

Sunil Kumar Vs. the State (Govt. of N.C.T. of Delhi)

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Court : Delhi

Decided On : Sep-23-2013

Judge : S. P. Garg

Appellant : Sunil Kumar

Respondent : The State (Govt. of N.C.T. of Delhi)

Judgement :

\$* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

23. d SEPTEMBER, 2013 + CRL.A. 513/2003 SUNIL KUMAR Appellant
Through : Mr.Sunil Mehta, Advocate. versus THE STATE (GOVT. OF N.C.T. OF
DELHI) Through : Respondent Mr.M.N.Dudeja, APP. CORAM: HONBLE MR.
JUSTICE S.P.GARG S.P.Garg, J.

(Open Court) 1. Sunil Kumar (the appellant) impugns a judgment dated 08.05.2003 of learned Additional Sessions Judge in Sessions Case No.68/02 arising out of FIR No.673/2000 PS Tilak Nagar by which he was convicted under Section 395/34 IPC. By an order dated 13.05.2003, he was sentenced to undergo RI for five years with fine ` 5,000/- under Section 395/34 IPC.

2. Allegations against the appellant were that on the night intervening 2/3.08.2000 at about 01.45 A.M., an information was received at PS Tilak Nagar that some assailants were breaking open the locks of shop No.104, M/s.Harkishan Jewellers in NA-Block, near Vishnu Garden Temple/ Gurudwara. Daily Diary (DD) No.79-B

was recorded and the investigation was assigned to ASI Gurdeep Singh. He lodged First Information Report after recording Sunil Kumars statement (Ex.PW8/A). Rajiv, Sajid, Sunil Kumar (the appellant), Bishan and Jagtar were produced with weapons. Allegations against them were that in a dacoity at the said shop, they removed jewellery boxes from inside the shop & when chased Sajid sitting on the rear seat fired on the complainant from country-made pistol. Sunil Kumar had an iron cutter. The assailants were overpowered and apprehended. During the course of investigation, statements of the witnesses conversant with the facts were recorded. The accused persons were arrested. After completion of investigation, a charge-sheet was submitted against all of them in the Court. They were charged under Sections 395/307/186/353/427/34 IPC. Number of witnesses were examined to establish the charges. In their 313 statements, they pleaded false implication. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held all of them guilty for committing the offence under Section 395/34 IPC.

3. During the course of arguments, appellants counsel on instructions from the appellant (present in the Court), stated at Bar, that Sunil Kumar has opted not to challenge conviction recorded under the aforesaid offences and accepts it voluntarily. He however, prayed to take lenient view and to modify the sentence order as Sunil Kumar has already served substantial period of substantive sentence and the fine has been deposited. Learned Addl. Public Prosecutor has no objection to consider the mitigating circumstances.

4. Since the appellant has accepted the conviction and has opted not to challenge the findings of the Trial Court under Section 395/34 IPC in the presence of overwhelming evidence, his conviction stands affirmed. The appellant was sentenced to undergo RI for five years with a total fine ` 5,000/-. Nominal roll dated 14.07.2003 reveals that he had already undergone two years, eleven months and five days incarceration as on 08.07.2003. He also earned remission for five days. The unexpired portion was two years and twenty days as on 08.07.2003. The appellant was granted suspension of sentence and enlargement of bail vide order dated 19.04.2004. Nominal roll further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory.

He was aged about 22 years on the day of incident and is son of a retired head master. Taking into consideration all these mitigating circumstances, the sentence order is modified and the appellant is ordered to be released for the period already undergone by him in this case. Other terms and conditions of the sentence are left undisturbed. The Trial Court would ensure that the appellant has deposited the fine imposed by it. The appellant shall pay it (if not deposited) within fifteen days from today.

5. Appeal stands disposed of in the above terms. (S.P.GARG) JUDGE
SEPTEMBER 23 2013/tr

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