

(2013) 05 DEL CK 0377

In the Delhi High Court

Case No : Criminal A.112 of 2012 and Criminal M.B. 185 of 2012, Crl A.113 of 2012 and Criminal M.B. 186 of 2012 and Crl A.114 of 2012 and Criminal M.B. 187 of 2012

Akbar Hussain @ Mohd Qasim @ Habib and Others (Mohd)

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Citation : (2013) 4 AD 701 : (2013) 2 Crimes 539

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : N.D. Pancholi and Mr. K. Zimik, for the Appellant; M.N. Dudeja, APP, for the Respondent

Judgement

S.P. Garg, J.—The appellants-Mohd. Akbar Hussain @ Mohd. Qasim @ Habib (A-1), Abdul Rehman @ Mohd. Hassan (A-2) and Salman Khurshid Kori (A-3) challenge judgment dated 13.12.2011 in Sessions Case No. 236/1/2010 arising out of FIR No. 96/2006 registered at PS Special Cell by which they were convicted u/s 5 of the Explosive Substance Act, 1908. Vide order dated 15.12.2011, they were awarded RI for ten years with fine 5,000/- each. Allegations against the appellants were that on the night intervening 18/19.12.2006, Insp. S.K. Giri received information that the appellants-A-1 to A-3 operatives of LeT would come by bus from J & K and reach at bus stand opposite Azad Hind Market, Red Fort at 07.00 A.M. and were in possession of explosives to execute their plan in Delhi. The information was reduced into writing and senior officers were informed. A raiding team was organized and they reached at the spot at 05.30 A.M. At 07.25 A.M. all the three accused persons were seen at the spot near the bus stand. At the instance of the informer, they were apprehended. On search of A-3, ten sticks of plastics explosive weighing 1 kg. were found in the bag in his possession. From A-2, ten sticks of plastic explosives weighing 1 kg. were recovered in the bag in his possession. On checking of bag in A-1's possession two detonators and hand grenades were

seized. PW-12 (Insp. S.K. Giri) prepared rukka and lodged First Information Report. ACP Sanjeev Yadav went to the spot. The accused persons were arrested. Necessary seizure memos were prepared. During the course of investigation, statements of concerned witnesses were recorded. Police teams were sent to J & K, Aligarh and Devband. The exhibits were sent to Forensic Science Laboratory and reports were collected. All the three accused were charge-sheeted u/s 121/121A/122/123/120B IPC and 4/5 Explosive Substance Act and 18/20/23 Unlawful Activities (Prevention) Act.

2. Charge under Sections 121A/121/122 IPC; u/s 18 of the Unlawful Activities (Prevention) Act and u/s 5 of the Explosive Substance Act was framed against A-1 to A-3 on 21.11.2007 to which they pleaded not guilty and claimed Trial. The prosecution examined fifteen witnesses to substantiate the charges. In their 313 statements, the appellants pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment, convicted all the three appellants u/s 5 of Explosive Substance Act and acquitted them of all other charges. It is relevant to note that the State did not file any appeal against acquittal of the appellants in other offences.

3. During the course of appeal, learned counsel for the appellants-Mr. N.D. Pancholi, Advocate on instructions from the appellants (who were present in custody in the Court) stated that the appellants have opted not to challenge the findings of the Trial Court on conviction. The appellants also moved applications for release for the period already undergone by them. I have made enquiries from the appellants whether they have voluntarily, without any fear or pressure have opted to accept the conviction u/s 5 of the Explosive Substance Act. They have stated that they, with their free consent, do not challenge conviction u/s 5 of Explosive Substance Act. They however, pray to take lenient view and modify the sentence awarded.

4. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellants have opted not to challenge the findings of the Trial Court on conviction u/s 5 of Explosive Substance Act, the order of conviction of the Trial Court stands affirmed.

5. Regarding sentence, the appellants have been sentenced to undergo RI for ten years fine Rs. 5,000/- each. They have been acquitted of offences u/s 121/121A/122 IPC and u/s 18 of the Unlawful Activities (Prevention) Act.

6. A-1's nominal roll dated 24.01.2013 reveals that he has already undergone six years and nineteen days incarceration as on 22.01.2013. He also earned remission for three months and five days. It further reveals that he is not involved in any other criminal activity and is not a previous convict. His overall jail conduct is satisfactory. He is a young man. His application reveals that he did not seek any bail/parole. He is suffering from depression. He was eighteen years old at the time of his arrest.

7. A-2's nominal roll reveals that he has already undergone six years and twenty-one days incarceration as on 22.01.2013. He also earned remission for three months and nine days. It further reveals that he is not involved in any other criminal activity and is not a previous convict. His overall jail conduct is satisfactory. He is a young man. He is suffering from depression. He is a native of North-East State of Manipur. He has old father aged 70 years. His mother has expired. He is the only earning member of the family.

8. A-3's nominal roll reveals that he has already undergone six years and twenty-one days incarceration as on 22.01.2013. He also earned remission for three months and nine days. It further reveals that he is not involved in any other criminal activity and is not a previous convict. His overall jail conduct is satisfactory. He is a young man. He is suffering from depression. He is a native of North-East State of Manipur. He qualified various exams during incarceration.

9. Considering all these facts and circumstances, the order on sentence is modified and the sentence of RI for ten years is reduced to seven years. The fine amount shall remain undisturbed. However, if the appellants fail to pay the fine, they shall undergo SI for one month, each. Other terms and conditions of the order on sentence are left undisturbed. The appeals stand disposed of in the above terms. Pending applications also stand disposed of being infructuous.