

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: March 08, 2011

+ **CRIMINAL APPEAL NO.811/2008**

JEEWAN

....APPELLANT

Through: Ms.Purnima Sethi, Amicus Curiae.

Versus

STATE

.....RESPONDENT

Through: Ms. Fizani Husain, APP

+ **CRIMINAL APPEAL NO.435/2009**

NEM CHAND

....APPELLANT

Through: Ms.Purnima Sethi, Amicus Curiae.

Versus

THE STATE

.....RESPONDENT

Through: Ms. Fizani Husain, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.(ORAL)

1. These appeals are directed against the impugned judgment of learned Additional Sessions Judge dated 4th August, 2008 in Sessions Case No.1/2006 FIR No.526/1994 under Section 307/34 IPC P.S. Patel Nagar and the consequent order on sentence dated 11th August, 2008 whereby the

appellants have been convicted on charge under Section 307 IPC read Section 34 IPC and sentenced to undergo R.I. for a period of 5 years each as also to pay fine of ₹2000/- each, failing which to undergo S.I. for a period of one month respectively.

2. Briefly stated, allegations against the appellants are that on 31st July, 1994 while complainant Sunil Kumar was going on his cycle from DMS Colony, Shadipur towards Patel Nagar, he was hit by a two-wheeler scooter on which three persons, including the appellants were travelling. Consequent upon the accident, cycle of Sunil Kumar had got damaged and he asked the scooter riders to pay for the repair of cycle. They left the spot saying that they did not have money and promised to come back in a short while. Complainant Sunil Kumar, thereafter, went to a cycle repair shop to get his cycle repaired. While he was present at cycle repair shop, the appellants and their co-accused came there and assaulted the complainant. He was given stab injuries on his lips as well as his chest. Thereafter, the appellants and the co-accused ran away.

3. The appellants as well as their co-accused were charged for offence under Section 307/34 IPC to which they pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of the appellants, prosecution has examined 19 witnesses, including the complainant Sunil Kumar and other eye witnesses.

5. The appellants, when examined under Section 313 Cr.P.C., denied the prosecution version in its totality and claimed that they have been falsely implicated in this case. Appellant Nem Chand examined 3 witnesses in his defence to establish that he was picked up from the bus stand and falsely implicated in this case.

6. Learned Additional Sessions Judge, after hearing the parties and on consideration of the evidence on record, found both the appellants guilty of the offence of attempt to commit murder punishable under Section 307 IPC read with Section 34 IPC. He convicted them and sentenced them accordingly.

7. Learned Ms.Purnima Sethi, Amicus Curiae submits that both the appellants have instructed her to make a statement on their behalf that they admit their guilt and do not challenge the impugned judgment on merits. Learned Amicus Curiae, however, has confined her argument to the quantum of sentence.

8. Learned Amicus Curiae has submitted that from the allegations in the FIR (Ex.3/A) and the statement of the complainant, it is apparent that it is not a case in which the appellants had a motive to cause harm to the complainant. She submitted that as per the case of the prosecution, the occurrence took place as a result of accident between scooter of the appellants and their co-accused and the cycle of the complainant and the complainant sought compensation from them for getting his cycle

repaired. Therefore, according to learned Amicus, the sentence of 5 years R.I. awarded by learned Additional Sessions Judge is too harsh and she has urged for reduction of sentence to the period already undergone by respective appellants in custody. Learned Amicus Curiae further submits that both the appellants are young people having their own families who are dependent upon them for their subsistence, therefore also they deserve to be treated leniently.

9. 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 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, has inter alia, observed thus:

"7. Punishment in criminal cases is both punitive and reformatory. 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 reformatory 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."

10. Learned APP, on the other hand, has argued in support of the order on sentence. She has submitted that perusal of the MLC (Ex.PW12/A) would show that the complainant was given stab injuries on his chest,

abdomen and lips, the chest and abdomen being the vital part of the body, the trial court has rightly convicted the appellant to undergo R.I. for a period of 5 years, besides fine.

11. In the case in hand, as per the nominal rolls of the respective appellants Jeewan and Nem Chand, they are aged 36 years and 38 years respectively, they are having their own family to cater to, who are dependent upon them. Otherwise also, taking into account the circumstances under which the occurrence took place and the nature of injuries sustained by the complainant, I am of view that sentence of 5 years R.I. awarded to the appellants by learned Additional Sessions Judge is on the harsher side. I, therefore, accept the plea of learned Amicus Curiae. While maintaining the sentence of fine, the sentence of imprisonment awarded to the appellants is reduced from 5 years R.I. to 3 ½ years R.I. respectively. Both the appellants shall get the benefit of Section 428 Cr.P.C.

12. Appellant Jeewan, as per latest nominal roll, submitted by Deputy Superintendent, Central Jail, Tihar has already undergone incarceration for a period of 3 years 7 months and 15 days, which takes care of the substantive punishment awarded to him as well as imprisonment for one month in default of payment of fine, therefore no further action against him is called for.

13. As regards Nem Chand, copy of this order be sent to the Jail Superintendent concerned for information and compliance.

14. The appeals are partly accepted, subject to the aforesaid modification in the impugned order on sentence.

15. The appeals stand disposed of.

MARCH 08, 2011
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(AJIT BHARIHOKE)
JUDGE