
(2014) 01 DEL CK 0090
In the Delhi High Court
Case No : Criminal A. 260 of 2003

Jauddin @ Pappu

APPELLANT

Vs

The State (Nct of Delhi)

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 392 397 458

Citation : (2014) 1 ILR 617

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

Bench : Single Bench

Advocate : J.P. Singh and Mr. Rahul Kr. Singh, for the Appellant; M.N. Dudeja, APP. and Laxmi Narain, SI, PS Rohini, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—The appeal is listed today for directions and with the consent of the parties, is disposed of today. Jauddin @ Pappu (the appellant) is aggrieved by a judgment dated 12.09.2001 in Sessions Case No. 169/2001 arising out of FIR No. 389/98 registered at Police Station Rohini by which he and his associate Kali Charan were convicted for committing offences punishable u/s 458 /392 read with Section 397 IPC and 27 Arms Act.

2. Allegations against the appellant were that on 12.06.1998 at about 09.30 P.M. at house No. F-17/162 Sector-8, Rohini, he and his associates Kali Charan and Israj committed robbery using deadly weapons. Complainant-Hari Om happened to reach at his residence and saw the assailants committing robbery. He raised alarm and with the assistance of the public persons was able to apprehend the appellant and Kali Charan at the spot. The deadly weapons were recovered from their possession. Israj succeeded to escape from the spot. The information was given to the police and DD No. 66B was recorded. The Investigating Officer lodged First Information Report after recording Hari Om's statement. During the

course of investigation, the statements of witnesses conversant with the facts were recorded. Israj was apprehended subsequently at Bus Stop. Robbed articles were recovered from the possession of accused persons. 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 16 witnesses to substantiate the charges. In their 313 statement, the accused persons pleaded false implication and denied their complicity in the crime. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted both the appellant and Kali Charan for the offences mentioned previously. Israj was given benefit of doubt and was acquitted of all the charges. It is relevant to note that the State did not challenge his acquittal. It appears that Kali Charan who had undergone the sentence awarded to him did not prefer to challenge the judgment.

3. I have heard the learned counsel for the parties. During the course of arguments, appellant's counsel on instructions from the appellant stated at Bar that the appellant has opted not to challenge the findings of the Trial Court on conviction. He, however, prayed to take lenient view as the appellant had remained in custody for substantial period. Since the appellant has given up challenge to the findings on conviction in the presence of overwhelming evidence, his conviction for offences mentioned in the judgment is confirmed. Nominal roll dated 22.05.2013 reveals that the appellant remained in custody for five years besides earning remission for eight months and fourteen days. He was enlarged on bail on 24.01.2004. He has clean antecedents and was not involved in any criminal case. Nothing has emerged if after enlargement on bail he was involved in any criminal activity or misused the liberty granted to him. The appellant has suffered ordeal of trial/appeal for about 15 years. Regarding modification of order on sentence, it reveals that he was awarded minimum sentence u/s 397 IPC i.e. seven years. However, this case has peculiar circumstances and interest of justice compels the Court to reduce the sentence. The appellant preferred the appeal against the impugned order of 2001 from jail. The appeal was admitted on 20.05.2003. Trial Court record was requisitioned vide order dated 30.04.2003. The substantive sentence of the appellant was suspended till the disposal of the appeal as the appellant had already undergone actual imprisonment of about four years and four months and had earned a remission of over five months vide order dated 20.05.2003. It is relevant to note that the original record was not traceable. Attempts were made to reconstruct the original record to appreciate the appeal on merits. However, the Trial Court was unable to reconstruct the original record to scrutinize the testimonies of the material prosecution witnesses on merits. The documents on record are not at all sufficient to finally decide the appeal on merits.

4. Learned APP has no objection if the power u/s 482 Cr.P.C. is exercised and the minimum sentence awarded to the petitioner/appellant RI for seven years is reduced to the period already undergone by him in this case. Considering the peculiar and special circumstances where the original record is not available and

taking into consideration all the facts and circumstances recorded above, for special and adequate reasons, the order on sentence is modified and the appellant is sentenced to undergo the sentence for the period already suffered in custody by him in this case. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith. Copy of the order be sent to the jail Superintendent for information.