
(2012) 09 DEL CK 0392
In the Delhi High Court
Case No : Criminal Rev. P. No. 654 of 2009

Jai Prakash

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 307, 326, 34

Citation : (2012) 4 JCC 2625

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : K.B. Andley, with Mr. Lokesh Chandra, for the Appellant; Sunil Sharma, APP for State with ASI Raj Singh, PS Vasant Kunj, for the Respondent

Final Decision : Disposed Off

Judgement

P.K. Bhasin, J.—These two revision petitions have been filed by the two convicted accused u/s 397 of the Code of Criminal Procedure against the common judgment dated 07.10.2009 passed by the learned Additional Sessions Judge whereby separate appeals filed by them against the judgment of conviction and order on sentence passed by the trial Court convicting them for the commission of offence punishable u/s 326/ 34 IPC were dismissed and while affirming their conviction the sentence of five years rigorous imprisonment and fine of Rs. 10,000/- awarded to both of them was also maintained. The facts of the case were noticed by the trial Court in its judgment dated 06.05.2008 are as follows:-

..... that on 5.1.1997 DD No. 18 B was recorded at PS Vasant Kunj regarding amputation of foot of a person near Nuclear Sciences Centre, kishan Garh, Aruna Asaf Ali Road. The DD No. 18 B was thereafter handed over to SI Diwan Chand who along with Ct. Shailender Kumar reached the spot where he came to know that the injured has already been taken to the Safdarjung Hospital by the PCR Va. SI Diwan Chand left the Ct. Shailender at the spot and himself went to Safdarjung Hospital where injured Netra Pal was admitted vide MLC No. 177. SI

Diwan Chand recorded the statement of the injured Netra Pal in which he alleged that on 5.1.1997 at about 9 am he had gone to ease himself in the jungle in front of Nuclear Science Centre, Aruna Asaf Ali Road when accused Jai Prakash armed with a "PHARSA" accused Pappu @ Sanjay and Arjun armed with "LATHI" and accused Hambeer with "DANDA" and accused Vivek @ Vicky with "GHANDASA" (now expired) had attacked him. The accused Jai Prakash hit the complainant/injured with the "PHARSA" as a result of which his left foot was amputated. The other accused persons also hit the complainant with "LATHI" and "GHANDASA" as a result of which the injured/complainant received multiple sharp as well as bone injuries. When the complainant had shouted for help all the accused persons ran away. The complainant managed to come out of the Jungle and reached a PCR Van which took him to the Safdarjung Hospital..

2. After completion of investigation charge-sheet was filed in Court against four accused persons for different offences including Section 307 IPC but the Sessions Court, on the case being committed to it, did not find any case u/s 307 IPC made out and so the four accused were tried by the Additional Chief Metropolitan Magistrate u/s 326/ 34 IPC. The trial Court after appraisal of the evidence adduced by the prosecution as well as the accused persons convicted the revisionists herein u/s 326/ 34 IPC while the remaining two accused were acquitted.

3. Separate appeals were filed by the revisionists in Sessions Court and both the appeals were dismissed by the appellate Court vide common judgment dated 07.10.2009. Hence the present revision petitions came to be filed by the two convicted accused and since both the petitions were heard together the same are being disposed of by this common judgment.

4. Learned Senior Counsel Mr. K.B. Andley, appearing for the petitioners-convicts at the time of hearing of these petitions did not press the same on merits as far as the conviction of the petitioners is concerned. He, however, made a fervent plea for showing some leniency on the point of sentence considering the fact that the petitioners had already spent almost three and half years in jail in addition to their undergoing the trauma of criminal proceedings for more than a decade. When the incident took place and convict Jai Parkash was a young boy and thereafter he had got married and was blessed with two children whom he has to look after. Other convict Sanjay @ Pappu also was a young boy of twenty years at the time of the incident and he after his marriage was bless with a girl child and he has also to take care of his family. Mr. Andley also cited on decision of the Hon"ble Supreme Court reported in (2010) 2 SCC (CrL.) 1025, "Neelam Bahal & anr. Vs State of Uttarkhand" wherein the conviction of the convict was converted from Section 307 IPC to 326 IPC and sentence of imprisonment of two years was reduced to the period already undergone by the convict which period of incarceration was almost of one year.

5. Learned APP, on the other hand, left it to the discretion of this Court whether to interfere with the quantum of sentence of the petitioners-convicts or not.

6. I have gone through the judgments of the two Courts below and I also find no reason to differ with the conviction of the petitioners and so their conviction u/s 326/ 34 IPC is maintained. As far as the sentence part is concerned, considering all the facts and circumstances pointed out by the learned senior counsel for the petitioners, the sentence of imprisonment awarded to the petitioners is reduced to the period already spent by them in jail. However, it is also ordered that out of the total amount of fine awarded to the two convicts 75% shall be paid to the injured person as compensation. As the petitioners are presently lodged in jail and serving the sentence of imprisonment they shall now be released from there.