

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.A. No.1016/2010**

Decided on 19.10.2010

IN THE MATTER OF :

RAJU

..... Appellant

Through: Ms. Nandita Rao, Adv. with
appellant in person.

versus

STATE

..... Respondent

Through: Mr. Naveen Sharma, APP for State.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may
be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. Pursuant to the production warrants, the appellant is present in the Court.

2. The matter was passed over on the first call as counsel for the appellant, who is engaged to appear for the appellant by the Delhi High Court Legal Services Committee, was requested to interact with the appellant and obtain instructions from him. On the second call, learned counsel states that she has obtained instructions from the appellant to the effect that while he does not wish to challenge the

impugned judgment of conviction dated 31.3.2010, he requests that having already undergone a period of sentence for 2 years 3 months, he be released by reducing the sentence to the period undergone by him.

3. The present appeal arises out of the judgment dated 31.3.2010, whereunder the appellant and two other co-accused were convicted in a case arising out of FIR No.220/2008 under Sections 411/458/394/397/34 IPC read with Section 25 of the Arms Act registered with PS Ashok Vihar, Delhi.

4. The incident, subject matter of the aforesaid judgment, occurred in the intervening night of 27/28.6.2008 when all the three accused including the appellant were found to have trespassed into the house of the complainant, Nathu Ram who woke up and tried to apprehend them. While one of the co-accused, Vikas @ Kishore took out the purse from the pocket of the complainant and stabbed him, the other two accused ran away. The second co-accused Ravinder @ Sudhir, who was carrying a knife and the appellant, who was carrying a rod, were apprehended by the brother and son of the complainant.

5. The disclosure statement of the accused persons was recorded and after the investigation was completed, a challan was filed before the court. Charges were framed against all the three accused who pleaded that they were not guilty and claimed trial. In the trial, 7 witnesses including the complainant, were examined, whereafter the trial court arrived at the conclusion that the accused were

apprehended from the spot itself, and they could not explain their presence there and further, the witnesses who were from the family of the complainant were reliable and there was no reason to discard their testimony.

6. As a result, the appellant was held to be guilty of the offence under Section 394 read with Section 34 IPC and convicted. As he was found to be in possession of an iron rod, he was acquitted under the provisions of Section 25 of the Arms Act. As per the order on sentence dated 13.4.2010, the appellant was found to be a first time offender and he was in judicial custody since 28.6.2008. As a result, a lenient view was taken against the appellant and he was sentenced to undergo rigorous imprisonment for a period of 3 years with fine of ₹.5,000/- for the offence under Section 394 read with Section 34 IPC. In default of payment of fine, he was directed to undergo simple imprisonment for a period of one month. Benefit of Section 428 Cr.P.C. was given to the appellant for the period already undergone by him during the trial.

7. Counsel for the appellant states that the appellant is a daily wager working as a Safai Karamchari and his family comprises of himself, his wife and four children aged 13 years, 8 years, 6 years and 3 years, all of who are dependent on him for succor. His wife is stated to be suffering from breathing problem and is bed ridden. There is no financial support available to the appellant and his family members as his parents had expired long back and after his conviction, none of his

brothers and sisters have come forward to support his family. The wife and children of the appellant are stated to be surviving on the basis of support offered by the neighbours in the area. As per the nominal roll dated 22.7.2010, as on 14.7.2010, the appellant had undergone imprisonment for a period of 2 years 15 days, with a remission earned for a period of 10 days. As on date, the appellant has undergone conviction for a period of 2 years and 3 months. As far as the jail conduct of the appellant is concerned, nothing adverse has been shown on the record. There is no other case pending against the appellant, nor has he been convicted in any other case.

8. Counsel for the appellant states that the stolen property in the present case is a purse containing ₹.60/- and an election identity card. She submits that the appellant being a first time offender, it is a fit case where he may be released by reducing the sentence to the period undergone by him for 2 years 3 months. She further states that the appellant is financially not even in a position to pay the fine of ₹.5,000/- imposed on him as part of the sentence, and the said amount be waived.

9. Having regard to the background of the appellant and considering the fact that he is a first time offender and has already undergone sentence for a period of 2 years and 3 months and also considering the fact that the appellant is the sole breadwinner of a family comprising of six members, four of who are minors, and that his wife and children are completely dependent on him for livelihood, a

lenient view is taken with respect to the appellant. In view of the aforesaid facts of the case and considering the fact that the appellant is stated not to be involved in any other criminal case apart from the present one, and it also appears that if released, he can be well assimilated in the main stream of the society as a useful citizen, no useful purpose shall be served in requiring him to undergo the remaining portion of the sentence.

10. While upholding the order of conviction, the sentence imposed on the appellant is modified to the extent that the appellant is released on the basis of sentence being reduced to the period already undergone by him. Having regard to the poor economic condition of the appellant, the fine imposed on him stands waived. The appellant is instead, admonished for the default period of one month imposed in the order of sentence.

The appeal is disposed of.

A copy of this order be forwarded forthwith to the Jail Superintendent for perusal and compliance.

OCTOBER 19, 2010
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HIMA KOHLI,J