

\$~R-32 & 33

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

% *Date of Decision: 31th May, 2016*

+ **Crl.A.988/2015 & Crl.M.B. No.588/2016**

AMARJEET Appellant

Through: Mr.Sunil Mehta, Advocate

versus

STATE Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State

+ **Crl.A.1072/2015 & Crl.M.B. No.757/2016**

RAMESH CHAND Appellant

Through: Mr.Tanmay Mehta and Mr.Jugal
Bagga, Advocates

versus

STATE Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State.

PRATIBHA RANI, J. (Oral)

1. These connected appeals have come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence upto five years).
2. Pursuant to the production warrants issued against the appellants, they have been produced from J/C.

3. The appellants have preferred these appeals impugning the judgment and order on sentence dated 10.07.2015 & 17.08.2015 respectively whereby they have been convicted for committing the offence punishable under Sections 147/148/342 read with Section 149 IPC, under Section 307/34 IPC and under Section 392/34 IPC and sentenced as under :

- (i) U/S 147 IPC : to undergo RI for one year with fine of ₹1000/- each and in default of payment of fine, to undergo SI for three months.
- (ii) U/S 148 IPC : to undergo RI for one year with fine of ₹1000/- each and in default of payment of fine, to undergo SI for three months.
- (iii) U/S 342 IPC : to undergo RI for one year with fine of ₹1000/- each and in default of payment of fine, to undergo SI for three months.
- (iv) U/S 307/34 IPC : to undergo RI for five years with fine of ₹5000/- each and in default of payment of fine, to undergo SI for six months.
- (v) U/S 392/34 IPC : to undergo RI for three years with fine of ₹5000/- each and in default of payment of fine, to undergo SI for six months.

4. Briefly stating, the appellants Amarjeet and Ramesh have been convicted in respect of the incident occurred on 23.03.2000. On that day, on receiving the secret information about huge stock of illicit liquor, SI Vijay Singh alongwith three Constables namely Ct.Ombir, Ct.Dharmender and

Ct.Jitender all posted in Excise Intelligence Bureau, reached house No.WZ-160, Ravi Nagar, Khyala. A jeep bearing registration No.HR-06-P-0232 was found parked there. When they peeped inside the jeep, it was found containing cartons of illicit liquor. While appellant Amarjeet was standing near the jeep, appellant Ramesh was inside the room. When the raiding team entered that room, they found stock of liquor stored there also in poly packs.

5. Appellant Ramesh was asked to hand over the keys of the jeep but he came out of the room and apprehended by the raiding team. Appellant Amarjeet asked them to stop and he called his family members including his mother and brothers. The members of their family were armed with hockeys, lathis and dandas and they started beating the raiding team. Appellant Ramesh snatched wireless set from SI Vijay Singh and pistol from Ct. Ombir and handed over to appellant Amarjeet. As per prosecution, appellant Amarjeet fired the pistol and the bullet hit on the hip of Ct.Ombir. Appellant Ramesh exhorted '*pistol ki saari goliyan isi mein utaar de*'. The car in which the raiding team visited the spot was also damaged. They were also bolted in a room and rescued by the local police. Thereafter they were sent for medical examination. After completion of investigation, chargesheet was filed against the appellants and other co-accused persons namely Anil and Virender.

6. On conclusion of trial, the appellants Ramesh and Amarjeet have been convicted for committing the offence punishable under Sections 147/148/342 read with Section 149 IPC, under Section 307/34 IPC and under Section 392/34 IPC and sentenced in the manner stated above. The other co-accused Virender has been convicted for the offence punishable under Sections 147/148 read with Section 149 IPC and under Section 411 IPC and co-

accused Anil has been convicted for the offence punishable under Sections 147/148/342 read with Section 149 IPC and under Section 427 IPC. Vide order on sentence dated 17.08.2015 both these co-accused persons namely Virender and Anil have been released on probation.

7. I have heard learned counsel for the appellants as well as the appellants, who have been produced from judicial custody.

8. Learned counsel for the appellants, on instructions from the appellants, have submitted that the appellants are not challenging their conviction and praying for mercy by reducing the substantive sentence.

9. Learned counsel for the appellants have submitted that it is a case where the incident has taken place when the raiding team visited the place of incident on getting the secret information about huge stock of liquor being stored. The appellants had no intention or made any attempt to kill any member of the raiding party including Ct. Ombir as the firing was accidental and not intentional. The fact that when the pistol was recovered it was containing one live cartridge strengthens their contention. Learned counsel for the appellants have also submitted that in this case incident has taken place about 16 years ago. The nature of the injury even by gunshot was simple and not on vital part of the body. On the basis of same set of evidence, the co-convicts Virender and Anil Kumar who have been convicted for committing the offence 147/148/342 read with Section 149 IPC and under Section 411/427 IPC, were given the benefit of release on probation. The appellants are not challenging their conviction but limiting their prayer to the extent that the substantive sentence awarded to them may be reduced to the period already undergone by them in this case. Learned counsel for the appellants have submitted that convict Amarjeet is aged

about 50 years and having family consisting of wife and four sons to support. One of his son is differently disabled. Convict Ramesh is aged about 58 years. He is the sole bread earner in the family and having wife and two children to support.

10. Learned APP for the State has submitted that it was a case of assault on the raiding team from Excise Intelligence Bureau that had gone there to conduct raid but assaulted by the appellants and co-convicts. While not disputing that there was a single fire and injury was simple and not on the vital part of the body, prayer for sentencing them to the period already undergone by them in this case has been opposed.

11. After considering the rival submissions, I am of the view that in the facts and circumstances in which the occurrence/firing has taken place, it is necessary that not only the appellants must be made to realise about the nature and gravity of the offence committed by them but at the same time there should be proportionality between the offence committed and the sentence awarded. They have faced the agony of trial for the last 16 years.

12. In the given facts and taking into consideration the submissions made on behalf of the appellants, I am of the opinion that it would meet the ends of justice, if the substantive sentence awarded to the appellants for committing the offence punishable under Sections 307/34 IPC and under Section 392/34 IPC is reduced to two years.

13. Accordingly, while upholding the conviction of the appellants, the substantive sentence awarded to them for committing the offence punishable under Sections 307/34 IPC i.e. to undergo RI for five years and substantive sentence awarded for committing the offence punishable under Section 392/34 IPC i.e. to undergo RI for three years, is reduced to two years.

Remaining substantive sentences of the appellants as well as sentence of fine shall remain the same.

14. The appeals stand disposed of in above terms.

15. TCR be sent back alongwith copy of this order.

16. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

17. A copy of the order be also sent to the appellants through concerned Jail Superintendent.

MAY 31, 2016
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PRATIBHA RANI, J.

