

(2017) 08 DEL CK 0079

In the Delhi High Court

Case No : 577 of 2000

RAJIV SAPRA & ANR.

APPELLANT

Vs

STATE, N.C.T. OF DELHI

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 308](#),
[Section 120-B](#), [Section 304-II](#)
- Attempt to commit culpable homicide
[Punjab Excise Act, 1914](#), [657](#)

Citation : (2017) 08 DEL CK 0079

Hon'ble Judges : Pratibha Rani

Bench : SINGLE BENCH

Advocate : N.Hariharan, Vaibhav Sharma, Varun Deswal, Siddharth Singh Yadav, Aditya Vaibhav Singh, Mallika Chadha, Prateek Bhalla, Vaishali Soni, Kusum Dhalla

Judgement

1. These three appeals have been preferred by the appellants namely Rajiv Sapra, Satpal Sethi, Naresh Bhardwaj and Amrish Bhatnagar assailing the judgment dated 5th August, 2000 and order on sentence dated 9th August, 2000 whereby they have been convicted for committing the offence punishable under Sections 304(II)/308/120-B IPC and sentenced as under:-

Appellants Satpal Sethi, Naresh Bhardwaj & Amrish Bhatnagar

(1) U/S 120-B IPC : to undergo RI for six months.

(2) U/S 308 IPC : to undergo RI for five years with fine of Rs. 1000/- each and in default of payment of fine, to undergo RI for six months.

(3) U/S 304 (II) IPC : to undergo RI for seven years with fine of Rs. 2000/- each and in default of payment of fine, to undergo RI for one year.

Appellant Rajiv Sapra

(1) U/S 120-B IPC : to undergo RI for six months.

(2) U/S 308 IPC : to undergo RI for five years with fine of Rs. 1000/- each and in default of payment of fine, to undergo RI for six months.

(3) U/S 304 (II) IPC : to undergo RI for five years with fine of Rs. 1500/- each and in default of payment of fine, to undergo RI for nine months.

2. During the course of hearing, Mr.N.Hariharan, learned Senior Advocate for appellants Rajiv Sapra and Naresh Bhardwaj, Mr.Jayant K.Sud, learned Senior Advocate for appellant Satpal Sethi and Mr.R.M.Tufail, learned counsel for the appellant Amrish Bhatnagar, on instructions, submit that all the four appellants are not challenging their conviction for committing the offence punishable under Section 304(II)/308/120-B IPC and would like to confine their submissions on the quantum of sentence only.

3. On behalf of appellants, it is submitted that this is the infamous SURA case wherein on the eve of Diwali i.e. on 5th November, 1991, many persons who consumed "KARPOOR ASHAV" had either lost their vision or died for which in all 254 FIRs were registered and equal number of chargesheets were filed. A Commission headed by Justice Jagdish Chandra was constituted and the appellants continued appearing before the Commission. The report was submitted by the Commission after about eight months. Thereafter a Special Court was created to try these cases and FIR No.394/1991, PS Ashok Vihar was ordered to be treated as the main case. The trial before the Special Court continued on day to day basis for about seven years. Thousands of witnesses were examined and throughout till the judgment was pronounced on 5th August, 2000, all the appellants had been regularly appearing before the learned Trial Court. All the appellants had remained in custody for a period ranging from three years to four years. This case had ruined all the appellants not only on social front but also economically and they had not been able to even take care of their respective families because of their long incarceration and regular appearance before the Court specially constituted to try this case where trial has been conducted on day to day basis.

4. Learned counsel for the appellants have submitted that in all 44 accused persons were sent to face trial. Out of 44 accused persons, 39 accused persons, who were the shopkeepers and sold the SURA to the victims, were charged for committing the offence punishable under Section 61(1)(14) of Punjab Excise Act. Out of the 39 accused persons (shopkeepers), 38 accused persons pleaded guilty at the initial stage of trial and were dealt with leniently. One shopkeeper i.e. accused Ajay Gupta was convicted under Section 61(1)(14) of Punjab Excise Act and sentenced to undergo RI for four months and to pay a fine of Rs. 1000/-.

5. Out of the remaining five accused persons, accused Ajay Kumar Sharma, who was alleged to be Manager of M/s Karnal Pharmacy was acquitted by the learned Trial Court. The appeal bearing Crl.A. No.103/2005 preferred by the State challenging the acquittal of accused Ajay Kumar Sharma has been dismissed by

this Court vide order dated 21st August, 2017.

6. Now these appeals pertain to the four appellants herein, who are stated to be partners of M/s.Karnal Pharmacy and have been convicted and sentenced as stated above. It has also been submitted that although three appellants namely Naresh Bhardwaj, Rajiv Sapra and Satpal Sethi ceased to be partners of the firm w.e.f. January, 1990 and at the time of this tragedy only one partner namely Amrish Bhatnagar was the sole proprietor but since there is no dissolution deed of the partnership concern, all the four appellants have preferred not to challenge their conviction but to pray for a lenient view on the quantum of sentence for the following reasons:- (i) They faced agony of trial for nine years and also remained in custody for a long time ranging from 3 years to 4 years without calculating remission.

(ii) These appeals are also pending since 2000 and throughout this period of about 17 years or prior thereto, they have never been involved in any other case.

7. In addition to above submissions, the appellants have filed their written submissions highlighting their peculiar circumstances under which they have prayed that they may not be sent to jail to undergo the unexpired portion of sentence.

8. Taking into consideration that the incident took place on 5th /6th November, 1991 and thereafter they have not only remained in incarceration for a period ranging from three years to four years but even the appeals are pending since 2000, in view of the facts and circumstances explained by the appellants, it would serve the ends of justice if the substantive sentence awarded to the appellants is reduced to the period already undergone by them in this case. In view of the peculiar circumstances, as narrated by the appellants in their separate submissions, sending them to Jail at this age and juncture would have the effect of subjecting them to unending misery.

9. While upholding the conviction of the appellants under Sections 304(II)/308/120-B IPC, the substantive sentence awarded to the appellants is reduced to the period already undergone by them in this case. However, in addition to the fine imposed on the appellants by the learned Trial Court, which they have already paid, all the four appellants are further directed to deposit a fine of Rs.7 lacs each (total Rs. 28 lacs) with the Registrar General of this Court. In default of payment of fine, the appellants shall undergo SI for two years.

10. Learned counsel for the appellants have submitted that currently the financial condition of all the four convicts is in bad shape and some time may be given to them to arrange for the fine amount. It has also been submitted that they have never abused their liberty and had been appearing on each and every date of hearing before this Court. Mr.N.Hariharan, Senior Advocate and Mr.R.M.Tufail, Advocate have submitted they had been associated with this case since inception i.e. during trial as well as during hearing of these appeals and that today the appellants can deposit only part of the fine amount i.e Rs. 1 lac each and for the

remaining fine amount of ₹6 lacs each (total Rs. 24 lacs), two months time may be given.

11. In view of the submissions made by learned counsel for the appellants, the appellants are directed to deposit the fine amount of Rs. 1 lac each (total Rs. 4 lacs) today with the Registrar General of this Court.

12. The remaining fine amount of ₹6 lacs each (total Rs. 24 lacs) shall be deposited with the Registrar General of this Court within two months from the date of this order subject their each furnishing an undertaking that they shall deposit the fine within two months from the date of this order and subject to their furnishing PB/SB each in the sum of Rs. 50,000/- each to the satisfaction of Registrar (Appellate).

13. In the circumstances, the sentence to be undergone by the appellant in default of payment of fine is deferred for a period of two months. It is made clear to all the appellants that if they fail to deposit the fine amount within two months as directed, they shall surrender before the Jail Superintendent to undergo the sentence in default of payment of fine.

14. All the four appeals are allowed only to the extent of modification of order on sentence to the above extent.

15. A copy of this order be sent to the concerned Jail Superintendent for information.

16. Registry is directed to send back the LCR alongwith copy of this order after the above order is complied with by the appellants.

17. As prayed, copy of the order be given dasti to the parties under the signature of Court Master.