

Pawan Sahani and anr. Vs. State Nct of Delhi

Pawan Sahani and anr. Vs. State Nct of Delhi

SooperKanoon Citation : sooperkanoon.com/1123042

Court : Delhi

Decided On : Jan-30-2014

Judge : S. P. Garg

Appellant : Pawan Sahani and anr.

Respondent : State Nct of Delhi

Judgement :

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

30. h January, 2014 + CRL.A. 1265/2011 & CRL.M.B. 1048/2013 PAWAN SAHANI & ANR. Through : Appellants Mr. Sunil Tiwari, Advocate. versus STATE NCT OF DELHI Through : Respondent Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. The appellants Pawan Sahani @ Sunil (A-1) and Akhtar @ Babloo (A-2) have preferred the appeal to challenge their conviction under Sections 186/353/307/34 IPC by a judgment dated 27.08.2011 in Sessions Case No.34/09 arising out of FIR No.271/06 registered at Police Station S.P.Badli. By an order on sentence dated 01.09.2011, they were awarded rigorous imprisonment for seven years with fine `5,000/- each under Section 307 IPC; rigorous imprisonment for three months with fine `500/- under Section 186 IPC and rigorous imprisonment for one year with fine `1,000/- under Section 353 IPC. The sentences were to operate concurrently.

2. Allegations against the appellants were that on 07.04.2006 at around 06.40 P.M. Khera Road near Jhuggies of Sector 18, Badli village, they obstructed SI Pawan Kumar, SI Ritesh Kumar and other member of raiding party in the discharge of their public duties and in furtherance of common intention attempted to inflict injuries by firing at them. On 07.04.2006 at around 05.00 P.M. SI Ritesh Kumar received a secret information that Pawan Sahani @ Sunil (A-1) and Akhtar @ Babloo (A-2) involved in committing robberies would come in Sector 18, JJ colony Jhuggies, Rohini to meet their friends. On that secret information a raiding party was organised and the police team comprising of SI Ritesh Kumar, ASI Ravinder, HC Hasim Ali etc. left the Crime Branch office in a government vehicle and recorded Daily Diary (DD) No.13 (Ex.PW7/A). At about 06.40 P.M. two persons were noticed coming on a motorcycle number DL-5R-5707 from Khera Road, Ring Road, Delhi going towards jhuggies of Sector 18. At the pointing out of the secret informer, SI Ritesh Kumar signalled them to stop the motor-cycle. Instead of stopping it, they took U turn and in the process they fell down. In the meantime, A-1 sitting as a pillion rider on the motorcycle took out a country made pistol from right side dub of his pant and fired at SI Ritesh Kumar. However, it did not hit him. Both the appellants were apprehended and necessary proceedings were conducted at the spot. Statements of witnesses conversant with the facts were recorded. After completion of investigation a charge-sheet was filed against both of them in the court; they were duly charged and brought to trial. The prosecution examined seven witnesses to prove their guilt. In 313 statements, the appellants pleaded false implication without examining any witness in defence. The trial resulted in their conviction as aforesaid.

3. During arguments, appellants counsel on instructions stated at Bar that the appellants have opted not to challenge findings of the trial court on conviction and voluntarily accept it. He, however, prayed to modify the sentence order as the appellants have clean antecedents and have remained in custody for substantial period. Learned Additional Public Prosecution has no objection to it.

4. Since the appellants have given up challenge to the findings on conviction in view of the overwhelming evidence against them, the conviction as recorded by the trial court is affirmed. A-1s nominal roll dated 03.02.2012 reveals that he has

remained in custody for seven months and seventeen days besides earning remission for two months and three days as on 02.02.2012. The custody period is stated to have been increased to more than three years till date. A-1s conduct in jail was satisfactory. He has not been shown involved in any criminal case. A-2s nominal roll dated 17.08.2013 reveals that he has remained in detention for two years, one month and twenty eight days besides earning remission for seven months and twenty four days as on 16.08.2013. He is also not shown to have been convicted in any criminal case. He has clean antecedents and his overall jail conduct was satisfactory. Vide order dated 21.01.2014, State was directed to file antecedents of the appellants. It is reported that the appellants were involved in FIR No.669/1998 under Section 395/398 IPC registered at Police Station Mandir Marg and were convicted on 13.05.2002. Nominal roll, however, does not depict it. It is unclear if the appellants had challenged their conviction or have served the sentence awarded to them. Anyhow, the said involvement pertains to the year 1998. At the time of apprehension of the appellants, only A-1 allegedly had a country made pistol in his possession. They had no other incriminating article. It is unclear to whom the motorcycle recovered in the incident belonged. Even after their apprehension, nothing emerged as to whom the appellants wanted to meet. They were not found involved in any criminal case of robbery of trucks as disclosed in the secret information. No stolen/robbed articles were recovered from their possession or at their instance. The appellants did not fire repeatedly at any specific member of the raiding party. No injury was caused to any police official. Considering these mitigating circumstances, sentence order is modified and the substantive sentence of rigorous imprisonment for seven years under Section 307 IPC is reduced to rigorous imprisonment for three years. Other terms and conditions of the sentence order are left undisturbed.

5. The appeal stands disposed of in the above terms. CrI.M.B.No.1048/2013 also stands disposed of. Trial Court record be sent back immediately. Copy of the order be sent to Superintendent Jail for information. (S.P.GARG) JUDGE JANUARY30 2014 sa