

(2019) 05 DEL CK 0261

In the Delhi High Court

Case No : Criminal Appeal No. 654 Of 2002

Shish Pal & Anr

APPELLANT

Vs

N.C.T. Of Delhi

RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 428
Indian Penal Code, 1860 — Section 394, 450

Citation : (2019) 05 DEL CK 0261

Hon'ble Judges : R.K. Gauba, J

Bench : Single Bench

Advocate : Abhishek Sharma, Mriyank Shankar, Sanjeev Sabharwal

Final Decision : Disposed Off

Judgement

1. The appellant along with two others viz., Ajay Pal (A2) and Bhupesh (A3) were sent up for trial on the basis of report (charge sheet) under section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted upon conclusion of investigation into first information report (FIR) No.425/1992 of Police Station Hauz Khas and were tried in sessions court (vide case no.43/2001), it culminating in judgment dated 07.08.2002, whereby he along with the co-accused Ajay Pal (A2) were held guilty and convicted on the charge for offence under sections 450 read with section 394 IPC, the third accused Bhupesh (A3) having jumped bail and absconded to be declared a proclaimed offender. By order dated 12.08.2002, the trial judge awarded rigorous imprisonment for five years with fine of Rs.5,000/- for offence under section 394 IPC, and rigorous imprisonment for three years with fine of Rs.3,000/- for offence under section 450 IPC against each of the convicts, substantive sentence having been directed to run concurrently, the benefit of set off under section 428 Cr.P.C. having been accorded.

2. The present appeal was filed jointly by the appellant, and co-convict Ajay Pal (A2). Ajay Pal (A2), however, died on 01.01.2017. This fact having been

confirmed, the proceedings against him have abated. The appeal, to that extent, was disposed of by order dated 26.04.2019.

3. At the hearing, the counsel for the surviving appellant Shish Pal (A1), on instructions from him, he being present in court, submitted that he does not press the appeal in so far as it challenges the judgment of conviction, his prayer being only for lenient view in the matter of sentence. It is pointed out that the nominal report dated 04.07.2018 submitted by jail confirms that prior to his release on bail pending hearing on the appeal, the appellant had undergone incarceration for over two years and eight months including period of remission earned for good conduct.

4. It is the submission of the appellant that he had past clean record, involvement in the present case being one off, he having gone astray for some period, he having thereafter abided by law, not being involved in any other case. His submission is that he has been earning his livelihood as an employee at a petrol pump all these years. He is supporting his family which includes young children who are also present in the court with him.

5. The fact that the appellant Shish Pal has clean antecedents, there being no other involvement, has been confirmed by the SHO of Police Station Haus Khas, by his report dated 22.05.2019, which has been submitted today, this being based on the record of the Crime Record Bureau.

6. The incident took place in November, 1992. More than twenty-six and a half years have gone by. The appellant had a past clean record. State has not shown any involvement of the appellant in any other criminal activity even after involvement in the case from which the present appeal arises.

7. The trial had concluded in 2002. The appeal has remained pending for the last seventeen years on board of this court. In these circumstances, it seems harsh to send the appellant back to jail, he having already undergone incarceration for a substantial period, which, this court feels, should serve the ends of justice.

8. Thus, while confirming the conviction and restricting the punishment, by modifying the order on sentence accordingly, to the period of detention already undergone, during the investigation, trial and appeal, the appeal is disposed of.