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Gulam Rasul vs.state

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SooperKanoon Citation : sooperkanoon.com/1206497

Court : Delhi

Decided On : Jun-02-2017

Appellant : Gulam Rasul

Respondent : State

Advocate for Pet/Ap. : Mr. Amar Nath, Mr. Sitab Ali Chaudhary, Mr. Gufram Ali

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: June 02, 2017 + CRL.A. 279/2015 GULAM RASUL ..... Appellant Through: Mr. Amar Nath, Amicus Curiae counsel with Mr. Sitab Ali Chaudhary, DHCLSC Panel Lawyer and Mr. Gufram Ali, Advocate versus STATE CORAM: HON'BLE MR. JUSTICE SUNIL GAUR Through: Ms. Meenakshi Chauhan, Additional Public Prosecutor with ASI Satya Pal Singh ..... Respondent JUDGMENT % (ORAL) For the offences under Sections 392/3
of IPC, appellant was tried and vide impugned judgment of 21st November, 2014, he has been held guilty of committing the aforesaid offences and vide impugned order on sentence of 2nd December, 2014, appellant has been sentenced to rigorous imprisonment for seven years for the offence under Section 397 of IPC and for the offence under Sections 3
of IPC, he has been sentenced to rigorous imprisonment for five years with fine of `5,000/- with default clause. At the outset, learned counsel for appellant submits that the offence under Section 397 of IPC is not made out and to submit so, attention of Crl.A. 279/2015 Page 1 of 4 this Court is drawn to evidence of SI

Hemant Kumar (PW-9) to point out that a surgical blade was recovered from the right pocket of appellant's pant and a bare perusal of surgical blades sketch reveals that it was a knife and not a surgical blade and neither the sketch nor the recovery memo of the alleged surgical blade reveals as to whether the alleged surgical blade was sharp enough to cause death or serious bodily injury and so, it cannot be termed to be a deadly weapon. It is submitted by learned counsel for appellant that it is highly improbable that a surgical blade could be kept by any person in the pocket of his pant as it can cause grievous injury to the person carrying it. Reliance is placed upon decision of a co-ordinate Bench of this Court in Deepak v. State (GNCT of Delhi), 2017 SCC OnLine Del 6918 to submit that without ascertaining as to whether the surgical blade was sharp enough to cause death or serious bodily injury, it cannot be termed to be a deadly weapon and so, the offence under Section 397 of IPC is not made out. It is submitted by appellants counsel that as per the Nominal Roll of 21st April, 2017, the conduct of appellant in jail has been satisfactory and the unexpired sentence is of 2 years and 5 months and few days and so, sentence awarded to appellant for the offence under Sections 3
of IPC deserves to be reduced from 5 years to the period already undergone by appellant. In pursuance to the production warrants issued vide last order, appellant is present in the Court and submits that he has already undergone substantive sentence of 4 years. On the other hand, learned Additional Public Prosecutor for respondent-State submits that the decision in Deepak (supra) relied upon by appellants counsel is inapplicable to the facts of the instant case as in Crl.A. 279/2015 Page 2 of 4 the case in hand, there is rough sketch of surgical blade and the dimension of the surgical blade has been given and so, the conviction of appellant for the offence under Section 397 of IPC is justified. Upon hearing and on perusal of impugned judgment, order on sentence, appellants Nominal Roll, trial court record and the decision cited, I find that as per the evidence of complainant (PW-5), appellant who was having a blade in his hand, had looted `10,000/- from him and at that time, complainant had raised alarm and the appellant-accused was arrested at the spot. It has not come in the evidence of complainant that upon seeing alleged surgical blade in the hand of appellant, the complainant had become frightened or he could not raise alarm and so, the

surgical blade in question cannot be termed as a deadly weapon. It is being so said because even on a close perusal of the sketch of surgical blade (Ex.PW5/G) or its memo, it cannot be made out if both the sides of the blade are sharp or as to what is to the actual length of the blade. Learned counsel for appellant is actually not mistaken in terming the surgical blade (as shown in its sketch) to be a knife. Since there is no evidence on record to the effect that surgical blade in question was sharp enough to cause death or serious bodily injury, therefore, by any stretch of imagination, the said weapon of offence cannot be said to be a deadly weapon. So, the conviction of appellant for the offence under Section 397 of IPC is rendered unsustainable and is accordingly set aside. In the face of evidence on record, the conviction of appellant for the offence under Sections 3
of IPC is found to be well merited. While maintaining the conviction of appellant for the offence under Sections 3
of IPC, the substantive sentence awarded to him is Crl.A. 279/2015 Page 3 of 4 reduced from 5 years to 4 years. However, the sentence awarded in default of payment of fine is maintained. If the appellant has already undergone the modified sentence of 4 years, then he be released in this case forthwith, if he is not wanted in any other case. To the aforesaid extent, the impugned judgment and order on sentence is modified. This appeal is accordingly disposed of. The concerned Jail Superintendent be apprised of this judgment forthwith to ensure its compliance. JUNE02 2017 s (SUNIL GAUR) JUDGE Crl.A. 279/2015 Page 4 of 4

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