

Prem Nath @ Munna Vs. State

Prem Nath @ Munna Vs. State

SooperKanoon Citation : sooperkanoon.com/1171729

Court : Delhi

Decided On : Nov-07-2014

Judge : Sunita Gupta

Appellant : Prem Nath @ Munna

Respondent : State

Judgement :

\$~14 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

07. h November, 2014 + CRL.A. 766/2012 & CrI. MB100412014 PREM NATH @ MUNNA Through: Appellant Ms Sunita Arora with Mr. Krishan Kumar, Advocates. versus STATE Respondent Through: Ms. Jasbir Kaur, Additional Public Prosecutor for the State along with SI Vijay Kumar, Police Station Pandav Nagar. % CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA : SUNITA GUPTA, J.

(ORAL) 1. Appellant Prem Nath@ Munna impugns the judgment dated 30.03.2014 and order on sentence dated 31.03.2014 in Sessions Case No.27/2011 arising out of FIR No.390/1991, P.S. Trilokpuri whereby he was convicted for offence punishable u/s 186/307/34 IPC and was sentenced to undergo RI for a period of 3 months for offence punishable u/s 186/34 IPC and was also awarded RI for a period of 5 years and fine of Rs.10,000/- for offence punishable u/s 307/34 IPC, in default to further undergo SI for 6 months. Both the sentences were to run

concurrently. The convict was granted benefit of Section 428 of Cr.P.C.

2. Prosecution case lies in a narrow compass. On 07.07.1991, at about 2.30/3 a.m., Constable Ram Lal(PW2) and Constable Zia Lal (PW14) during patrolling reached Pocket-5, Mayur Vihar, Phase-I where one tent was to be affixed. The appellant along with his co-accused Mohan Lal(PO) and two other assailants(not arrested) came and one of them was carrying a bag on his shoulder. When they were stopped and asked as to from where they were coming from at such odd hours, Prem Nath and his co-accused Mohan Lal fired at the stomach of both the Constables, as a result of which they sustained injuries. Complainant Israr Khan, brother of the tent owner and who was known to Constable Ram Lal from earlier, witnessed the incident and removed the injured to hospital. During the course of investigation, accused Prem Nath and Mohan Lal were arrested.

3. Charge for offence u/s 186/307/34 IPC were framed against the accused persons to which they pleaded not guilty and claimed trial. After certain witnesses were examined by the prosecution, accused Mohan Lal stopped appearing in the Court, as such after initiating proceedings against him, he was declared Proclaimed Offender. Proceedings continued qua the present appellant.

4. In order to substantiate its case, prosecution examined as many as 25 witnesses. The case of accused was one of denial simplicitor. Vide impugned judgment, the learned Trial Court convicted the appellant for offence u/s 186/307/34 IPC by observing that case of prosecution stands established from the testimony of the two injured witnesses, duly corroborated by complainant Ishrar Khan. Further the ocular testimony of the prosecution witnesses find substantial corroboration from the medical evidence which prove that injured Jai Lal and Ram Lal had received clean and circular gun shots of 1/2x1/2 cm in diameter and nature of injuries were opined to be grievous. The blood stained clothes i.e. shirt and banian of injured persons were also seized and as per the expert report Ex.PW23/A and Ex. PW23B, human blood of `Bgroup was detected on shirts and banians of injured persons. The revolver and cartridges recovered from the spot was sent to CFSL. As per report Ex.PW24/A, .32 bullets sent for examination was fired from .32revolver and live cartridges sent for examination could be fired from

the revolver sent to CFSL. It was also observed that hole in front portion of the shirt and corresponding hole on the banian had been caused by the passage of .32 bullets of parcels sent from examination. From the testimony of ballistic expert and his report, it was duly proved that injured received one gun shot injury fired from the revolver used by accused Mohan Lal which hit the stomach of Constable Ram Lal and Constable Zia Lal. Identity of the appellant was also duly established as he was duly identified by the injured. His presence at the spot at the time of incident was also established from the fact that live cartridges were recovered from the spot. It was also proved that both Constable Ram Lal and Constable Zia Lal were public servants and were discharging their public functions at the time of the incident and it was their legal duty to inquire from the accused persons as to from where they were coming from at odd hours of night. It was also proved that they were obstructed by accused Prem Nath, his co-accused Mohan Lal and other accused in discharge of their public functions. An attempt to commit murder of the injured persons was committed by the accused. As such the appellant was rightly convicted by the learned Trial Court.

5. At the time of hearing argument, the appellant was produced in judicial custody. On instructions from the accused, learned counsel for the appellant submitted that he does not challenge the conviction of the appellant on merits of the case and rightly so, in view of the discussion made above. The only plea taken by learned counsel for the accused is that the maximum punishment awarded to the appellant was 5 years. The appellant has already undergone more than 4-1/2 years sentence, as such he be sentenced to the period already undergone.

6. Learned APP for the State, however, referred to the antecedents of the appellant for submitting that he was involved in 5 cases, out of which he was convicted in two cases and in one case he was discharged. As per the status report, the fate of two other cases is not known.

7. As per the nominal roll dated 11.07.2014, the appellant has already undergone a period of 3 years and 8 months and 18 days besides earning remission for 8 months and 8 days. The unexpired portion of sentence was 7 months 4 days, meaning thereby that now the unexpired portion is approximately 3 months.

8. Keeping in view the totality of the facts and circumstances, the substantive sentence of the appellant is modified to the period already undergone. As regards the quantum of fine, it is submitted by counsel for the appellant that the appellant belongs to a poor strata of society and is not financially sound enough to deposit the fine. He even could not engage any advocate of his own and as such had to be provided legal assistance through Delhi High Court Legal Services Committee. In this background, the amount of fine is reduced to Rs.5,000/-, in default to undergo SI for 3 months. With this modification, the appeal as well as the pending applications, if any, stands disposed of. Copy of the judgment along with Trial Court record be sent back. Copy of the judgment be also sent to Superintendent Jail for information and necessary action. (SUNITA GUPTA) JUDGE NOVEMBER07 2014 as

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com