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

Judgment delivered on: 24th February, 2016

+ **CRL.APPEAL No.406/2002**

DALJEET & ANR. Appellants

Represented by: Mr. M.L. Yadav, Advocate.

Versus

STATE OF DELHI Respondent

Represented by: Mr.G.M.Farooqui, Additional
Public Prosecutor for the State with
SI Ashok Kumar, P.S. Janakpuri.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present appeal, the appellants seek setting aside of the judgment dated 30.04.2002 passed by the learned Additional Sessions Judge, Delhi, in Sessions Case No.69/2000, whereby the appellants were held guilty and convicted for the offence punishable under Sections 392 read with 34 and 394 read with 34 of the Indian Penal Code, 1860 ('IPC') and order on sentence dated 02.05.2002, whereby they were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, in default to suffer further rigorous imprisonment for six months under Section 394 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to suffer further rigorous imprisonment for six months under Section 392 IPC.

2. In nutshell, case of the prosecution is that on 17.06.2000, on receipt of DD No.20B, SI Hardeep Singh (PW10) Investigating Officer of the case alongwith a constable went to the spot, i.e., H. No.C-3/234, Janakpuri, where a large crowd of people was present and was giving beatings to a person. On enquiry, name of the said person revealed as Rajesh S/o Sh. Jamun Parshad, who was having a country made pistol. Complainant Ram Avtar Goel (PW1) made a statement Ex. PW1/A, whereby stated that he was residing at the aforesaid address and run a kiriyana shop at C-4E Market, Janakpuri, and on that day he alongwith his son Amit Goel (PW4) was returning to his house on Scooter No.DL 4SQ 8393 after closing the shop. PW4 was driving the said scooter and the complainant was the pillion rider. At about 9.30 PM, when they reached in front of their house, three boys came on a scooter from behind, one of them gave a blow on his hip with an iron object due to which he fell down and then the said person pointed out a country made pistol on him and threatened him to hand over the bag to him or he would be shot. Then the other boy snatched the bag from his hand containing Rs.30,000/-. The third boy was sitting on the scooter. Complainant and his son raised an alarm and some neighbours came there. Out of the three boys, two boys managed to escape from the spot alongwith the bag, while the third body holding the katta was apprehended by the public with the scooter bearing No. DL 2SJ 5720 and the katta. The Investigating Officer seized the scooter vide memo Ex. PW1/B and the country made pistol vide memo Ex. PW1/C. PW1 also stated that he could identify the other two boys.

3. During the course of investigation, other two accused Daljeet and Ravi, i.e., the appellants herein were also apprehended. Their test

identification parade was got conducted. Accordingly, chargesheet was filed. Charges for offences punishable under Sections 392/34 IPC and 394/34 IPC were framed against both the appellants and other co-accused, to which they pleaded not guilty and claimed trial. In support of its case, the prosecution has examined eleven witnesses in all including the eye witnesses, namely, Ram Avtar Goel (PW1) complainant and Amit Goel (PW4).

4. Consequently, vide judgment dated 30.04.2000 and order on sentence dated 02.05.2000, the appellants alongwith accused Rajesh were held guilty and convicted as noted in para 1 above.

5. The learned counsel appearing on behalf of the appellants at the outset submits that he does not want to press the appeal on merits but prays that the appellants be released on the sentence of imprisonment which they had already undergone. In view of the submission of the learned counsel for the appellants, I do not deem it necessary to deal with other aspects of this case.

6. The facts remain that the appellants filed appeal before this Court and their sentence was suspended and they were granted bail on 14.05.2002. Appellant Daljeet was arrested in this case on 24.06.2000 and has already undergone imprisonment for about two years, whereas appellant Ravi Gulati was arrested on 21.06.2000 and has already undergone imprisonment for one year and nine months. Both the appellants are not involved in any other criminal case. As per the nominal roll conduct of the appellants is satisfactory.

7. It is submitted by the learned counsel for the appellants that during the pendency of the instant appeal, both the appellants got married and are having two minor children to look after. The appellants have faced the

agony and trauma of criminal proceedings, trial and ignominy and humiliation of the conviction for almost sixteen years. They belong to poor strata of the society and are the sole bread earner of their families having minor children and families to look after.

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 appellants 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 instant case also, the incident had taken place in the year 2000. The appellants had already undergone incarceration for about two years out of total imprisonment and faced trauma of criminal proceedings for almost sixteen years.

13. As noted above, there is no criminal background attached to them prior to this conviction, their conduct even in the jail during incarceration being satisfactory and even after the instant case, despite being on bail, the appellants are not indulged in any other offence, thus, I am of the

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

14. Taking into consideration all these facts and circumstances of the case, while maintaining conviction under Sections 392 read with 34 and 394 read with 34 IPC, order on sentence is modified and the appellants are set free on the period already undergone by them in this case.

15. In view of the above, the present appeal is partially allowed.

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

**SURESH KAIT
(JUDGE)**

FEBRUARY 24, 2016

Sb/jg