
(2010) 08 DEL CK 0149
In the Delhi High Court
Case No : Criminal Appeal No. 781 of 2010

Jitender	Vs	APPELLANT
The State (NCT of Delhi)		RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 375
Penal Code, 1860 (IPC) — Section 34, 392, 397

Citation : (2010) 08 DEL CK 0149

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Ajay Verma and Gaurav Bhattacharya, for the Appellant; Pawan K. Bahl, APP, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Bharihoke, J.—Jitender Kumar, the appellant herein, has preferred this appeal u/s 375(b) of the Code of Criminal Procedure challenging the quantum of sentence awarded to him in terms of the judgment/order dated 07.12.2009.

2. Briefly stated, facts relevant for the disposal of this appeal are that the appellant was tried for the offence u/s 392/397 IPC on the allegations that on 14.02.2005, he along with his co-accused entered House No. 1521, Sector 7, Pushp Vihar, New Delhi belonging to the complainant and committed robbery of Rs. 10 lakhs besides some ornaments and a briefcase containing various documents and camera etc. on the point of a "katta" and a knife by putting the complainant and her children under the fear of their lives.

3. The learned Additional Sessions Judge charged the appellant u/s 392/397/34 IPC to which he pleaded not guilty in the first instance. However, after the examination of eight witnesses including the complainant, the appellant moved an application to confess his guilt. On being satisfied that the application moved by the appellant voluntarily, the learned Additional Sessions Judge proceeded to record the statement of the appellant wherein he admitted the correctness of the

evidence produced by the prosecution and confessed his guilt. The learned Additional Sessions Judge, on the basis of the evidence adduced by the prosecution and the plea of guilt of the appellant, convicted him on the charges u/s 392 as well as Section 397 IPC. The appellant was sentenced u/s 397 IPC to undergo rigorous imprisonment for the period of seven years and for the offence u/s 392 IPC, a fine of Rs. 1000/- was also imposed on him, in default of payment of fine to undergo rigorous imprisonment for the period of two months.

4. The appellant is aggrieved of the quantum of sentence awarded to him. As per the nominal roll, he has undergone incarceration for five years and five days (actual) as on 04.06.2010 and he has also earned a remission in sentence for two months and ten days. Thus, the unexpired period of sentence, as per the latest nominal roll dated 04.06.2010, is one year nine months and fifteen days. The appellant has prayed that his sentence be modified to the extent of the period already undergone in custody and he has also prayed for the waiver of fine.

5. Learned Counsel for the appellant has contended that the appellant is a young man having responsibility of his old parents and an unmarried sister. He contended that the brother of the appellant is living separately with his family and he is not supporting the parents and the sister. Thus, because of incarceration of the appellant, the parents and young sister of the appellant have been pushed on the verge of starvation. Learned Counsel also submitted that the appellant has realised his mistake and is full of remorse and repentance and he deserves a chance to mend his ways and integrate himself in the society as a useful member.

6. Learned APP, on the other hand, has argued in support of the order on sentence and he has submitted that considering the nature of the offence committed by the appellant he has been shown sufficient indulgence and leniency in awarding sentence.

7. I have considered the rival contentions. The learned Additional Sessions Judge has sentenced the appellant to undergo imprisonment for seven years for the offence u/s 397 IPC read with Section 392 IPC and, for the offence u/s 392 IPC, the learned Additional Sessions Judge has imposed fine of Rs. 1,000/- on the appellant.

8. Section 397 IPC deals with the punishment for the offence of robbery or dacoity with attempt to cause death or grievous hurt and it reads thus:

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.-

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

9. Bare reading of aforesaid provision reveals that minimum punishment which

could be awarded for the offence u/s 397 IPC is seven years. In the instant case, the learned Additional Sessions Judge has apparently awarded minimum sentence to the appellant u/s 397 IPC, as such there is no scope for interfering with or reducing the sentence. Coming to the fine imposed for the offence punishable u/s 392 IPC, the learned Additional Sessions Judge has imposed a fine of Rs. 1,000/- only on the appellant. Taking into account that the appellant and his co-accused were involved in robbery of Rs. 10 lakhs as well as valuables including gold ornaments, I am of the view that the fine imposed upon the appellant by the learned Additional Sessions Judge is minimal as compared to the gravity of offence. Thus, I find no reason to interfere with the sentence by reducing the same particularly when the offence committed by the appellant is of grave nature.

10. In view of the above, I find no merit in the appeal. It is dismissed accordingly.