

(2017) 06 DEL CK 0031

In the Delhi High Court

Case No : 635 of 2015

SHIRAJ @ SIRAJUDDIN

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 13-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 173](#), [Section 428](#) - Report of police officer on completion of Investigation - Period of detention undergone by the accused to be set off against the s

Citation : (2017) 06 DEL CK 0031

Hon'ble Judges : R.K.Gauba

Bench : SINGLE BENCH

Advocate : S. Azad Tarang Srivastava, G.P. Pal

Final Decision : Disposed off

Judgement

1. Appellant Shiraj @ Sirajuddin stood trial in the court of sessions in Sessions Case No. 26/2010 on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) submitted on conclusion of investigation into first information report (FIR) No. 165/2009 of police station Civil Lines. Besides him, six other persons had been sought to be prosecuted out of which one Gulzar Albi (second accused), however, was discharged by order dated 21.07.2010 of the trial court. On conclusion of the trial, by judgment dated 09.04.2015, all the six persons including the appellant were held guilty and convicted. The appellant herein, shown in the array before the trial court as fifth accused, was found guilty and convicted for offences punishable under Sections 341 / 365 / 392 read with Section 34 of Indian Penal Code, 1960 (IPC). By subsequent order dated 29.04.2015 he, besides similarly placed other convicted persons, was sentenced to simple imprisonment for one month for offence under Sections 341 / 34 IPC, rigorous imprisonment for four years with fine of Rs. 5,000/- for offence under Sections 365 read with Section 34 IPC and rigorous imprisonment for four years

with fine of Rs. 5,000/- for offence under Section 392 read with Section 34 IPC. The learned trial judge accorded benefit of set off in terms of Section 428 Cr.P.C.

2. By the appeal at hand, challenge was brought to the judgment finding the appellant guilty and convicting him as also to the order on sentence.

3. When the appeal has come up for hearing, the learned counsel for the appellant submits that he does not press the appeal on merits so as to challenge the finding of guilty or conviction for the above- mentioned offences, restricting his prayer, on instructions, only for reduction of sentence. This being the first appeal, and consequently this Court being the final forum on facts, the evidence has nonetheless been gone through with the assistance of the learned counsel to record satisfaction as to the correctness of the findings returned.

4. The case before the trial court was based primarily on the evidence of Rajender (PW-5), the victim of the offence and the first informant. He was engaged as a driver on a commercial vehicle, described variously as a truck or tempo, bearing No. DL ILG 4278. He had picked up cargo in the nature of 225 tins of Palmoline oil and 100 tins of refined Soyabean, all of Ambuja brand besides other

articles from the godown of one Kulbhushan Gupta of Saraspur Gaon, which was to be delivered at the premises of Ram Lal Bhatia and Sons, Jheel Khuranja, Geeta Colony, Delhi. PW-5, while driving the said vehicle, had reached near Majnu Ka Tila at Outer Ring Road by 9.30 p.m. on 30.10.2009 when the said vehicle was intercepted by a car make Scorpio colour black. The evidence shows that the first informant was forced to get down from the vehicle and make to sit in the rear seat of the car whereupon he was rendered unconscious. His vehicle with Cargo was taken away. Upon regaining consciousness in a remote village, he returned and reported the incident to the police. During investigation, the role of four persons, including the appellant herein was revealed, they having participated in the waylaying of the vehicle and relieving PW-5 of the said vehicle and its cargo. Pursuant to the disclosures made, recoveries of part of the stolen goods were effected from co-accused persons namely Shan Mohammad, Riyazuddin and Anil. During the trial, the appellant was positively identified by PW-5.

5. Given the clear and cogent evidence to above effect, the conclusions reached by the trial court, holding the appellant guilty and convicting him as above, cannot be faulted.

6. The offence was committed on 30.10.2009. The appellant was arrested on 16.12.2009 and remained in custody during the period of trial for almost nine months. After the trial court had found him guilty he was taken in custody whereafter he remained in jail from 29.04.2015 till he was released on bail suspending the sentence on 01.04.2017. The nominal roll shows that he has suffered incarceration for two years nine months and sixteen days and on account of good conduct has earned remission to the extent of seven months and

seven days. It is noted that the appellant does not have any past criminal record. He is married and has two children in the family who depend on him for sustenance.

7. Having regard to the facts and circumstances of the case, in the opinion of this Court, it would be just and proper to modify the period of sentence for offences punishable under Section 365 read with Section 34 and Section 392 read with Section 34 IPC to rigorous imprisonment for three years each, with fine as imposed by the trial court. Ordered accordingly. Since the appellant has already undergone the sentence including on account of the period of remission, he need not surrender to custody.

8. The appeal is disposed of in above terms.