

Mohan Prakash @ Monu vs.state

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Court : Delhi

Decided On : Feb-16-2018

Appellant : Mohan Prakash @ Monu

Respondent : State

Judgement :

\$~ * % IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

09. 02.2018 Judgment delivered on:16.02.2018 + CRL.A. 508/2011 MOHAN PRAKASH @ MONU Appellant STATE Through Mr.M.L.Yadav, Adv. versus Respondent Through Mr.Kewal Singh Ahuja, APP with SI Pankaj Tomar from P.S.Sarai Rohilla. + CRL.A. 1229/2011 SHANKAR @ BABU Appellant STATE Through Mr.M.L.Yadav, Adv. versus Respondent Through Mr.Kewal Singh Ahuja, APP with SI Pankaj Tomar from P.S.Sarai Rohilla. + CRL.A. 485/2013 TAPESH SHARMA Appellant Through Mr.M.L.Yadav, Adv. versus STATE OF NCT OF DELHI Respondent Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 1 of 9 Through Mr.Kewal Singh Ahuja, APP with SI Pankaj Tomar from P.S.Sarai Rohilla. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellants have impugned the judgment and order of sentence dated 14.02.2011 and 21.02.2011 respectively wherein the appellants stand convicted under Sections 393/3 of the IPC as also under Section 27 of the Arms Act. They have been sentenced to

undergo RI for a period of 5 years and to pay a fine of Rs.1000/- each, in default of payment of fine to undergo SI for 1 month for the offence under Section 393 of the IPC. For their conviction under Section 398 of the IPC they have been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.1000/-each, in default of payment of fine to undergo SI for 1 month. For their offence under Section 27 of the Arms Act they have been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.1000/- each, in default of payment of fine to undergo SI for 1 month. The sentences are to run concurrently. Benefit of Section 428 Cr.P.C. has been given to the appellants. 2 All the appellants are on bail. The nominal roll of the appellant Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 2 of 9 Mohan Prakash @ Monu shows that he had been released on bail on 15.3.2013; till that date he had undergone incarceration of about 4 years. Appellant Shankar @ Babu is on bail since 17.01.2013; till that date he had undergone incarceration of about 4 years. The third appellant Tapeshe Sharma is on bail since 25.01.2014; till that date he had undergone incarceration of about 5 years and 3 months. 3 The version of the prosecution is that on 30.12.2008 in the evening at about 4.00 p.m. an information was received in the local police station that the appellant Mohan Prakash @ Monu along with the other two co-accused Shankar @ Babu and Tapeshe Sharma had entered into the office of the complainant Raja Ram Verma at BSA Infomedia, 202, IInd Floor, Gupta Complex, Inderlok, Delhi. Appellant Tapeshe took out a deshi katta whereas appellants Mohan Prakash and Shanker took out knives and by brandishing them upon the victims they asked the complainant and his office staff to hand over all the cash amount which was lying at their office failing which they would be killed. Alarm was raised; public persons gathered at the spot. The appellants tried to flee but they were apprehended. FIR was accordingly registered. 4 The prosecution in support of its case had examined 12 witnesses. Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 3 of 9 PW-1, PW-2 and PW-3 were the star witnesses of the prosecution. PW-2 (Raja Ram) was the complainant. He had deposed that when he was in his office complex along with his junior manager Prashant Tiwari (PW-1) accompanied by Sandeep Gupta, Head Cashier (PW-3), the appellants (3 in number) armed with knives and a katta entered his office and by brandishing the knives and desi katta upon them they asked the complainant and his associates to bring the cash which was lying

in their office. Noise was raised; public persons gathered; accused persons tried to flee but they were apprehended and caught at the spot. PW-2 had described that the accused Mohan @ Monu was having a dagger type knife; co-accused Shaker was having a churri with him; accused Tapes had a katta. Sketches of the arms were duly exhibited as Ex.PW-1/A, Ex.PW-1/B and Ex.PW-1/C. The three motorcycles belonging to the three accused persons upon which they had come to do the crime were also exhibited. The case property which included the desi katta and the two knives were also proved in the Court. Along with the desi katta there was one live cartridge and one empty cartridge. All documents stand proved in the testimony of PW-2. In his cross-examination PW-2 had stated that the incident had taken place at about 4.00 p.m.; his younger brother Rampal was helping him at that time since he had injury on Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 4 of 9 his right hand. The police was informed. He volunteered to inform the Court that prior to the date of the incident the bag of his younger brother namely Rampal was snatched by the accused persons at A-Block, Saket containing cash amount of Rs.3,07,000/- and keys of safety vault of his office. He was not present along with his brother when that incident occurred with his brother. He denied the suggestion that he is deposing falsely. No suggestion has been given to him as to why he was deposing falsely. 5 PW-1 Prashant Tiwari was the Head Cashier working in the office at the relevant time. He had also deposed on the same lines as PW-2. He had described the incident in the manner in which it was occurred. He described the fact that one of the appellants was armed with a deshi katta and two appellants were armed with knives. PW-1 along with his associates namely Naveen, Harpreet Singh (PW-6) and others over powered the appellants; public persons gathered and the appellants were apprehended at the spot. In his cross-examination he had stuck to his stand. He denied the suggestion that he was deposing falsely and that the arms were falsely planted upon the appellants. In another part of his cross-examination he admitted that Rs.10 to 15 lakhs cash used to remain in their office as cash transactions used to go Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 5 of 9 on. Police reached the spot at about 4.15 p.m. 6 PW-3 Sandeep Gupta was also working as a cashier in the office at that time. He had also identified the appellants stating that two of the appellants were having knives

and one of them was having a deshi katta. The appellants were apprehended when alarm was raised. He denied the suggestion that he was deposing falsely. Relevant would it be to note that even this witness has not been given any suggestion on the point that any of the witnesses had any enmity with the appellants. 7 PW-6 Harpreet Singh was also working in the office at the relevant time. He rushed to the room where PW-1, PW-2 and PW-3 were already present on hearing their alarm. This witness was cross-examined by learned APP for the State as he could not identify the desi katta; in his cross-examination he denied the suggestion that he had been won over by the appellants on this aspect. This part of the cross-examination of PW-6 has been relied upon by learned counsel for the appellants to support a submission that the arm (desi katta) has not been proved. This Court is not in agreement with this submission of the learned counsel for the appellants. The incident had occurred in 2008 and the witnesses came into the witness box in the year 2010 i.e. after a period of two years. Memory tends to fade CrI A. 508/2011, CrI.A. 1229/2011 & CrI.A.485/2013 Page 6 of 9 with the passage of time and the exact description of the katta not having been known to PW-6 is no ground to discard the otherwise credible testimony of the other witnesses i.e. PW-1, PW-2 and PW-3. Version of PW-6 supports the case of the prosecution on all other counts; merely because there was a slight confusion in a part of his testimony it would not destroy the credibility of this witness. 8 This Court is of the view that the version of PW-1, PW-2 and PW-3 coupled with the version of PW-6 had established the stand of the prosecution. 9 The Investigating Officer was examined as PW-12. He had also reached the spot along PW-7. They apprehended the appellants at the spot and had seized the case property. The FSL had examined the desi katta and cartridges which had been sent to them for examination. The report of the FSL established that this country made pistol was a fire arm within the meaning of the Arms Act; the cartridges were ammunition. The country made pistol was found to be in a working condition. This piece of scientific evidence further supports the case of the prosecution. 10 In the statement of the appellants recorded under Section 313 Cr.P.C. they have simpliciter pleaded falsity in the case. No other defence has been CrI A. 508/2011, CrI.A. 1229/2011 & CrI.A.485/2013 Page 7 of 9 highlighted. No evidence has been led in defence. 11 In a judgment of a Coordinate Bench of this Court in CrI.A. 170/2001 titled Papp

Vs. State delivered on 07.01.2011 had held as under:-

"Section 398 IPC applies to cases of attempt to commit robbery or dacoity. Section 393 IPC corresponds to Section 398 IPC whereas Section 392 IPC corresponds to Section 397 IPC in case of attempt to robbery/dacoity and robbery/dacoity respectively coupled with user of deadly weapon. Thus, Section 398 IPC regulates the punishment in a case of attempt to commit robbery being armed with deadly weapon as distinguished from the case in which the offender has already accomplished his purpose and robbery has been actually committed with the use of deadly weapon under Section 397 of the IPC. 12 The attempt of the appellants to commit a robbery in the office of PW-2 while armed with deadly weapon which included one deshi katta (found to be in working condition) and two knives which were also deadly weapons within the meaning of Section 397 of the IPC as is evident from the sketches of the knives is proved. The appellants are guilty of offence under Section 398 of the IPC. A conviction under this section has a minimum sentence which is not less than 7 years. The conviction of the Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 8 of 9 appellants under Section 393 and Section 7 of the Arms Act also calls for no interference. The appellants have already been awarded the minimum sentence of 7 years for their conviction under Section 398 of the IPC. The conviction not being disturbed, the sentence of the appellants also cannot be modified. The appeals are dismissed. 13 The appellants are on bail. Their bail bonds stand cancelled; sureties stand discharged. Appellants be arrested and directed to serve the remaining sentence. 14 Appeals disposed of in the above terms. FEBRUARY16 2018 ndn INDERMEET KAUR, J Crl A. 508/2011, Crl.A. 1229/2011 & Crl.A.485/2013 Page 9 of 9