

Crl.A. 511/2011, Crl. M. (Bail) Vs. State

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Court : Delhi

Decided On : Jan-24-2012

Appellant : Crl.A. 511/2011, Crl. M. (Bail)

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 24.01.2012 + CRL.A. 511/2011, Crl. M. (Bail) 680/2011 GHULAM QADIR BHAT @ GHULAM QADIR BHATT @ BABA Appellant Through: Ms. Kamini Jaiswal, Advocate along with the appellant in person. versus STATE Respondent Through : Sh. Dayan Krishnan, ASC, for the State. CORAM: MR. JUSTICE S. RAVINDRA BHAT MR. JUSTICE S.P. GARG MR. JUSTICE S.RAVINDRA BHAT %.

1. This will dispose of the appeal against an order of the Designated Court, under Prevention of Terrorism Act, by which Ghulam Qadir Bhat was convicted of various offences and sentenced to undergo RI for different terms. By a judgment and order dated 23.01.2012, this Court had disposed of connected appeals by co-accused, based on statements made by them and their counsel (in Crl. A. Nos. 229/2011, Crl. A. 281/2011, Crl. A. 307/2011 and Crl. A. 986/2011)..

2. The Appellant and others, who had approached this Court - Tariq Mehmood and Ishaq Ahmed (in Crl. A. 229/2011), Arshad Khan; Mufti Mohd. Asrar and Ghulam Mohd. Dar were tried together with several other Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 1 accused. By common judgment and order dated 24.12.2010 and

15.01.2011 of Ms. Pinki, learned ASJ/Designated Court, Saket, New Delhi (which have been challenged in the present appeals), these accused/appellants were convicted for committing various offences. All appeals were heard on several dates. During the course of hearing, the Appellant's counsel submitted that having regard to the nature of evidence and the fact that the principal accused Abdul Majeed was held guilty and awarded 10 years sentence for the offence of criminal conspiracy under Section 120-B IPC, (which was the maximum punishment to him), was reduced to 8 years Rigorous Imprisonment by this Court, in a previous order and that the same was to run concurrently with the sentences for the other offences, it was urged that having regard to the allegations leveled against these appellants, Tariq Mehmood and Ishaq Ahmed (in Crl. A. 229/2011), Arshad Khan; Mufti Mohd. Asrar and Ghulam Mohd. Dar, and the findings of the Trial Court, they would not be contesting or pressing for setting-aside of the conviction. The appellants were also present; they were present pursuant to production warrants issued by the Court. They concurred with the statements made on their behalf by the counsel. The present appellant, Ghulam Qadir Bhat, made a similar statement today. His counsel was also present in Court..

3. The prosecution case was that the principal accused Abdul Majeed, in conspiracy with several others, had plotted committing various subversive and terrorist acts in India. These included possibility of kidnapping several highly-placed individuals, and also getting some terrorists, who were lodged in Indian jails, released in bargain. The role attributed to Abdul Majeed was a prominent one; he is alleged to have purchased a plot with a view to stay in Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 2 India to provide hideout to the others, some of whom were from Pakistan and also to mastermind operations and provide logistic support..

4. Although the present Appellant and the other accused, i.e. Abdul Majeed, Mohd. Amran and Mohd. Ashraf were named in the same First Information Report (FIR), and also arraigned (charged) along with these appellants, in view of the fact that some of them pleaded guilty, the order of conviction and sentence was passed much earlier. In the case of Abdul Majeed and Mohd. Amran, the conviction was on 30.09.2003. Mohd. Ashraf's conviction was on 18.09.2003. These orders were

made by the learned Designated Judge (POTA). The relevant sentences awarded by the learned Designated Judge(POTA) on 15.10.2003 were noticed by the Trial Court in the impugned judgment, in the form of a chart. The same is extracted below: "XXXXXX XXXXXX XXXXXX Sr. Name of Convicted U/S Sentence Awarded No. Accused.

1. Abdul Majeed 3 (3) of POTA Eight Years RI with Mohd. Amran fine of Rs. 15,000/- Mohd. Ashraf each. ID one year RI..
2. Abdul Majeed 3 (5) of POTA Five Years RI with Mohd. Amran fine of Rs. 25,000/- Mohd. Ashraf each. ID one year RI..
3. Abdul Majeed 20 of POTA Five Years RI with Mohd. Amran fine of Rs. 10,000/- Mohd. Ashraf each. ID six months RI..
4. Abdul Majeed 3 (6) of POTA Five Years RI with fine of Rs. 5,000/-. ID one year RI. Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 3.
5. Abdul Majeed 4(b) and 5 of Ten Years RI with Explosive fine of Rs. 25,000/-. Substances Act ID one year RI. R/w 5 of POTA.
6. Abdul Majeed 22(2) and 22(3) of Seven Years RI with fine of Rs. 10,000/-. POTA ID six months RI..
7. Abdul Majeed 25 of Arms Act Five Years RI with Mohd. Amran R/w 5 of POTA fine of Rs. 5,000/- Mohd. Ashraf each. ID three months RI..
8. Abdul Majeed 120B IPC Ten Years RI with Mohd. Amran fine of Rs. 25,000/- Mohd. Ashraf each. ID one year RI..
9. Abdul Majeed 121A IPC Eight Years Mohd. Amran Imprisonment (RI) Mohd. Ashraf with fine of Rs. 25,000/- each. ID one year RI..
10. Abdul Majeed 122 IPC Eight Years RI with Mohd. Amran fine of Rs. 25,000/- Mohd. Ashraf each. ID one year RI..

11. Mohd. Amran 307 IPC Five Years RI with fine of Rs. 5,000/-. ID three months RI..
12. Mohd. Ashraf 465 IPC Two Years RI with fine of Rs. 5,000/-. ID three months RI..
13. Mohd. Ashraf 471 IPC Two Years RI with fine of Rs. 5,000/-. ID three months RI..
14. Abdul Majeed 14 Foreigners Two Years RI with Mohd. Amran fine of Rs. 10,000/- Act Mohd. Ashraf each. ID six months RI. XXXXXX XXXXXX XXXXXX" Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 4.
5. The Trial Court also noticed the modification on quantum of sentence awarded against Abdul Majeed, Mohd. Amran and Mohd. Ashraf by this Court in various appeals by each one of the same accused, in Crl. A. 239/2004, Crl. A. 774/2003 and Crl. A. 775/2003. The relevant part of the impugned judgment in that regard reads as follows: "XXXXXXXX XXXXXX XXXXXX C.8 MODIFICATION OF QUANTUM OF SENTENCE AWARDED UNDER SECTION 120B OF INDIAN PENAL CODE C.8(a) Vide order dated 26.05.2009 passed by Hon'ble Mr. Justice Pradeep Nandrajog and Hon'ble Ms. Justice Indermeet Kaur, Judges, Delhi High Court in Criminal Appeal No. 239/04, the order on sentence in respect of accused Mohd. Ashraf was modified. C.8(b) Vide order dated 26.10.2009 passed by Hon'ble Mr. Justice Pradeep Nandrajog and Hon'ble Mr. Justice Suresh Kait, Judges, Delhi High Court in Criminal Appeal No. 774/03, the order on sentence in respect of accused Mohd. Amran was modified. C.8(c) Vide order dated 18.01.2010 passed by Hon'ble Mr. Justice Pradeep Nandrajog and Hon'ble Mr. Justice Suresh Kait, Judges, Delhi High Court in Criminal Appeal No. 775/03, the order on sentence in respect of accused Abdul Majeed was modified. C. 8(d) The sentences awarded vide order dated 15.10.2003 passed by Sh. S.N. Dhingra, learned Designated Judge POTA (as his lordship then was) which is on page 467 to 468 Part-IB has been modified only in respect of quantum of sentence imposed for the offence punishable under Section 120B Indian Penal Code as follows: Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 5 Sr. No. Name of Accused Under Modified Section Sentence.

1. Abdul Majeed 120 B IPC Eight Years RI with fine of Rs. 25,000/-. ID one year RI..
 2. Mohd. Amran 120 B IPC Eight Years RI with fine of Rs. 25,000/-. ID one year RI..
 3. Mohd. Ashraf 120 B IPC Eight Years RI with fine of Rs. 25,000/-. ID one year RI. XXXXXX XXXXXX XXXXXX".
6. In the present case, the order of conviction and sentence appearing in the Trial Court's judgment, in para 22 reads as follows: "XXXXXX XXXXXX XXXXXX.
22. The convicts continues to pose a serious threat to society and are likely to do so for the future. Therefore, they are being awarded the sentence as mentioned herein below:- Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 6 Sr. Name of the Convicts Convict Sentence No. ed U/S Awarded.
1. Tariq Mehmood @ 3(3) Imprisonment for Naeem POTA life and fine in Ishaq Ahmad @ sum of Rs. Dilshad 15,000/- and in Mufti Mohd. Asrar default of Arshad Khan payment of fine RI Ghulam Mohd. Dar for one year for Ghulam Qadir Bhat each convict..
 2. Mufti Mohd. Asrar 3(4) Ten years RI and POTA fine in sum of Rs. 10,000/- and in default of payment of fine RI for eight months..
 3. Tariq Mehmood @ 3(5) Twelve years RI Naeem POTA and fine in sum of Ishaq Ahmad @ Rs. 12,000/- and Dilshad in default of Mufti Mohd. Asrar payment of fine RI Arshad Khan for fourteen Ghulam Mohd. Dar months for each Ghulam Qadir Bhat convict..
 4. Ghulam Mohd. Dar 3(6) Twelve years RI Ghulam Qadir Bhat POTA and fine in sum of Rs. 12,000/- and in default of payment of fine RI for fourteen months for each convict..
 5. Tariq Mehmood @ 20 Ten years RI and Naeem POTA fine in sum of Rs. Ishaq Ahmad @ 10,000/- and in Dilshad default of Mufti Mohd. Asrar payment of fine RI Arshad Khan for eight months Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 7

Ghulam Mohd. Dar for each convict. Ghulam Qadir Bhat.

6. Ghulam Mohd. Dar 22(2) and Ten years RI and Ghulam Qadir Bhat 22(3) fine in sum of Rs. POTA 10,000/- and in default of payment of fine RI for eight months for each convict..

7. Tariq Mehmood @ 25 of Five years RI and Naeem Arms fine in sum of Rs. Ishaq Ahmad @ Act r/w 5,000/- and in Dilshad 5 of default of POTA payment of fine RI for four months for each convict..

8. Tariq Mehmood @ 120 B Ten years RI and Naeem IPC fine in sum of Rs. Ishaq Ahmad @ 10,000/- and in Dilshad default of Mufti Mohd. Asrar payment of fine RI Arshad Khan for eight months Ghulam Mohd. Dar for each convict. Ghulam Qadir Bhat.

9. Tariq Mehmood @ 121A Ten years RI and Naeem IPC fine in sum of Rs. Ishaq Ahmad @ 10,000/- and in Dilshad default of Mufti Mohd. Asrar payment of fine RI Arshad Khan for eight months Ghulam Mohd. Dar for each convict. Ghulam Qadir Bhat.

10. Tariq Mehmood @ 122 IPC Ten years RI and Naeem fine in sum of Rs. Ishaq Ahmad @ 10,000/- and in Dilshad default of Mufti Mohd. Asrar payment of fine RI Arshad Khan for eight months Crl. A. 511/2011, Crl. M. (Bail) 680/2011 Page 8 Ghulam Mohd. Dar for each convict. Ghulam Qadir Bhat.

11. Tariq Mehmood @ 474 IPC Five years RI and Naeem fine in sum of Rs. 5,000/- and in default of payment of fine RI for four months..

12. Tariq Mehmood @ 14 of Two years RI and Naeem Foreign fine in sum of Rs. Ishaq Ahmad @ Act 10,000/- and in Dilshad default of Arshad Khan payment of fine RI for six months for each convict..

7. It is argued by learned counsel that the previous orders of the Court so far as it dealt with the other appeals of Abdul Majeed, Mohd. Amran and Mohd. Ashraf is concerned, it consistently accepted the plea for reduction of sentence. The appellant's counsel relied upon the orders made by this Court in that regard. One

of those is reported as Mohd. Amran @ Naved v. State 164 (2009) DLT.

262. The relevant part of the said order reads as follows: "XXXXXX XXXXXX XXXXXXIt is urged that the appellant has expressed remorse for his conduct and at the first instance has pleaded guilty. Thus, it is urged that the mitigating circumstance i.e. the expression of remorse by the appellant has to be taken into account and sentence tempered accordingly. It is urged that for the commission of the substantive offences in respect whereof the charge of conspiracy was framed, the sentence imposed is of 8 years rigorous imprisonment and thus it does not stand to reason as to why for the charge of conspiracy relating to the said substantive offences, the sentence imposed should be 10 years RI. CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 9.

8. It is urged that as per the Code of Criminal Procedure, if the fines are not paid, the relatable period of incarceration to be undergone has to be undergone by the appellant and that in relation to payment of fine, the sentences cannot run concurrently. It is urged that the sum total of the fine imposed upon the appellant is in the sum of Rs.1,45,000/- and if the same is not paid, the imprisonment required to be undergone would be 6 years and 6 months..

9. Learned Counsel for the State urges that the offence of conspiracy is a substantive offence and therefore the learned Trial Judge justify in imposing the sentence of Rigorous Imprisonment for 10 years pertaining to the offence of conspiracy. Learned Counsel urges that keeping in view the magnitude of the offence for which the appellant was charged of, namely to enter into conspiracy to commit terrorist acts directed at the President of India and the noted cricketer Sachin Tendulkar, sentences imposed are adequate. Learned Counsel urges that the scourge of terrorism which has created a fear psychosis in the society needs to be put down with a heavy hand. Learned Counsel urges that the society's cry for justice in the form of appropriate sentence has to be respected because the crime of terrorism shocks the conscience of the society..

10. Having considered the rival submissions, we but note that prima facie it seems discriminatory and inappropriate to impose a lesser sentence for a crime which has manifested itself in the form of commission of the crime vis-a-vis the

conspiracy to commit the crime and impose a higher sentence for the substantive offence of conspiracy..

11. We agree with the submissions made by the learned counsel for the state that for offences relatable to terrorism, no leniency in the imposition of sentence has to be shown, more so, when the crime is committed by foreign national who trespasses CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 10 into the territory of the Union of India and attempts to over awe the very existence of the State..

12. Thus, we do not find any infirmity in the impugned order in so far the fines have been imposed and in default, further imprisonment for respective period has been directed to be undergone..

13. But, we find a hiatus with respect to the substantive sentence of rigorous imprisonment for 10 years imposed for the charge punishable under Section 120B IPC for the reason for the charge of conspiracy the relatable offences have resulted in a conviction for a maximum period of 8 years..

14. We accordingly take corrective action. The appeal stands disposed of modifying the order of sentence dated 15.10.2003, but limited to the sentence imposed for the offence punishable under Section 120B IPC. We direct that for the offence punishable under Section 120B IPC, the appellant shall undergo rigorous imprisonment for 8 years and pay a fine in sum of Rs.25,000/-, in default of payment of fine would undergo rigorous imprisonment for one year..

15. The appeal stands disposed of as aforesaid..... XXXXXX XXXXXX XXXXXX".

8. It is urged by the learned Addl. Standing Counsel, Sh. Dayan Krishnan that the plea urged on behalf of the appellant merits consideration. He does not dispute that the material which persuaded the Trial Court in this case to convict the accused in this case points to a far lesser role by the appellant than that of Abdul Majeed, the mastermind and the principal conspirator, who was sentenced to a maximum of 8 years Rigorous Imprisonment. CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 11.

9. We have carefully considered the evidence in the course of hearings these last few days. We are also independently of the opinion that the depositions and materials placed on record, which persuaded the Trial Court to convict the present appellant do not reveal his role of such nature as was alleged against Abdul Majeed. In view of the plea made on his behalf by counsel as well as by him (which has been recorded separately in his appeal, that he would not challenge the conviction and would be contented if the sentences are reduced in the same manner as was awarded to the other three accused, whose appeals were disposed of by this Court), we are of the opinion that such relief is warranted. Here, it would be necessary to recollect the judgment of the Supreme Court in Harbans Singh v. State of U.P. 1982 (2) SCC 101 and Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra 2003 (2) SCC 708, which was noticed in a recent judgment, reported as Ajmer Singh v. State of Haryana 2010 (3) SCC.

746. Such parity in sentencing is called for. The need to maintain a consistent sentencing policy in the given facts of a case, if joint responsibility is attributed, was emphasized in R. v. Christie, 2004 ABCA 287, by the Alberta Court of Appeal in Canada, in the following terms: "XXXXXX XXXXXX XXXXXX "40. Parity is a principle which must be taken into account in any sentence, and particularly where the offence was a joint venture. There will, of course, be cases where the circumstances of the co-accused are sufficiently different to warrant significantly different sentences, such as where one co-accused has a lengthy related criminal record or played a much greater role in the commission of the offence." XXXXXX XXXXXX XXXXXX" CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 12 "43. What we must strive for is an approach to sentencing whereby sentences for similar offences committed by similar offenders in similar circumstances are understandable when viewed together, particularly in cases involving joint ventures." XXXXXX XXXXXX XXXXXX".

10. In the subsequent judgment of Alberta Court of Appeal in Wahby v. R. 2004 WASCA 308, it was stated as follows: "XXXXXX XXXXXX XXXXXX (6) "In considering the application of the principle, all the circumstances of the case are to be taken into account; those concerned with the commission of the offence and those which are personal to the offender before the court and the co- offender.

Where there are differences, as almost inevitably there will be, true parity will be produced by different sentences, each proportionate to the criminal culpability of each offender, bearing in mind, as is often said but is worth repeating, that sentencing is not and should not be a process involving a search for mathematical precision, but is an act of discretion informed by the proper application of sentencing principles to the particular case. Inevitably there will be a range of appropriately proportionate sentences which may be passed for the offence before the court." XXXXXX XXXXXX XXXXXX".

11. The parity principle was explained by the Australian High Court in *Postiglione v. R.* (1997) 189 CLR 295: 94A Crim R 397, in the following terms: "XXXXXX XXXXXX XXXXXX CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 13 "The parity principle upon which the argument in this Court was mainly based is an aspect of equal justice. Equal justice requires that like should be treated alike but that, if there are relevant differences, due allowance should be made for them In the case of co-offenders, different sentences may reflect different degrees of culpability or their different circumstances. If so, the notion of equal justice is not violated ... Discrepancy or disparity is not simply a question of the imposition of different sentences for the same offence. Rather, it is a question of due proportion between those sentences, that being a matter to be determined having regard to the different circumstances of the co-offenders in question and their different degrees of criminality." XXXXXX XXXXXX XXXXXX" "..... the concept simply is that, when two or more co- offenders are to be sentenced, any significant disparity in their sentences should be capable of a rational explanation." XXXXXX XXXXXX XXXXXX".

12. Having regard to the overall conspectus of the facts in the present appeal, we are of the opinion that since none of the appellants before this Court was in fact convicted for offences punishable under the Explosive Substances Act, (unlike Abdul Majeed, who was so sentenced), and having regard to the nature of allegations against each of them, this Court was of opinion that their cases deserved application of principle of parity. Consequently, even while leaving their conviction undisturbed, the sentences were reduced to 8 years Rigorous Imprisonment in respect of POTA and IPC offences, except in the case of Tariq

Mehmood, Ishaq Ahmed, whose sentences in addition under Sections 25 of the Arms Act read CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 14 with Section 5 of POTA and Section 474 IPC, of 5 years Rigorous Imprisonment with fine are left undisturbed. Their sentences under POTA and IPC, however, were reduced to 8 years Rigorous Imprisonment with fine. The sentence of fine in respect of all the Appellants, too, was modified; each of them was sentenced to pay ` 25,000/- in aggregate, failing which to undergo simple imprisonment for six months. These were in the order dated 23.01.2012 in CrI. A. Nos. 229/2011, 281/2011, 307/2011 and 986/2011..

13. The allegations against Ghulam Qadir Bhat was of his assisting in the financing operations; the prosecution sought to prove the case against him by relying upon the bank transactions in the form of deposit of amounts in his bank accounts by Abdul Majeed. No other allegations were leveled or proved against him. We also notice that the prosecution did not make any effort to trace the amounts transferred to various accounts in Jammu and Kashmir (J and K) and whether they were in fact used for subversive purposes. Having regard to these aspects, we are of the opinion that since he has chosen not to challenge the conviction, this is an appropriate case to reduce the sentence to 8 years Rigorous Imprisonment. He has undergone more than 9 years detention. The appeal is allowed to such extent. The directions with regard to fine in his case are also altered; the fine amount is reduced to ` 5,000/- or in default, to undergo simple imprisonment for one month. The appellant will be at liberty to deposit the fine with the concerned Jail Superintendent, as per rules..

14. The appeal is allowed in the above terms; the Appellant Ghulam Mohd. Qadir Bhat shall be released unless he is required in any other case. CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 15.

15. Order Dasti; a copy of the order shall be sent to the Jail Superintendent for appropriate action. S. RAVINDRA BHAT (JUDGE) S.P. GARG (JUDGE) JANUARY 24, 2012 CrI. A. 511/2011, CrI. M. (Bail) 680/2011 Page 16