
(2013) 11 DEL CK 0236
In the Delhi High Court
Case No : Criminal A. 6 of 2006

Mohd. Kalam

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 392, 394, 397, 411

Citation : (2013) 11 DEL CK 0236

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Shishir Kumar and Mr. Shoeb Shakeel, Along and Appellant, for the Appellant; Feroz Khan Ghazi, for the Respondent

Final Decision : Partly Allowed

Judgement

G.S. Sistani, J.—Present appeal is directed against the judgment dated 30.09.2005 and order on sentence dated 13.10.2005 passed by learned Additional Sessions Judge, Delhi, whereby the appellant has been directed to undergo imprisonment for a period of 3 1/2 years with a fine of Rs. 1,000/- for the offence punishable u/s 392 IPC and in default of payment of fine, further imprisonment for two months. The appellant has further been directed to undergo imprisonment for a period of 3 1/2 years with fine of Rs. 1,000/- for the offence punishable u/s 394 IPC and in default of payment of fine, to undergo further imprisonment for a period of two months. For the offence punishable u/s 411 IPC, the appellant has been sentenced to undergo imprisonment for a period of 1 1/2 years. It was directed that all the sentences would run concurrently. The necessary facts, to be noticed for the disposal of the present appeal, are as under:

One Jahir Ahmed aged 40 years lodged a complaint with the police on 22.5.04 stating that a day before at 8.15 p.m. he was going towards Nehru Nagar Jhuggi from his house located in DDA Flats, Inderlok, Delhi. He was going via Railway tracks. At about 8.30 p.m. he reached near the jhuggis at Rakhi market, Zakhira

Two or three boys from the side of bushes came to him. Out of them a thin built boy gave a slap to him and told him to give everything he possessed. The complainant refused. The remaining two boys started searching his person. He resisted. One of the boys aged 20-22 years, heavy built, his mouth showing that he was a "Pan (beetel) chewer" took out a "chhuri" concealed on his person. The said boy gave a blow of "chhuri" on the shoulder, back, face and hand. The remaining two boys started beating him with "kicks and fists". They took out cash of Rs. 1,400/- Rs. 1,500/-, phone diary and mobile phone. On raising alarm, all these boys ran away under the cover of darkness. The complainant further stated that with great difficulty and efforts he could reach his house from where his wife brought him to Hospital. The boy who was thin built was having six fingers on one of his hands. The heavy built boy was a "Pan chewer". The third boy was medium built with an average height. The complainant also stated that he was carrying a photo Identity Card alongwith the above said articles at that time.

2. On completion of the formalities, the challan was filed U/S. 392/394/397/411 I.P.C. in the court of Ld. M.M. Case was thereafter committed to the Court of Sessions.

3. My Ld. Predecessor vide Orders dated 02.09.2004 framed charge against the accused Mohd. Kalam U/s. 392/394 IPC r/w Section 34 IPC and 397/411 IPC.

4. To prove its case prosecution examined in all 14 witnesses.

2. Learned counsel for the appellant on instructions from the appellant, who is present in Court, submits that the appellant does not wish to contest the judgment on conviction but prays that the sentence awarded to the appellant be modified to the period already undergone by him.

3. Learned counsel for the appellant submits that the appellant has undergone 02 years, 02 months and 08 days, besides he has earned remission of 02 months and 10 days. The conduct of the appellant in jail has remained satisfactory. Counsel further submits that since the date of the incident till date the appellant has not been convicted in any other criminal matter; on the date of the incident the appellant was 19 years of age; and the appellant has also joined the main stream of the society after being released on bail. It is also pleaded that after his sentence was suspended he got married and has one child. The father of the appellant died in the year 2010. He is the sole bread winner of the family. I have heard learned counsel for the parties and considered their rival submissions. In this case, the appellant has been convicted u/s 392/394/411 IPC read with Section 34 IPC. In the present appeal, the incident occurred in the year 2004, when the age of the appellant was nineteen years. As per the nominal roll dated 14.11.2013, the appellant has already served 02 years, 02 months and 08 days besides earning a remission of 02 months and 10 days. The unexpired period is 01 year 01 month and 12 days and the conduct of the appellant in jail has remained satisfactory. Having regard to the fact that the appellant does not have

any previous conviction; he has joined the main stream of the society; he has a wife, one minor child and a widowed mother to support; he is the sole bread winner of his family; and further taking into consideration that in case the appellant, at this stage, is directed to serve the sentence, not only would he lose his employment but his family would also suffer, the present appeal is partly allowed. The order on sentence awarded to the appellant is modified to the period already undergone by the appellant. Bail bond stands cancelled and surety stands discharged.