

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

Reserved on: 8th April, 2013

Pronounced on: 9th July, 2013

+ **CRL.A. 517/2010**

RAJESH @ RAJU

..... Appellant

Through: Mr. Gautam Khazanchi, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Rajdipa Behura, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant impugns a judgment dated 28.10.2009 and order on sentence dated 05.11.2009 passed by the learned Additional Sessions Judge (ASJ) in Sessions Case No.102/2008 arising out of the case FIR No.346/2005 whereby he was convicted for the offence punishable under Sections 397/394/392/34 IPC and was sentenced to undergo RI for seven years and to pay a fine of ₹3,000/- and in default of payment of fine to undergo SI for three months for the offence punishable under Section 397 IPC and to undergo RI for five years and to pay a fine of ₹3,000/- and in default of payment of fine to undergo SI for three months for the offence punishable under Section 392/34 IPC and to further undergo RI for five years and to pay fine of ₹3,000/- for the offence punishable under Section 394/34 IPC.

2. Apart from the conviction in the above stated case, the Appellant faced trial in case FIR No.375/2005 registered at Police Station Naraina and was sentenced to undergo rigorous imprisonment for seven years. He also faced trial in case FIR No.877/2005 registered under Sections 392/397 IPC at Police Station Uttam Nagar where he faced a sentence to undergo rigorous imprisonment for four years apart from some fine.
3. As per Section 427 of the Cr.P.C., when a person is already undergoing a sentence of imprisonment in one case and is further sentenced in a second case, the second sentence shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs the subsequent sentence to run concurrently. In case FIR No.375/2005 the Appellant was convicted on 15.09.2009, whereas in case FIR No.877/2005 the Appellant was sentenced on 02.11.2009. In the instant case he was sentenced on 04.11.2009. The Appellant's sentence in the two case FIR Nos.375/2005 and 877/2005 are already over. If the benefit of concurrent sentence is not given the Appellant's sentence in this case would get over in another one year and six months.
4. It is urged by the learned counsel for the Appellant on his (Appellant's) instruction that he does not contest the Appeal on merits. His only prayer is for an order holding that the sentence in this case will run concurrently so as to enable the Appellant to come out of the jail earlier.
5. The Appellant along with two others had robbed a passenger Gulshan Lal of ₹7,000/-, two rings and a Nokia mobile phone on knife point. The Appellant was subsequently arrested on 17.01.2006 in another case wherein he made a disclosure statement about the commission of the

offence in the instant case. Recovery of a diamond ring and a mobile phone was also affected in the instant case. Certain contradictions and discrepancies were pointed out in the testimony of the TSR driver PW-8 and complainant Gulshal Lal, the same were found to be insignificant by the Trial Court so as to affect the substratum of the prosecution version. The Appellant was convicted under Sections 397/394/392/34 IPC and was sentenced to undergo imprisonment as stated earlier. I affirm the findings of the Appellant being guilty and the sentence imposed by the learned ASJ.

6. The powers of the Court under Section 482 of the Code to direct the sentences to run concurrently is unquestioned. In *Jadu @ Jadua Bhoi v. State of Orissa 1992 Crl.L.J. 2117* the Orissa High Court held that although the Court has power under Section 482 of the Code to direct the sentences to run concurrently, yet, it will be decided on the facts and circumstances of each case whether such a power should be exercised or not.
7. The learned counsel for the Appellant urges that the offences were committed on account of the bad company in which he (the Appellant) had fallen. It is urged that the Appellant was a young boy of 21 years at the time of the commission of the all the three offences which were committed almost at the same time one after the other. He is in custody since December, 2005, when he was arrested, and he has already undergone a sentence of more than seven years. It is only on account of the fact that if the date of the conviction, the sentences in all three cases

were to run one by one that his sentences would be over in one year and six months (from the date of this order).

8. It is urged that the Appellant deserves an opportunity to reform himself. It is not in dispute that the Appellant was aged about 21 years on the date of commission of the offence. All the three offences were committed towards the end of the year 2005. I would refrain myself from going into the aspect as to why the Appellant fell in bad company and committed three robberies one after the other.
9. In the facts and circumstances of the case, I would exercise power under Section 482 of the Code to order the sentences in this case to run concurrently with the sentences in the other cases, that is, in case FIR No. 375/2005 registered at Police Station Naraina and in case FIR No.877/2005 registered at Police Station Uttam Nagar.
10. The Appellant is directed to be released forthwith, if not wanted in any other case.
11. The Appeal is disposed of accordingly.
12. The copy of the order be sent to the Superintendent Jail concerned for information and compliance.

(G.P. MITTAL)
JUDGE

JULY 09, 2013

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