

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO. 271 OF 2014

Nisar ali Nizamuddin Shah

... Applicant.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. V. V. Purwant, Advocate for the Applicant.

Smt. A. A. Mane, A.P.P. for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 24th JUNE, 2015

P.C. :

1 Heard the learned counsel appearing for the applicant and the learned additional public prosecutor for the State.

2 The applicant has been convicted by the Ad-hoc Sessions Judge for the offences punishable under section 394 and 397 of the Indian Penal Code. The applicant is sentenced to suffer rigorous imprisonment for a period of 7 years for each of the conviction. The appeal filed by him had been dismissed by the additional Sessions Judge. Hence, the present revision application.

3 The applicant had allegedly committed robbery in respect of a bag, containing cash amount of Rs. 12 lakhs. The bag was removed from the possession of PW-1 by use of force. PW-1 was assaulted at the time of incident and hurt was caused to PW-1. As such, it appears from the evidence that the applicant had voluntarily caused hurt to PW-1 while committing robbery.

4 After having gone through the judgment of the learned trial court and the appellate court, I do not find any reason to disturb the conviction of the applicant for the offence punishable under section 394 of the Indian Penal Code.

5 As far as the offence punishable under section 397 is concerned, it was necessary for the respondent/prosecution to establish that the applicant had used any deadly weapon or had caused grievous hurt or attempted to cause death by causing grievous hurt to PW-1. It is an admitted position that no grievous hurt was caused to PW-1. It is also an admitted position that no attempt was made to cause his death. PW-7: Panch witness and PW-10 : Police Officer have stated that one knife was recovered from the possession of the applicant. PW-1 has stated that a knife was shown to him at the time of the incident. It is, therefore, established that a knife was used by the applicant while committing robbery. However, it is difficult to say that the applicant had used a deadly weapon.

Neither PW-1 nor other witnesses have given description of the knife. It was difficult for the trial court as well as the appellate court to come to the conclusion that the weapon used by the applicant was a deadly weapon. Simply because it was a knife, it cannot be said that it was the deadly weapon. Description of the knife was necessary to come on record to determine as to whether it would fall in the category of deadly weapon. In the light of this, I come to the conclusion that the conviction of the applicant under section 397 needs to be set aside.

6 As far as the sentence part of the order is concerned, it is submitted by the learned counsel Mr. Purwant that the applicant has no bad record and that PW-1 and the applicant were known to each other and that it was first ever offence on the part of the applicant. He is aged about 26 years and he is married. He has got two children to be looked after by him. In these circumstances, in my opinion, 7 years punishment imposed by the trial court Judge and the appellate court Judge was unreasonable. Sentence of two years, in my opinion, could have served the purpose to meet the ends of justice.

7 Revision application is partly allowed.

8 Conviction of the applicant for the offence punishable under section 397 is set aside.

9 Conviction of the appellate for the offence punishable under section 394 is maintained.

10 Sentence imposed on the applicant for the offence punishable under section 394 is modified and it is ordered that the Applicant shall undergo sentence of rigorous imprisonment of two years and shall pay a fine of Rs.3000/-.

11 The set off be given for the period already undergone by the applicant in the jail. The fine paid by the applicant for the conviction under section 397 be refunded to him.

12 The revision application stands disposed of in the above terms.

(JUDGE)

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