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

Judgment delivered on: 15th October, 2015

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CRL.APPEAL No.961/2002

RAVINDER KUMARAppellant

Represented by: Mr Ajay Burman, Advocate.

Versus

STATE Respondent

Represented by: Mr.Amit Chadha, Additional
Public Prosecutor for the State with
ASI Prem Chand, P.S. Alipur.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is taken up on the mentioning of learned counsel appearing on behalf of the appellant as other connected appeals listed today at serial Nos. 38 to 43 were taken up for hearing and disposed of.

2. Vide the present appeal, the appellant seeks setting aside of the judgment dated 26.11.2002 and order on sentence dated 30.11.2002 passed by the learned Additional Sessions Judge, Delhi in case bearing FIR No.166/1997 registered at Police Station Alipur, Delhi, for the offences punishable under Sections 395/412 IPC.

3. Brief facts of the case are that on 27.05.1997 after finishing the

work, Sunil Kumar, who was working as Supervisor in M/s Kaushik Metal Works, situated at Hamirpur Road, Bakoli, Delhi, slept in the office of the said factory and other labourers, namely Gauri Shankar Goswami and Udai Chand Dass slept in the lawn and Kartik Kundu and his wife were sleeping near the main gate of the said factory. Around 1.30 AM, Kartik gave calls to Sunil Kumar, resultantly he woke up and saw that one person was peeping through the window of the office. The said person had put his hand inside through the window, lifted the receiver of the telephone, broken it and threatened Sunil Kumar to open the door otherwise he would fire at him. Out of fear, Sunil Kumar opened the door. Two-three persons armed with country made pistols and knives came inside and caught hold of him and demanded keys of the main gate, however, he denied that keys were not with him. Thereafter, one of them sat alongwith Sunil Kumar in the office and others went to the main gate and had broken open the same with the help of iron rods etc. At the point of revolver, three-four persons threatened the labourers named above, took them inside and bolted them from outside. Thereafter, one TATA 407 Tempo was brought inside the factory premises and 240 lead slabs weighing 20 kilogram each were loaded by the outlaws in the said vehicle and thereafter they fled away. Sunil Kumar informed the police about the incident and also gave description of the accused persons. During the course of investigation, accused persons were arrested and the said lead slabs were recovered. Accordingly, chargesheet was filed. Charge for offences punishable under Section 395 IPC was framed against accused Kulwant, Ramu, Iqbal, Manoj, Sanjay, Balbir Singh, Balak Ram and Shiv Charan and charge for offence punishable under Section 412 IPC was framed against appellant Ravinder and Jai Parkash, to which the accused

persons pleaded not guilty and claimed trial. In support of its case, the prosecution has examined eleven witnesses in all including the eye witness, namely, Sunil Kumar (PW5).

4. Consequently, vide judgment dated 26.11.2002, the accused Kulwant, Ramu, Iqbal, Manoj, Sanjay, Balbir Singh, Balak Ram and Shiv Charan were held guilty and convicted under Section 395 IPC and appellant alongwith Jai Parkash was held guilty and convicted under Section 412 IPC. Vide order on sentence dated 30.11.2002, convicts Kulwant, Ramu, Iqbal @ Bunt, Manoj, Sanjay, Balbir Singh, Balak Ram and Shiv Charan were sentenced to undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs.5,000/- each, in default thereof to further undergo rigorous imprisonment for six months each and convicts Ravinder (appellant herein) and Jai Parkash were sentenced to undergo rigorous imprisonment for a period of five years each and to pay a fine of Rs.5,000/- each, in default thereof to further undergo rigorous imprisonment for six months each.

5. The learned counsel appearing on behalf of the appellant at the outset submits that he does not want to press the appeal on merits but prays that the appellant be released on the sentence of imprisonment which he had already undergone as the appeals of other co-accused bearing Nos. 978/2002, 984/2002, 182/2003, 149/2003, 615/2003 and 409/2003 have been disposed of on the sentence already undergone by them. In view of the submission of the learned counsel for the appellant, I do not deem it necessary to deal with other aspects of this case.

6. The facts remain that the appellant filed appeal before this Court and was granted bail on 07.01.2003. He had suffered imprisonment for about one month. He is not involved in any other criminal case.

7. It is submitted that the appellant has faced the agony and trauma of criminal proceedings, trial and ignominy and humiliation of the conviction for more than eighteen years. He is around 58 years old and is the sole bread earner of the family having four children, i.e., three daughters and one son. Out of three daughters, one daughter is still to be married. Appellant himself is a heart patient and has already suffered protracted trial for more than eighteen years.

8. The learned counsel further submits that looking to the totality of the facts and circumstances of this case, the ends of justice would meet if a lenient view is taken and the sentence of imprisonment is reduced to the period which the appellant had already undergone.

9. In the case of ***B.G. Goswami Vs. Delhi Administration, [1974] 1 SCR 222***, the Supreme Court held as under:-

“10..... Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from

repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilised societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200.00 to Rs. 400.00 . Period of imprisonment in case of default will remain the same."

10. In the case of ***Sarup Chand Vs. State of Punjab***, reported in **1987 (1) Crimes 818**, appellant was convicted by the learned Trial Court under Section 161, Indian Penal Code and under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, conviction was upheld by the High Court. While maintaining the conviction, the Supreme Court had reduced the sentence to the period already undergone on the ground that six years have passed from the date of the incident and this is the first time the appellant had committed an offence.

11. In the case of ***Inder Parkash Shingal Vs. State***, **38 (1989) Delhi Law Times (SN) 5**, accused appellant was convicted under Section 161, Indian Penal Code and Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947. This Court reduced the sentence of the

imprisonment of appellant to the period already undergone on the ground that the appellant has faced the agony of trial for about 18 years now.

12. In the case of *Mohd. Jamil Vs. Customs, 2002 (81) ECC 693*, a Coordinate Bench of this Court had noted that as per the proviso to Section 135 of the Customs Act, 1962, for special and adequate reasons, a substantive sentence less than the minimum could be awarded; in that case, he having suffered a long protracted trial since the year 1989 and having a medical ailment also and having undergone incarceration of more than two months, the period of sentence already undergone by him was the sentence imposed upon him.

13. In the case bearing Crl. Appeal No.220/2001, titled as *Satya Prakash Vs. State*, decided on 06.12.2010, a Coordinate Bench of this Court while disposing of the appeal released the appellant for the period already undergone by him, i.e., 25 days.

14. In the instant case also, the incident had taken place in the year 1997. The appellant had already faced trauma of criminal proceedings for more than eighteen years and there is no criminal background attached to him prior to this conviction.

15. It appears to me that eighteen years of agony of trial is a punishment sufficient enough to teach the appellant a lesson. Coupled with that, he had also deposited Rs. 5,000/- as fine. As deposed by Rishi Parkash (PW2), 58 lead slabs which the appellant bought from one Dinesh had also been recovered by the police and the petitioner has faced the

ordeal of about one month incarceration in prison as well. In these facts and circumstances, I deem it proper and in the interest of justice to reduce the sentence of imprisonment of the petitioner to a period already undergone.

16. Taking into consideration all these facts and circumstances of the case, while maintaining conviction under Section 412 IPC, order on sentence is modified and the appellant is ordered to undergo the sentence for the period already undergone by him in this case.

17. In view of the above, the present appeal is disposed of.

18. The Registry of this Court is directed to send a copy of this order to the Jail Superintendent for information.

**SURESH KAIT
(JUDGE)**

OCTOBER 15, 2015
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