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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 26th APRIL, 2016

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CRL.A.1660/2014 & CRL.M.A.No.6709/2016

BHAWANI SHANKAR

..... Appellant

Through : Mr.Sitab Ali Chaudhary, Advocate.
versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. The present appeal has been preferred by the appellant – Bhawani Shankar to challenge the legality and correctness of a judgment dated 07.07.2014 of learned Addl. Sessions Judge in Sessions Case No. 21/14 arising out of FIR No. 302/13 PS Kashmere Gate by which he was held guilty for committing offences punishable under Sections 392/34 IPC. By an order dated 23.07.2014, he was awarded RI for four years with fine ₹1,000/-.

2. Briefly stated, the prosecution case was that the appellant along with his associates Vikas Pahari @ Vicky @ Manoj and other one (since not arrested) in furtherance of common intention committed robbery upon Sonu and deprived him of a bag containing tiffin box and watch at knife point. The occurrence took place on 03.11.2013, the Diwali day, and the items

robbed were gifted by his employer. The FIR was lodged on Sonu's complaint (Ex.PW-3/A) in which, he gave detailed account as to how and in what manner the appellant and his associates robbed him. The appellant was overpowered at some distance with the assistance of Head Constable; others succeeded to flee. During investigation, statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant and his associate - Vikas Pahari @ Vicky @ Manoj under Sections 392/397/411 IPC. The prosecution examined six witnesses to substantiate its case. In 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and pleaded false implication. The trial resulted in conviction under Section 392 read with Section 34 IPC. It is relevant to note that the appellant and his associate were acquitted of the charge under Section 397 IPC. Section 411 IPC was proved only against co-convict - Vikas Pahari @ Vicky @ Manoj. It is unclear if co-convict - Vikas Pahari @ Vicky @ Manoj has challenged his conviction.

3. During the course of arguments, appellant's counsel, on instructions, stated that the appellant has opted to give up challenge to the findings on conviction. He, however, prayed to modify the sentence order as the appellant is suffering from cancer and is getting treatment at jail hospital. Learned Addl. Public Prosecutor has no objection to consider the mitigating circumstances.

4. Since the appellant has opted to give up challenge to the findings on conviction, his conviction stands affirmed. The appellant was apprehended at the spot and was duly recognised by the complainant to be one of the assailants.

5. Nominal Roll dated 12.04.2016 reveals that the appellant has already undergone two years and five months incarceration besides remission for six months and seventeen days as on 06.04.2016. It further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. He was not awarded any labour being medically unfit. Report dated 08.04.2016 has been received from Medical Officer Incharge, Central Jail Hospital. In this report, the concerned Medical Officer has informed the Superintendent Jail that the appellant is a diagnosed case of Carcinoma of left side Buccal Mucosa. He was referred to Delhi State Cancer Institute for further management. He is on chemotherapy from the said Institute and has been reviewed on various dates. It further records that the patient has complaints of swelling and pain at left side of cheek. He has difficulty in opening mouth and inability to take solid food; he can take only semi-solid and liquid food. The growth is gradually progressing in size and his general condition is deteriorating day-by-day.

6. Considering the mitigating circumstances and medical condition, Sentence Order is modified and the period already undergone by him in this case is treated as his substantive sentence. It is relevant to note that CrI.M.A.No.6709/2016 has been filed on behalf of the appellant for release on the period undergone by him.

7. The appeal stands disposed of in the above terms. Pending application also stands disposed of. The appellant shall be released forthwith if not required to be detained in any other criminal case. Trial Court record (if any) be sent back forthwith with the copy of the order. A

copy of the order be sent to the Superintendent Jail for information / compliance.

(S.P.GARG)
JUDGE

APRIL 26, 2016 / *tr*

