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Ashraf @ Danny Vs. State

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Court : Delhi

Decided On : Sep-09-2011

Judge : Ajit Bharihoke, J.

Acts : Indian Penal Code (IPC) - Sections 452, 392, 397, 120 B; Code of Criminal Procedure (CrPC) - Section 313; Terrorist and Disruptive Activities (Prevention) Act, 1987 - Sections 3, 4, 6

Appeal No. : CRIMINAL APEAL NO.11/2008

Appellant : Ashraf @ Danny

Respondent : State

Advocate for Def. : Ms. Jasbir Kaur, Adv.

Advocate for Pet/Ap. : Mr. Ajay Verma, Adv.

Judgement :

1. Ashraf @ Danny, the appellant herein on being convicted and sentenced for the offence punishable under Section 452 and 392 IPC vide impugned judgment dated 29.10.2007 and the consequent order on sentence dated 02.11.2007 has preferred this appeal.

2. Briefly stated, allegations against the appellant are that he along with his co-accused trespassed into the house of Afsana Praveen, gagged her mouth and one

of the co-accused took out a dagger and abused and criminally intimidated the complainant Afsana Praveen and thereafter they robbed her of `1,50,000/- in cash besides gold ornaments.

3. Appellant along with other co-accused was charged for the offence punishable under Section 452, 392, 397 read with Section 120 B IPC. The appellant pleaded not guilty to the charge and claimed trial.

4. In order to prove the guilt of the appellant, prosecution examined as many as 12 witnesses, including the complainant. Statement of accused under Section 313 Cr.P.C. was recorded wherein he denied the prosecution story and claimed innocence.

5. On consideration of the evidence on record as well as submissions made on behalf of the parties, learned Additional Sessions Judge found the appellant guilty of the offence punishable under Section 452 and 392 IPC and convicted him accordingly. The appellant was sentenced for the offence under Section 452 IPC to undergo RI for the period of 04 years besides fine of `5,000/- and for the offence under Section 392 IPC to undergo RI for the period of 04 years besides fine of `10,000/-.

6. Learned counsel for the appellant, on instructions, at the outset submitted that the appellant admits his guilt on merits and does not press his appeal against the judgment of conviction. The appellant, however, has confined his submissions to the point of sentence awarded to him. It is contended that the appellant is a young man of 27 years. He is the only earning member of his family comprising of his widowed mother and his brother aged 8 to 9 years, who are dependent upon him. He has no history of any previous criminal record. Learned counsel submits that the appellant realises his mistake and he is inclined to mend his ways and become a useful member of the society. Thus, learned counsel for the appellant has prayed this court to take a lenient view and submitted that sentence of 04 years RI is too harsh and presses for reduction of his sentence.

7. Learned APP, on the contrary, has argued in support of the order on sentence and submitted that the sentence of 04 years RI and fine awarded to the appellant

is commensurate with the offence committed by him. Thus, the learned APP has urged for dismissal of the appeal.

8. I have considered the rival contentions. Sentencing of an accused in a criminal matter is a serious exercise and the quantum of sentence imposed should be commensurate with the gravity of the offence committed by the accused and the circumstances under which the offence was committed. While dealing with the issue of sentence for the offences under Sections 3, 4 & 6 of Terrorist and Disruptive Activities (Prevention) Act, 1987, Supreme Court in the matter of Karamjit Singh v. State (Delhi Admn.), (2001) 9 SCC 161, wherein the Supreme Court, has inter alia, observed thus:

"7. .....Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the appellant and objected to on behalf of the respondent, we have come to the conclusion that some consideration should be shown to the appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the appellant in the matter of punishment we have reposed confidence in goodness of human character which is a part of the personality of every human being. We hope and believe that our confidence will not be belied in the case of the appellant. In the facts and circumstances of the case and the changed social environment which has taken place in the meantime, it is our considered view that the sentence of life imprisonment should be modified to the period already undergone (about 13 years 7 months). Before being released from jail in the case, the appellant will notify the jail authority the place and the address at which he intends to stay, on receipt of which the jail authority will intimate the Superintendent of Police of that place with a request to him to keep the appellant under observation. If the Superintendent of Police finds that the appellant is indulging in any illegal activity which amounts to an offence under any law, he shall immediately send a report to the Registrar General of this Court. With this modification of sentence as noted above, this appeal is dismissed."

9. In the case in hand, the appellant is a young man aged about 27 years. He has a widowed mother and a brother aged 8 to 9 years who are dependent upon him. As per the latest nominal roll received from Central Jail No. 8/9, Tihar, the appellant has undergone incarceration for a period of 02 years and 11 months (approximately) including the remission earned as on 05.09.2011. As per the nominal roll, the conduct of the appellant during custody was found satisfactory and till 05.09.2011 he did not avail benefit of parole or interim bail. Taking into account the nature of the offence committed by the appellant and the fact that the appellant is a first offender, to my mind, the imprisonment of 04 years RI for

offence under Section 452 and Section 392 IPC is too harsh. He deserves at least a chance to mend his ways and become a useful member of the society.

10. In view of the discussion above, while maintaining the conviction of the appellant under Section 452 and 392 IPC and also maintaining the sentence of fine imposed upon the appellant, the substantive sentence awarded to the appellant for offence under Section 452 and 392 IPC is reduced from 04 years RI to 03 years RI.

11 Appeal is disposed of accordingly.

12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

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