

Rajesh and anr. Vs. the State (Govt. of Nct of Delhi)

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Court : Delhi

Decided On : Dec-05-2013

Judge : S. P. Garg

Appellant : Rajesh and anr.

Respondent : The State (Govt. of Nct of Delhi)

Judgement :

\$-8 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

5. h DECEMBER, 2013 + CRL.A. 420/2001 RAJESH & ANR. Appellants Through : Mr.D.S.Rathore, Advocate for A2. versus THE STATE (GOVT. OF NCT OF DELHI) Through : Respondent Mr.Lovkesh Sawhney, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.Garg, J.

(Open Court) 1. The case is taken up today as the date already fixed i.e. 04.12.2013 was declared as holiday on account of General Elections to the Legislative Assembly of Delhi.

2. Rajesh, Mahender Kumar and Harish Chand @ Hari were arrested in case FIR No.131/93 PS Keshav Puram and were sent for trial under Section 307/452 IPC with the allegations that on 05.07.1993 at around 07.30 P.M. at G-40/A Industrial Area, Lawrence Road, they in furtherance of common intention inflicted injuries to C.R.P. Rao by a knife. Harish Chand @ Hari was declared Proclaimed Offender. During trial it emerged that the assailants had also robbed ` 5,000/- from the

complainant C.R.P. Rao. The appellants were charged under Section 397 IPC. The prosecution examined number of witnesses to establish the guilt of the appellants. In their 313 statements, the appellants pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment dated 30.04.2001 in Sessions Case No.252/96 held both the appellants guilty under Section 307 IPC. Mahender Kumar was in addition convicted under Section 452 IPC. By an order dated 02.05.2001, Rajesh was awarded RI for four years with fine ` 5,000/-. Mahender was awarded RI for five years with fine ` 5,000/- under Section 307 IPC and RI for three years with fine ` 2,000/- under Section 452 IPC. Both the sentences were to operate concurrently.

3. Rajesh and Mahender Kumar preferred appeal to challenge the conviction. Subsequently, Rajesh did not appear to pursue the appeal. Nominal roll dated 06.12.2010 reveals that he has already served the sentence awarded to him and was released from jail on 13.05.2004 after expiry of the sentence and payment of fine. It appears that on that account the appellant Rajesh has lost interest to pursue the appeal and is dismissed for non-prosecution.

4. During the course of arguments, counsel for the appellant Mahender Kumar, on instructions, stated at Bar that he has opted not to challenge the findings of the Trial Court on conviction under Sections 307/452 IPC. He prayed to take lenient view and to modify the sentence order as the appellant has remained in custody, in this case, for more than three years and has no criminal antecedents.

5. Since Mahender Kumar has opted not to challenge the findings of the Trial Court on conviction, the conviction under Sections 307/452 IPC stands affirmed. Nominal roll dated 06.12.2000 reveals that he remained in custody, in this case, for two years, eight months and ten days besides earning remission for five months and twenty two days as on 13.12.2002. He was not involved in any other criminal case and had no criminal antecedents. His overall jail conduct in the jail was satisfactory. After his release in 2002, on bail, nothing has emerged to infer if he was involved in any criminal case. The incident pertains to the year 1993. It is stated that he is a married man and has four children to look after them.

Considering all these mitigating circumstances, the period already suffered by the appellant Mahender Kumar is taken as substantive sentence. He shall, however, pay the unpaid fine (if any) and deposit ` 30,000/- as compensation to be paid to the complainant/ injured within fifteen days in the Trial Court. The compensation shall be released to the complainant after service of due notice.

6. The appeal stands disposed of in the above terms. Reconstructed Trial Court record be sent back forthwith. Copy of the order be also sent to the Superintendent Jail for information. (S.P.GARG) JUDGE DECEMBER05 2013/tr

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