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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.984/2002

KULWANT

.....Appellant

Represented by: Mr. Sanjiv Kumar, Senior
Advocate with Mr. S.K. Santoshi,
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. 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.

2. 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 Ramu, Iqbal, Manoj, Sanjay, Balbir Singh, Balak Ram Shiv Charan and Kulwant (appellant herein) and charge for offence punishable under Section 412 IPC was framed against accused 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).

3. Consequently, vide judgment dated 26.11.2002, the appellant

alongwith accused Shiv Charan, Ramu, Iqbal, Manoj, Sanjay, Balbir Singh and Balak Ram were held guilty and convicted under Section 395 IPC and accused Ravinder Kumar and Jai Parkash were held guilty and convicted under Section 412 IPC. Vide order on sentence dated 30.11.2002, appellant alongwith convicts Shiv Charan, Ramu, Iqbal @ Bunty, Sanjay @ Lehta, Balbir Singh, Balak Ram and Manoj 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 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.

4. The learned counsel appearing on behalf of the appellant at the outset submits that she 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. 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.

5. The facts remain that the appellant filed appeal before this Court and was granted bail on 11.10.2006. He was arrested in this case on 23.06.1997 and has already undergone more than five years imprisonment including the period of remission earned. He is not involved in any other criminal case. The nominal roll dated 10.11.2006 reflects that conduct of the appellant is satisfactory.

6. 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. Appellant is the sole bread

earner of the family as during pendency of the case, his father died, his aged mother is ill and confined to bed and he has a minor daughter aged around seven years to look after. The appellant has already suffered protracted trial for more than eighteen years.

7. 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.

8. 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."

9. 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.

10. 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.

11. In the instant case also, the incident had taken place in the year 1997. The appellant had already undergone incarceration for more than five year including remission period out of total imprisonment and faced trauma of criminal proceedings for more than eighteen years.

12. As noted above, there is no criminal background attached to him prior to this conviction, his conduct even in the jail during his incarceration of for the aforesaid period being satisfactory, I am of the

considered opinion that it is a fit case to release the appellant on the period of sentence already undergone by him.

13. Taking into consideration all these facts and circumstances of the case, while maintaining conviction under Section 395 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.

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

15. 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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