
(2013) 12 DEL CK 0096
In the Delhi High Court
Case No : Criminal A. 132 of 2010

Shiv Shanker

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 323, 34, 452

Citation : (2014) 1 AD 185 : (2014) 1 JCC 170

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sumeet Verma, DHCLSC, for the Appellant; Navin Sharma, APP for State and SI Deepak, PS Narela, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The appellant has filed the present appeal against the judgment of conviction dated 20.10.2009 and the order on sentence dated 21.10.2009 in a case arising out of FIR No. 253/2008 under Sections 452/323/304/34 IPC registered at Police Station: Narela. On 22.10.2013, the nominal rolls of the appellant and that of the co-convict (appellant in CRL. A. 683/2010) were called for. As per the nominal roll of the appellant, against a quantum of sentence of simple imprisonment for seven years and a fine of Rs. 5,000/-, in default of payment of fine, three months" simple imprisonment under Sections 304/34 IPC, simple imprisonment for six months under Sections 323/34 IPC and simple imprisonment for three years and a fine of Rs. 3,000/-, in default of payment of fine, three months" simple imprisonment under Sections 452/34 IPC (all sentences to run concurrently) in case FIR No. 253/2008 under Sections 452/323/304/34 IPC, Police Station: Narela, as on 25.11.2013, he has undergone sentence for a period of five years, five months and twenty five days. The total period of remission earned by the appellant is one year, four months and twenty days. The unexpired portion of his sentence is one month and fifteen days (if fine paid). The jail conduct of the appellant is stated to be satisfactory

and there is no other case pending against him. The nominal roll mentions that the appellant has been working in jail langar.

2. Learned counsel for the appellant states that having regard to the unexpired portion of sentence of the appellant, he does not wish to assail the impugned judgment of conviction dated 20.10.2009 on merits and only seeks to make submissions on the order on sentence dated 21.10.2009 by requesting that the appellant may be released for the period of sentence undergone by him.

3. Vide judgment of conviction dated 20.10.2009, the appellant herein and the remaining three co-convicts were held guilty and convicted for the offence under Sections 452/323/304/34 IPC and thereafter, the sentence as mentioned hereinabove was imposed on all of them.

4. Learned counsel for the appellant submits that the main accused No. 1, Vakeel Yadav had filed an appeal, registered as CRL. A. 1041/2009 that has been disposed of by a separate order passed today on the basis of a report submitted by the Jail authorities that he has already undergone the sentence imposed on him. It is contended that as per the prosecution case, it is the said accused, who was carrying a rod with him on the fateful date, i.e., on 29.05.2008 when on the day prior to that (i.e. on 28.5.2008) a quarrel had taken place amongst some factory workers at a close distance from the subject factory situated at Narela, where the crime had taken place.

5. The facts recorded in the judgment of conviction reveal that on 29.5.2008, all the four accused persons had arrived at the factory, where Govind Sharma(PW-3) was posted as a Supervisor and they had forcibly entered inside and demanded the presence of the thekedar (contractor) and the factory workers. PW-3 had tried to intervene and pacify the accused persons but they had started assaulting him. In the meantime, a factory worker by the name of Gautam had intervened and tried to rescue PW-3 and at that stage, accused No. 1, Vakeel Yadav (appellant in Crl. A. 1041/2009), who was carrying an iron rod with him and the other three accused persons including the appellant herein, who were armed with Dandas, had hit Gautam on his head and gave him and Govind Sharma, blows with Dandas. Both of them were taken to the hospital, where Gautam had succumbed to his injuries while, Govind Sharma was given medical treatment. Based on the aforesaid incident, a charge-sheet was filed against all the four accused persons, including the appellant herein followed by framing of charges and the trial. Finally, the judgment of conviction was pronounced indicting the appellant and the other co-accused and awarding them identical punishment under the order on sentence.

6. Learned counsel for the appellant submits that upon reading the deposition of Govind Sharma(PW-3), who is the prime witness, it clearly emerges that accused No. 1, Vakeel Yadav was carrying an iron rod and it was he, who had delivered fatal blows with the said rod on the head of the deceased and the said witness had deposed that all the other accused persons had given blows to the deceased

on other parts of his body. He thereafter submits that the appellant herein was not responsible for the blows on the head of the deceased. He further states that facts of the case reveal that the alleged dispute had actually taken place between the accused No. 4, Amarjeet and the Thekedar of the factory, where Govind Sharma(PW-3), was working as a Supervisor and as per the testimony of PW-3, the other three accused used to visit the factory on earlier occasions to meet Amarjeet. PW-3 had also deposed that there was no other altercation that had taken place prior to the incident in question.

7. It is thus submitted by learned counsel for the appellant that while awarding the sentence to the appellant, the trial court did not consider the proportionality of the crime and the sentence imposed in the light of the role attributed to each of the accused and instead, awarded a similar sentence to all of them. He further states that no minimum period of sentence has been prescribed under the provision of Section 304 IPC that deals with punishment for culpable homicide not amounting to murder and in any case, by now the appellant has undergone almost the entire sentence imposed on him, barring a month and a half and the sentence of default on account of non-payment of the fine imposed and therefore his case may be considered sympathetically by releasing him for the period of sentence undergone by him till date.

8. Learned APP defends the order of conviction by stating that as the appellant and the other co-accused were awarded a sentence u/s 304 Part (I) of the IPC, it was not necessary for the trial court to have awarded different sets of punishments to the convicts merely because different roles could be attributed to them.

9. The Court has perused the judgment of conviction dated 20.10.2009 and the impugned order on sentence dated 21.10.2009 passed by the trial court, as also the latest nominal roll of the appellant in the light of the submissions made by the learned counsels.

10. No doubt, the order on sentence does not take into consideration the different roles attributed to each of the accused in respect of the incident in question that had resulted in the death of a person on the fateful day and a common order on sentence has been passed in respect of all the accused, by awarding them identical punishment u/s 304, 323, 452 and 34 IPC. But learned counsel for the appellant has chosen to confine his arguments to point out mitigating factors for the premature release of the appellant.

11. Referring to the social and financial background of the appellant, learned counsel states that at the relevant point in time, the appellant was in his early twenties and a perusal of an application filed by him for suspension of sentence (Crl. M.B. 1573/2012) reveals that he has aged parents to support, apart from a wife and a four year old son. The appellant also has a sister of marriageable age and a younger brother, doing agricultural work at his native place at Bihar. His nominal roll mentions that the appellant has been working in the langar seva in

jail and his conduct has been satisfactory.

12. Having regard to the fact that the appellant has undergone almost the entire period of substantive sentence awarded to him in the present case and by now, the unexpired portion of his sentence would have reduced further to one month and eight days and the sentence in default for non-payment of fine is for a period of six months and further, taking into consideration the fact that he is a first time offender, he has old ailing parents, a wife and a small child as also an unmarried sister to support and lastly, in view of his weak financial background as mentioned in CrI. M.B. 1573/2012, this Court is of the opinion that the ends of justice would be served if the impugned judgment of conviction is upheld and the appellant is admonished in lieu of the fine imposed and his sentence is reduced to the period already undergone by him in the present case. Ordered accordingly. The appeal is disposed of.

A copy of this order be forwarded forthwith to the Superintendent Jail for making compliances.