

(2013) 08 DEL CK 0378
In the Delhi High Court
Case No : Criminal Appeal 135 of 2004

Krishan Kumar

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 308, 332, 333, 353

Citation : (2013) 08 DEL CK 0378

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Advocate : Nitender Sharma, for the Appellant; Fizani Hussain, APP and S.P. Samaria, SI, PS Mehrauli, for the Respondent

Final Decision : Disposed Off

Judgement

Sunita Gupta, J.—Challenge in this appeal is to the judgment dated 31st January, 2004 and order on sentence dated 3rd February, 2004 in Sessions Case No. 82/2003 in case FIR No. 154/2003 u/s 308 /332 /353 /333 IPC, PS Mehrauli vide which the appellant was convicted for offence u/s 308 IPC and was sentenced to undergo rigorous imprisonment for two years and to pay fine in the sum of Rs. 15,000/- failing which he was to undergo rigorous imprisonment for one year. Prosecution case emanates from the fact that complainant Het Ram was posted as Head Master in MCD primary school, Bhatikalan, Mehrauli. The appellant Krishan Kumar was working as school attendant in the same school. He was habitual in coming late to the school. On 31st March, 2003, when he arrived late, Het Ram told him that he was writing an application for his transfer to some other school. Thereupon appellant thrust a danda blow on the head of Het Ram. As a result of which, he fell down and became unconscious. Shiv Narain and Hari Shankar, teachers came to the rescue of Het Ram. The accused also gave danda blows to them. Het Ram was admitted in Mahendra Hospital, Green Park Extension by his colleague Jagdish Prasad. Intimation was sent to the police. ASI Lala Ram and Constable Vipin Kumar went to Mahendra Hospital where

statement of complainant Ex. PW-2/A was recorded. A danda was produced by watchman of the school, namely, Surender Kumar on 1st April, 2003 which was seized. On 7th April, 2003, the appellant surrendered before the learned Metropolitan Magistrate. He was formally arrested. After completing investigation, charge sheet was submitted against him.

2. Charge for offence u/s 308 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. In order to substantiate its case, prosecution examined 9 witnesses. All the incriminating evidence was put to the accused while recording his statement u/s 313 Cr. P.C. wherein he admitted giving danda blow to Het Ram, Shiv Narain and Hari Shankar. However, he alleged that he has been framed in this case and that the witnesses are interested witnesses.

4. Vide order dated 31st January, 2004, the appellant was convicted for offence u/s 308 IPC and sentenced as stated above. Feeling aggrieved by the aforesaid judgment and order on sentence, the present appeal has been preferred.

5. At the outset, learned counsel for the appellant submitted that he does not challenge the conviction of the appellant, however, he prayed for a lenient view on the ground that the appellant was aged about 18 years at the time of incident and is now 26 years of age. He had already deposited the fine. He remained in jail for a period of 9 months. He has also adequately compensated the injured, who has since expired, which fact was admitted by his daughter. Learned Public Prosecutor for the State has no objection to taking a lenient view in the matter in view of the circumstances pleaded by learned counsel for the appellant.

6. As regards the conviction of the appellant u/s 308 IPC is concerned, same does not call for any interference inasmuch as the case of prosecution stands proved from the testimony of complainant-Het Ram, PW-3-Shiv Narain Sharma, coupled with the medical evidence and the admission of the appellant himself in his statement u/s 313 Cr. P.C. wherein he admitted that he had inflicted danda blows on Het Ram, Shiv Narain Sharma and Hari Shankar.

7. The only question left for consideration is whether the appellant is entitled for leniency in the sentence or not.

8. It is a matter of record that the incident took place in the year 2003 and the appellant is suffering the protracted trial for the last about ten years. He is stated to be 18 years at the time of incident. The fine imposed by learned Additional Sessions Judge has already been paid by him. The appellant had stated that he has adequately compensated the injured and sought time to produce the complainant but during the pendency of the appeal, the complainant died. Subsequently his widow and one son also expired leaving behind one married daughter only. Smt. Sangeeta, daughter of the deceased complainant appeared and admitted that there was a settlement between the appellant and her deceased father and as per that settlement, her father has received a

compensation of Rs. 80,000/-. She also supported the prayer made on behalf of the appellant for taking a lenient view in the matter. The record also reveals that when application for suspension of sentence and release of appellant on bail was moved, nominal roll of the appellant was called which reflected that he had already undergone a sentence of about 9 months including the remission earned by him. Under the circumstances, keeping in view the totality of facts and circumstances, the order on sentence is modified to the extent that the period of sentence is reduced to the period during which the appellant has remained as under trial in this case. Fine has already been deposited.

9. The appeal is accordingly disposed of. Trial Court record be sent back.