 919211305")
Sh. K.K. Singh, Ld. LAC for the accused Raj Dass, present through video-conferencing (Cisco Webex "Meeting ID No. 919211305").
None for the accused persons namely Ramu & Dashrath.
Clarification sought from Ld. LAC for the accused Raj Dass.
Put up for order at 3.00 p.m. today itself.

(Pankaj Arora)
MM-03/West/THC/Delhi
23.07.2020

At 3.00 p.m.

Present: As above.

Vide separate judgment dictated through VC, the accused persons namely Raj Dass & Dashrath are hereby convicted for the commission of offence under Section U/s 394/34 of IPC and the accused Ramu is hereby convicted for the commission of offence under Section 411 of IPC. The accused Raj Dass & Dashrath are hereby acquitted for the commission of offence under Section 411 of IPC and the accused Ramu is hereby acquitted for the commission of offence under Section 394 of IPC. Issue court notice to the complainant and BW against the accused Dashrath and Ramu for NDOH

Put up for hearing on the point of sentence on 29.07.2020.

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(Pankaj Arora)
MM-03/West/THC/Delhi
23.07.2020

IN THE COURT OF SH. PANKAJ ARORA, MM-03, WEST/THC, Delhi.

STATE Vs. Shiv Dutt
FIR No. 81/11
PS: MAYA PURI
U/S: 380/457/411 of IPC

ID No.	:	62980/16
Date of commission of offence	:	21.01.2012
Date of institution of the case	:	01/02.08.2011
Name of the complainant	:	Sh. Baleshwar Prasad.
Name of accused and address	:	Shiv Dutt S/o Sh. Ram Chander, R/o H. No. RZ-353, Gali No. 2, Main Sagar Pur, Delhi.
Offence complained of or proved	:	U/s 380/457/411 of IPC
Plea of the accused	:	Pleaded not guilty
Final order	:	convicted
Date of judgment	:	23.07.2020

J U D G M E N T

1. The case of the prosecution in brief is that on 01/02.08.2011 at 7.00 p.m. to 4.00 a.m. at Punjabi National Bank, Nangal Raya Branch, Ground Floor, D-2/13, Janak Puri, Delhi within the jurisdiction of PS Maya Puri, the accused namely Shiv Dutt had committed house breaking by night in the above said premises in order to commit theft and stolen a bundle of duly filled cheques from the said premises and the above said duly filled cheques were also recovered from the accused Shiv Dutt which he had retained knowingly or having reason to believe to be stolen property. On the basis of complaint of complainant

Sh. Baleshwar Prasad, the present FIR came to be registered. The accused persons were arrested. After completion of necessary formalities, charge sheet was filed in this Court. Cognizance of the offence was taken. The accused was summoned. Charge for the commission of offence under Section 380/457/411 of IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

2. The prosecution examined 15 witnesses in support of its case, which are as follows:-

1) Sh. Baleshwar Prasad is the complainant in the present case, who was examined as PW-1. He deposed that on 02.08.2011, he was posted at Punjab National Bank, Branch Office, Nangal Raya as Scale-I Officer. On 01.08.2011, after closing his office, at about 7.00 p.m., he went to his place of residence. On the next day, on 02.08.2011, at about 5.00 p.m., he came to know from the police official through telephone that glass of window of the bank was broken and something had happened in the bank. After getting this news, he immediately rushed towards his bank. After reaching there, he saw Sh. R.K. Tanwar who was the member of their bank, police & public persons were already present there. He saw bundle of the used cheque was scattered on the window, sealing of floor was broken, window of the glass broken and iron grill was bent. Thereafter, he opened shutter of the bank and searched inside it and one person was found inside. Thereafter, police official enquired from that person and disclosed his name as Shiv Dutt. He could not identify the accused due to lapse of time. Police official recovered 1 ½ feet of iron rod from the possession of the accused. He further stated that thereafter, police recorded his statement which is Ex. PW-1/A. Thereafter, IO seized the iron rod, two long keys & two bundles of used original cheque vide seizure memos which are Ex. PW-1/B to Ex. PW-

1/E respectively. Thereafter, IO recorded the disclosure statement of the accused which is Ex. PW-1/F. Thereafter, IO arrested the accused vide arrest memo which is Ex. PW-1/G. Personal search of the accused was conducted vide personal search memo which is Ex. PW-1/H. During his cross-examination, he stated that he do not know from which pocket of the accused keys, iron rod and cheque bundle was recovered. He admitted the suggestion that used bundle of cheque is totally useless for any person. He voluntarily stated that bundle of cheque was important document /important record for the bank. He denied the suggestion that nothing was recovered from the possession of the accused on the relevant time. He further denied the suggestion that he was not present at the time of accident. He further denied the suggestion that he was deposing falsely at the instance of the IO.

2) Sh. R.K. Tanwar was examined as PW-2. He deposed that on 02.08.2011, at about 4.45 a.m., Manager of the bank informed him that some noise were coming from inside the bank. He informed about the same to the Baleshwar Prasad employee of the bank and he used to carry keys of the bank. He & Baleshwar Prasad came at the bank and check out window of the bank and found that it was broken by someone. When they entered in the bank and they found that ceiling of the roof was in broken condition and they found that ceiling of the roof was in broken condition and they found that gates of bank were in broken condition. Suddenly, they found that one person inside the bank and they apprehended him his name was Shiv Dutt. Some neighbours made the call at 100 number and police officials came at the spot. They checked the strong room and found in a proper condition. Police officials recorded his statement. The witness, thereafter, deposed about site plan, seizure memos, disclosure statement, arrest memo & personal

search memos. The witness has correctly identified the accused. The witness was not cross-examined despite having given the opportunity.

3) Sh. ASI Ajit Singh was examined as PW-3, who conducted the inspection of the bank, Ct. Suresh Kumar developed 5 chance prints and lifted the same. Ct. Sukrampal took the photographs of the spot. He prepared the Crime Team report which is Ex. PW-3/A. The witness was cross-examined but nothing material came out from his cross-examination.

4) ASI Suresh Chand was examined as PW-4 who had taken chance print and total 5 chance prints were developed. The report was prepared by Ajeet Singh and report is already Ex. PW-3/A. The witness was cross-examined but nothing material came out from his cross-examination.

5) Sh. Ram Prasad was examined as PW-5. He deposed that he was residing in the basement of D-2/13 and the PNB bank was on first floor. While he was sleeping along-with his family, he heard certain noises. Thereafter, he got up and knocked the door of nearby persons. It was about 02:30 – 03:00 am. The nearby persons gathered there and on their direction, he had called at 100 number, police officials reached at them spot. He told them that certain noises were coming inside the bank. Police officials had called bank officials at the spot and after that, he went to the basement at his residence. During his cross-examination, he stated that he did not remember the perfect date but it is of 2011. The name of the person gathered at the spot namely K. K. Johar, Ramesh living at 1st floor, Ramesh living at 2nd floor and one person namely Nayyar.

6) HC Jai Singh is the duty officer and he was examined as PW-6, who registered present FIR No. 81/11, which is Ex. PW-6/A and made the endorsement on the rukka which is Ex. PW-6/B. He had also identified DD No. 6A recorded by him on the basis of information received regarding theft in bank. The witness was not cross-examined despite having given the opportunity.

7) Ct. Sukaram Pal was examined as PW-7, who clicked 12 photographs which already on record and same are already Ex. P-1 (Colly). He brought the negatives of the said photographs which are Ex. P-2 (Colly). The witness was not cross-examined despite having given the opportunity.

8) Ct. Ketan was examined as PW-8, who made departure entry in respect of officials whose names have been mentioned in the registered vide DD No. 73B. Among other officials, HC Kailash Chand was assigned duty night patrolling in Beat No. 8 of the area. The DD Entry is Ex. PW-8/A. The witness was not cross-examined despite having given the opportunity.

9) Sh. Manish Chauhan was examined as PW-9, who has brought finger print slip from bureau in respect of Shiv Dutt and same is Ex. PW-9/A. The certificate under Section 65B of Indian Evidence Act in this regard is Ex. PW-9/B. The witness was not cross-examined despite having given the opportunity.

10) Sh. Prem Kumar Mehta, Branch Manager of PNB (Retd.) was examined as PW-10. He deposed that the incident has occurred on the intervening night of 01/02.08.2011 in PNB, Branch, Nangal Raya situated at ground floor and basement bearing no. D-2/13, Janak Puri,

Delhi. At that time, he was working as Branch Manager of the aforesaid branch.

He further deposed that on 02.08.2011, in early morning around 6-7 a.m., he received a call from official of PS Maya Puri, who informed him that some passers-by had heard noise inside the aforesaid branch. The police official requested me to open premises for investigation. Sh. Baleshwar Dutt, then officer and Sh. R.K. Tanwar, then head cashier of the branch were directed to arrive at the branch along with keys as both the said officials were living nearby and were in possession of the keys of the strong room of the branch. Sh. Baleshwar Dutt was also having key of the main gate. Both the said official had reached the branch by the time he arrived. On inspection, they found that locks of the drawer of the tables, two drawer for filing cabinets and four drawer fire resistant, filing cabinet, iron grill gate were broken. They also found that the record of bank including cheques were found torn and scattered inside and outside the branch premises. They noticed that though attempts were made to open the strong room door inside which lockers cabinets and safe deposits vault having branch cash were kept. The police checked possible escape route of the offender but found that there was a small gap in the broken window which was near the entrance of the branch but the gap was so small that it was not possible to escape from there. The police made search and found that there was no escape route from bank premises and therefore, suspicion grew that that the offender might still there in the branch itself. Police official noticed that there was some movement over the falls ceiling. The police official followed the trail and at one point, the falls ceiling gave way as a result of which, leg/feet of person hung outside. Police official warned the said person to come out but he did not obey and therefore, he was dragged and apprehended. The written complaint was lodged by Sh. Baleshwar Dutt

which led to the registration of the present FIR.

He further deposed that he also gave letter dated 19.10.2011 addressed to the SHO, PS Maya Puri & same is Ex. PW-10/A. In the said letter, he had inter-alia mentioned about the possession of the keys, working of the branch and installation of CCTV Cameras & security alarms. On checking the CCTV Footage, there was total darkness. However, CCTV Footage was working properly. At least some light is required for capturing by CCTV Cameras.

The witness has identified the photographs of the premises clicked by the police official which are Ex. P-1 (Colly). He has also correctly identified iron rod, two keys and bundle of clearing cheques seized by the IO. The witness was not cross-examined despite having given the opportunity.

11) Sh. Anand Prakash was examined as PW-11. He deposed that in the year 2011, he was working as record clerk in PNB Branch Nangal Raya, Delhi. During investigation of the present case, he has provided the relevant record pertaining to 32 cheques to the concerned police official through the Branch Manager. The said record was seized by the IO vide seizure memo, which is Ex. PW-11/A. The record running into three pages is Ex. PW-11/B (Colly). The witness was cross-examined but nothing material came out from his cross-examination.

12) ASI Shiv Dan Singh is the Investigating Police official in the present case, who was examined as PW-12. He deposed On 02.08.2011, he was posted at PS Maya Puri as Ct. On that day, he was on night emergency duty. At about 4.00 a.m. the concerned duty officer HC Jai Singh had handed over to him a DD No. 6A dated 02.08.2011 for further handing over it to SI Amit Kumar. The DD was handed over to SI Amit

Kumar. Thereafter, he along with SI Amit Kumar in Govt. Vehicle being driven by Ct. Rakesh went to PNB, Nangal Raya Branch, Janak Puri, Delhi, where few persons were already present. One Ram Prasad informed that the noise was coming inside the branch. On inspection, they found that the window pan was broken and grill was bent. Two bundles of cheques were lying near window. However, the shutter of the branch was locked. In the meantime, HC Kailash also arrived at the spot and it transpired the key of the branch was with head cashier Sh. R.K. Tanwar who then resided at Nangal Raya. Sh. R.K. Tanwar was informed but it was revealed that the keys of the branch were with Sh. Baleshwar Prasad, resident of Binda Pur. Both Sh. R.K. Tanwar and & Sh. Baleshwar Prasad were called at the spot. The lock of the shutter was opened and we went inside. They notice that sealing was broken at various point and and door leading to basement was also broken. Some noise was also coming from the sealing. On checking, one person was found hiding. The accused was brought on the ground and on his cursory search, two keys were found from left pocket of his wearing trouser and bundle of cheque (containing 11 cheques) was found from the right pocket of his trouser. The accused was also carrying one *Sariya* of about 1.5 feet in his hand. The crime team was called at the spot, which conducted the inspection and handed over its report to the IO. The concerned bank officials informed that the strong room of the branch was secure. IO prepared the rukka on the statement of Sh. Baleshwar Prasad and handed over the same to me for registration of FIR. He went to PS to get the FIR registered and came back at the spot along with copy of FIR and original rukka and the same were handed over to the IO at the spot. The IO seized the two bundles of cheques, which were lying near the window. One bundle of cheques was consisting one cheque whereas the other bundle was containing 11 cheques. The seizure memo in this regard is already Ex. PW-1/E. The IO had mentioned complete particulars of the cheques in question in seizure memo. IO also seized the *Sariya* vide

seizure memo, which is already Ex. PW-1/B bearing my signatures at point C, two keys vide seizure memo, which is already Ex. PW-1/C and the original cheque bundle, all recovered from the possession of the accused, vide seizure memo, which is already Ex. PW-1/D. The pulladas were prepared and sealed with the seal of AKY. The accused was interrogated vide his statement which is already Ex. PW-1/F. The accused was arrested and personally searched vide memos which already Ex. PW-1/G & Ex. PW-1/H respectively. The accused was got medically examined at DDU Hospital and he remained at the spot. After medical examination, the accused was again brought to the spot. No cash was found to be stolen. IO made enquiry from R.K. Tanwar and Baleshwar Prasad and also recorded his statement. The witness was not cross-examined despite having given the opportunity.

13) HC Kailash was performing patrolling duty in the area where incident took place, he was examined as PW-13. He deposed that on 02.08.2011, he was posted at PS Maya Puri as HC. On that day, he was on night patrolling duty. At about 4.00 a.m. the concerned duty officer HC Jai Singh had informed him about entry of a thief inside the PNB Nangal Raya Branch. He immediately reached at the spot, where few persons and police staff were already present. One Ram Prasad informed that the noise was coming inside the branch. On inspection, they found that the window pane was broken and grill was bent. Two bundles of cheques were lying near window. However, the shutter of the branch was locked. It transpired that the key of the branch was with head cashier Sh .R. K. Tanwar who then resided at Nangal Raya. Sh. R.K. Tanwar was informed but it was revealed that the keys of the branch were with Sh. Baleshwar Prasad resident of Binda Pur. Both Sh. R.K. Tanwar and Sh. Baleshwar Prasad were called at the spot. The lock of shutter was opened and they went inside. He further deposed that they noticed that sealing was broken at

various point and door leading to basement was also broken. Some noise was also coming from the sealing. On checking one person was found hiding. The Witness had correctly identified the accused by pointing towards him. The accused was brought on the ground and on his cursory search, two keys were found from left pocket of his wearing trouser and bundle of cheque (containing 11 cheques) was found from the right pocket of his trouser. The accused was also carrying one Sariya of about 1.5 feet in his hand. The crime team was called at the spot, which conducted the inspection and handed over its report to the IO. The concerned bank officials informed the strong room of the branch. IO prepared the rukka on the statement of Sh. Baleshwar Prasad and handed over the same to him for registration of FIR. He went to PS to get the FIR registered and came back at the spot along with copy of FIR and original rukka and the same were handed over to the IO at the spot. The IO seized the two bundles of cheques, which were lying near the window. One bundle of cheque was consisting one cheque whereas the other bundle was containing 11 cheques. The seizure memo in this regard is already Ex. PW-1/E bearing his signatures at point D. The IO had mentioned complete particulars of the cheques in question in seizure memo. IO also seized the Sariya vide seizure memo, which is already Ex. PW-1/8 bearing his signatures at point D, two keys vide seizure memo, which is already Ex. PW-1/C bearing his signatures at point D and the original cheque bundle, all recovered from the possession of the accused vide seizure memo, which is already Ex. PW-1/D bearing his signatures at point D. The pullandas were prepared and sealed with the seal of AKY. The accused was interrogated vide his statement which is already Ex. PW-1/F bearing his signatures at point D. The accused was arrested and personally searched vide memos which already Ex. PW-1/G & Ex. PW-1/H respectively, both bearing his signatures at. Point D. The accused was got medically examined at DDU Hospital. After medical examination, the accused was again brought to the spot. No

cash was found to be stolen. IO made enquiry from R.K Tanwar and Baleshwar Prasad and called Ram Prasad, who had made called on 100 number. The accused was produced before the court and sent to JC. The case property was deposited in Malkhana. IO recorded his statement.

The witness has identified the photographs of the premises clicked by the police official which are Ex. P-1 (Colly). He has also correctly identified iron rod, two keys and bundle of clearing cheques seized by the IO. The witness was not cross-examined despite having given the opportunity.

14) SI Amit Kumar is the IO of the present case who was examined as PW-14. He deposed that on 02.08.2011, h was secure. He prepared the rukka on the statement of Sh. Baleshwar Prasad and handed over the same to Ct. Shiv Dan Singh for registration of FIR. Ct. Shiv Dan Singh went to PS to get the FIR registered. In the meantime, he prepared the site plan at instance of complainant Sh. Baleshwar Prasad vide site plan memo, which is Ex. PW-14/A. he was posted at PS Maya Puri as SI. On that day, he was on night emergency duty along with Ct. Shiv Dan Singh. At about 4.00 a.m. Ct. Shiv Dan Singh had handed over to him a DD No. 6A dated 02.08.2011. Thereafter, he along with Ct. Shiv Dan Singh in Govt. Vehicle went to PNB, Nangal Raya Branch, Janak Puri, Delhi, where few persons were already present. One Ram Prasad informed that the noise was coming inside the branch. On inspection, they found that the window pan was broken and grill was bent. Two bundles of cheques were lying near window. However, the shutter of the branch was locked. In the meantime, HC Kailash also arrived at the spot and it transpired the key of the branch was with head cashier Sh. R.K. Tanwar who then resided at Nangal Raya. Sh. R.K. Tanwar was informed but it was revealed that the keys of the branch were with Sh. Baleshwar Prasad, resident of Binda Pur. Both Sh. R.K. Tanwar and & Sh. Baleshwar Prasad were called at the spot. The lock of the shutter was opened and

they went inside. They notice that ceiling was broken at various point and and door leading to basement was also broken. Some noise was also coming from the ceiling. On checking, one person was found hiding. The accused was brought on the ground and on his cursory search, two keys were found from left pocket of his wearing trouser and bundle of cheque (containing 11 cheques) was found from the right pocket of his trouser. The accused was also carrying one Sariya of about 1.5 feet in his hand. The crime team was called at the spot, which conducted the inspection and handed over its report to the him. The concerned bank officials informed that the strong room of the branch

He further deposed that after registration of FIR, Ct. Shiv Dan Singh came back at the spot along with copy of FIR and original rukka and the same were handed over to me at the spot. He had mentioned the particulars of FIR on the site plan as he has already prepared the site plan. He had recorded the statement of member of crime team and they were discharged from the spot. He seized the two bundles of cheques, which were lying near the window vide seizure memo, which is already Ex. PW-1/E. One bundle of cheques was consisting 10 cheque whereas the other bundle was containing 11 cheques. He also seized the Sariya vide seizure memo, which is already Ex. PW-1/B, two keys vide seizure memo, which is already Ex. PW-1/C bearing my signatures at point E and the original 11 cheque bundle, all recovered from the possession of the accused, vide seizure memo, which is already Ex. PW-1/D. The pulladas of two keys, of 11 cheques bundles, of two bundles of cheques were prepared and sealed with the seal of AKY. The accused was interrogated and I had recorded his disclosure statement vide disclosure memo, which is already Ex. PW-1/F. The accused was arrested and personally searched vide memos Ex. PW-1/G & Ex. PW-1/H respectively. The accused was got medically examined at DDU Hospital. After medical examination, the accused was again brought to the spot. No cash was found to be stolen. He made enquiry

from R.K. Tanwar, Ram Prasad and Baleshwar Prasad and also recorded my statement. On the same day, the accused was produced before the court and he was sent to JC. Exhibits were deposited in Malkhana as per seizure memo.

He further deposed that on 01.09.2011, chance print recovered from the spot and finger print of the accused had been sent to finger print bureau, Kamla Market, New Delhi for comparing it vide letter mark-14A.

He further deposed that on 19.10.2011, he went to PNB Nangal Raya Branch, where Anand Prakash had handed over three pages containing particulars of the recovered 32 cheques from the accused at the spot and the seized the same vide seizure memo, which is Ex. PW-11/A. The above said three pages are already Ex. PW-11/B (Colly) and on the same day, one letter was handed over by senior manager from the above said bank namely Sh. Prem Kumar Mehta and letter is already Ex. PW-10/A. Thereafter, he had recorded the statement of Bank Official namely Sh. Prem Kumar Mehta and Anand Prakash.

He further deposed that after completion of investigation, he prepared the charge-sheet and same was filed before the court. Thereafter, he collected the result from finger print bureau and submitted before the court through supplementary charge-sheet through application, which is Ex. PW-14/B. The witness was not cross-examined despite having given the opportunity.

15) Retd. Sh. K. N. Singh, Finger Print Expert was examined as CW-1. He deposed that he have examined more than 2000 cases till 31.01.2019. This case marked to me for comparison of five chance print with specimen finger prints of Shiv S/o Sh. Ram Chander by Director of Finger Print Bureau, PS Kamla Market. He has examined chance print mark Q4 to Q5 are not identical with any of finger prints of Shiv Dutt. Chance print mark Q1 to Q3 are partial and smudged and did not disclose sufficient number of

ridged details in their relative position for comparison. Hence, they are not unfit for comparison. My report regarding the same is Ex. CW-1/A and signature of Director of Finger Print Bureau at point B. Covering letter is Ex. CW-1/B bearing signatures of Director Finger Print Bureau at point A.

3. Statement of accused persons U/s 313 of Cr.P.C. was recorded, in which all the incriminating evidence were put to the accused. Accused stated that he has been falsely implicated in the present case and he was innocent. Accused opted not to lead any evidence in defence.

4. This Court has heard the Ld. APP for the State and perused the record. However, Ld. Counsel for the accused has failed to address arguments despite having given opportunity to address the same either physically or through VC. He even failed to file the written submission on the court's e-mail ID i.e. mm03west@ gmail. Com. Thus, the opportunity to address arguments from the side of accused stood closed vide order dated 20.07.2020. Ld. Counsel for the accused has turned up today through VC at 12;30 pm. He was given an option to address the arguments through VC today at 2 PM but he again failed to turn up.

5. It is observed that the prosecution has got examined only three eye witnesses in the present case who had seen accused Shiv Dutt present at the Bank premises in question, namely PW-1 Baleshwar Prasad and PW-2 R. K. Tanwar and PW-13 H. C. Kailash Chand. PW-2 & PW-13 have correctly identified the accused as well as the seized articles in their respective deposition dated 05.03.2016 and 16.12.2019. However, PW-1 Baleshwar Prasad has failed to identify the accused due to lapse of time. Nevertheless, he has correctly revealed the name of accused and his testimony otherwise is in consonance with the statement Ex. PW1/A

recorded by the IO. He categorically deposed that on 02.08.2011, at about 5.00 p.m., he came to know from the police official through telephone that glass of window of the bank was broken and something had happened in the bank. After getting this news, he immediately rushed towards his bank. After reaching there, he saw Sh. R.K. Tanwar who was the member of our bank, police & public persons were already present there. He saw bundle of the used cheque was scattered on the window, sealing of floor was broken, window of the glass broken and iron grill was bent. Thereafter, he opened shutter of the bank and searched inside it and one person was found inside. PW-2 R. K. Tanwar and PW-13 H.C. Kailash Chand corroborates the version of PW1 Baleshwar Prasad.

It is further observed that as per the version of PW-1, PW-2 & PW-13, the bundle of cheques were found torn and scattered inside & outside the bank premises. Thus, it cannot be said that the said bundle of cheques were retained by the accused knowingly or having reason to believe to be stolen property. He was found neither in constructive or physical possession of those bundle of cheques. In these circumstances, this court is of the opinion that the prosecution has failed to prove charges punishable u/s 411 of IPC. No defence evidence was led on behalf of the accused despite having given the opportunity.

All the prosecution witnesses have deposed about the incident fully in consonance with the facts mentioned in the charge sheet. Nothing material came out in their respective cross-examination. There is no reason to disbelieve the testimony of the prosecution witnesses. The prosecution has proved the fact that the accused Shiv dutt had con 01/02.08.2011 at 7.00 p.m. to 4.00 a.m. at Punjabi National Bank, Nangal Raya Branch, Ground Floor, D-2/13, Janak Puri, Delhi within the jurisdiction of PS Maya Puri, committed house breaking by night in order to commit theft and stolen a bundle of duly filled cheques from the said premises All the

requirements of section 380 & 457 of IPC are satisfied. The testimony of prosecution witnesses comes out to be clear, convincing, trust-worthy & inspires confidence of this Court. Accordingly, accused Shiv dutt is hereby convicted for the commission of offence under Section 394 of IPC and he is acquitted from charges punishable u/s 411 of IPC. The convict be heard on the point of sentence on 29.07.2020.

Announced in the virtual Court vide cisco webex meeting ID **919211305** ,
On 23rd July,2020.

PANKAJ
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by PANKAJ
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Date: 2020.07.23
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(Pankaj Arora)
MM-03/West/THC/Delhi
23.07.2020

STATE Vs. Shiv Dutt
FIR No. 81/11
PS: MAYA PURI
U/S: 380/457/411 of IPC

23.07.2020

**(PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING ID
NO. 919211305.)**

At 12:30 p.m.

Present: Ld. APP for the State through VC.
Ld counsel Sh A.K.Sharma through VC

Adjournment sought as Ld counsel is not prepared with file. Already opportunity to address arguments has been closed vide order dated 20.07.20. Nevertheless, in the interest of justice, an opportunity is given to the Ld. Counsel to address the arguments at 2:00 p.m.

(Pankaj Arora)
MM-03/West/THC/Delhi
26.07.2020

At 2:00p.m.

Present : None through VC till 3:00 pm

Opportunity to address arguments stands closed.

Vide separate judgment dictated in the virtual court vide cisco webex meeting ID **919211305** , accused Shiv dutt is hereby convicted for the commission of offence under Section 394 of IPC and he is acquitted from charges punishable u/s 411 of IPC. The convict be heard on the point of sentence on 28.07.2020. Issue court notice to the complainant and BW against the accused for NDOH

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(Pankaj Arora)
MM-03/West/THC/Delhi
26.07.2020