

Attar Mian Vs. State

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SooperKanoon Citation : sooperkanoon.com/691819

Court : Delhi

Decided On : Feb-08-1993

Reported in : 1993(25)DRJ284

Judge : Sat Pal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389; [Indian Penal code, 1860](#) - Sections 307

Appeal No. : Criminal Miscellaneous Appeal No. 208 of 1992 and Criminal Appeal No. 172 of 1992

Appellant : Attar Mian

Respondent : State

Advocate for Pet/Ap. : S.S. Gandhi and; R.D. Jolly, Advs

Judgement :

Sat Pal, J.

(1) In this case the appellant was convicted under section 307 and 324 Indian Penal Code vide judgment -dated 31st August,1992 passed by the learned Additional Sessions Judge, Delhi and vide order of sentence dated 3rd September, 1992 he was sentenced to undergo R.I. for a period of 10 years and a fine of RS.1000.00 or in default to undergo R.I. for ten days for the offence

punishable under section 307 I PC and to undergo R.I. for a period of six months and a fine of Rs.500.00 in default to undergo further Ri for a period of five days for the offence punishable under section 324 Indian Penal Code.

(2) The aforesaid judgment was challenged by the petitioner' and his appeal being Criminal.A. 172/92 was admitted on 4th November, 1992.

(3) In the present application the appellant has prayed turn suspension of the execution of the sentence passed by the learned Additional Sessions Judge and for a further direction for release of the appellant on bail.

(4) Mr. Gandhi, the learned counsel for the appellant submitted that while awarding the sentence, the learned Additional Sessions' Judge proceeded on the assumption that the minimum sentence prescribed under section 307 Indian Penal Code is ten years whereas no minimum sentence has been prescribed in the aforesaid section. He also placed reliance on para 24 of the Supreme Court judgment in Babu Singh vs State of U.P., : 1978 CriLJ651 wherein it was observed that as 'per earlier practice of the High Courts once a person has been found guilty and sentenced to life imprisonment, he should not be let loose so long as conviction and sentence are not set aside.' It was further observed that 'the rational of this practice can have no application where the court is not in a position to dispose of the appeal for five or six years.' Learned counsel for the appellant also submitted that the appellant has been in jail for a period of about two years.

(5) Before examining the contention urged by the learned counsel for the appellant it will-be relevant to reproduce Section 307 Indian Penal Code and the relevant portion from the order of sentence passed by the learned Additional Sessions Judge which are as follows:-

'FURTHERmore, since the injuries have been caused to PW2 (Akhtar Mian) and PW6 (Ramesh Kumar) in this case, therefore, minimum sentence prescribed by section 307 of the Indian Penal Code cannot less than 10 years.'

'307.Attempt to murder - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be

guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life-convicts - When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.'

(6) A mere reading of section 307 Indian Penal Code shows that for the offence mentioned in the former part of the p:6 first paragraph, the punishment is imprisonment up to 10 years and also a fine and for the offence mentioned in the latter part of the paragraph i.e. 'if hurt is caused to any person by such act', the punishment is either imprisonment for life or such punishment as is mentioned in the former part.

(7) From the relevant part of the order of sentence reproduced herein above it appears that while interpreting section 307 Indian Penal Code, keeping in view the injuries caused to two persons in the present case, the learned Additional Sessions Judge was of the view that minimum sentence cannot be less than ten years. As is clear from the language of section 307 Indian Penal Code the maximum punishment in such a case is imprisonment for life.

(8) Keeping in view the facts mentioned herein above, I am of the view that this is not a fit case for suspension of the execution of the sentence passed by the learned Additional Sessions Judge and grant bail to the appellant. However, I am of the view that CrI.A. 172/92 should be heard expeditiously. Accordingly, I direct that the appeal be listed for hearing in the week commencing 3rd August, 1993. The application for bail is rejected.