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

+ CRL.A. 30/2017

% *Date of Judgment: 16th May, 2017*

BADAL

..... Appellant

Through: Mr.K.P. Mavi, Adv. with Mr. B.P. Mishra, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE REKHA PALLI

G.S.SISTANI, J. (ORAL)

1. Challenge in this appeal is to the judgment dated 09.11.2016 by which the appellant has been held guilty for an offence under Section 25 of the Arms Act, 1959 and the order on sentence dated 21.11.2016 by which the appellant has been sentenced to rigorous imprisonment for three years with fine of Rs.25,000/- and in the event of default in payment of fine, rigorous imprisonment for one year.

2. We note at this stage that a co-convict has been convicted by the same judgment under Section 302 of the Indian Penal Code, 1860 ('IPC') and under Sections 25 and 27 of the Arms Act. The appeal filed by the co-convict is also pending.

3. Mr.Mavi, learned counsel for the appellant, at the outset, submits that the appellant has already undergone imprisonment for a period of more than two years and nine months and the remaining period of sentence is approximately two months and eleven days. He submits on instructions that he does not challenge the order on conviction but he

prays that the sentence may be modified to the period already undergone.

4. The case of the prosecution is that on 01.06.2007 at 6:15 PM, Ashok, Suman, Badal, Amit and Yogender @ Chhotu (since deceased) in furtherance of their criminal conspiracy, committed murder of one, Sarita who was in the family way and her son Master Abhishek aged one and a half years.

5. Statement of Rani (PW-1) who was present at the scene of crime, was recorded by SI Vikram Singh (PW-12). An FIR was registered under Section 302/34 IPC. In order to bring home the guilt of the accused, twenty three witnesses were examined by the prosecution. No evidence was led by the defence.

6. Mr.Mavi, learned counsel submits that the appellant has been falsely implicated in this case. The judgment of the Trial Court is based on surmises and conjectures. The Trial Court lost track of the fact that the ballistic report conclusively shows that the pistol allegedly recovered on the basis of a disclosure statement of the appellant, was not used in the commission of the crime. Additionally, any recovery alleged to have been made at the instance of this appellant, cannot be relied upon as Rani (PW-1) did not support the case of the prosecution with regard to the recovery of the weapon.

7. It has also been contended before us that the Trial Court committed a serious error by convicting the appellant under Section 25 of the Arms Act solely on the basis that the appellant was unable to give any explanation for possession of a country made pistol. Counsel contends that a specific defence was raised by this appellant that he was lifted from his house and signatures were obtained on blank pieces of papers. It is also the case of the appellant that the pistol was planted on him.

8. Learned counsel for the State submits that the Trial Court has carefully analysed the testimony of all the witnesses and rightly reached a

conclusion of guilt under Section 25 of the Arms Act with respect to the appellant herein. He submits that there is no infirmity in the judgment and order on sentence passed by the trial court against the appellant by which he has been convicted and sentenced for imprisonment for three years with fine of Rs.25,000/-.

9. We have heard learned counsel for the parties and considered their rival submissions.

10. The appellant had been arrested on 25.08.2007 and his disclosure statement (Ex.PW12/P) was recorded by Ins.Ramesh Dahiya (PW-18). The appellant had disclosed that he had kept a country-made pistol and two live cartridges in a polythene in a pit near the bushes inside the jungle near *Zero pusta* on the way of *Milk gaon* and he can get it recovered therefrom. Pursuant thereto, the appellant led Ins.Ramesh Dahiya (PW-18) to the area and got recovered one 12 bore country made pistol (Ex.P14) and two live cartridges (Ex.P15). SI Vikram Singh (PW-12) has also deposed of the recovery at the instance of the appellant. Since the ballistics report (Ex.PW13/B) could not link the pistol to the pellets recovered from the dead body of the deceased Abhishek, the appellant could not be linked with the primary crime. However, the Trial Court found no explanation forthcoming in respect of the conscious possession of the country made pistol (Ex.P14) and two live cartridges (Ex.P15) and convicted the appellant under Section 25 of the Arms Act.

11. We also find that the Trial Court has carefully analysed the entire evidence and rightly reached the conclusion of guilt with respect to the appellant herein.

12. We have also carefully considered the submissions made by learned counsel for the appellant with respect to the modification of the order on sentence to the period already undergone.

13. The appellant has only been convicted under Section 25 of the

Arms Act; more particularly sub-section (1B), which reads as under:

“Section 25 - Punishment for certain offences

...

(1B) Whoever--

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

(c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section;

(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

(f) brings into, or take out of, India, any arm or ammunition in contravention of section 10; or

(g) transports any arms or ammunition in contravention of section 12; or

(h) fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21;

(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries there from or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point

*out where the same are or is manufactured or kept;
shall be punishable with imprisonment for a term which
shall not be less than one year but which may extend to
three years and shall also be liable to fine;*

*Provided that the Court may for any adequate and special
reason to be recorded in the judgment impose a sentence of
imprisonment for a term of less than one year.”*

(Emphasis Supplied)

14. The appellant has been convicted under Section 25 (1B) (a) for possessing the country made pistol (Ex.P14) and two live cartridges (Ex.P15). We may note that the provision provides for judicial discretion in the matter of sentencing as a minimum sentence of one year is provided and maximum of three years. Further, as per the proviso, the court may for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.

15. It is clear that the Trial Court has awarded the harshest punishment possible under the provision and the only reason in the order on sentence dated 21.11.2016 is that the appellant was involved in three cases in the jurisdiction of Bulandshahar Court and two of them relate to Section 302 IPC.

16. It is settled law that sentencing in a criminal case after the establishment of guilt is not something which should be done in a mechanical manner and the discretion is to be exercised in a sound manner while balancing the aggravating and mitigating circumstances of a case.

[See ***Shailesh Jasvantbhai v. State of Gujarat***, (2006) 2 SCC 359 (paragraph 7 to 13) and ***Nandan v. State***, MANU/DE/2154/2015 (paragraph 12 and 21)]

17. The question before us is whether the sole aggravating factor

mentioned in paragraph 15 foregoing could warrant imposing the harshest punishment under law upon the appellant? We think not. The punishment imposed is clearly excessive and deserves to be reduced.

18. Further, having regard to the fact that the appellant has already undergone incarceration for a period of two years seven months and fifteen days plus remission of one month and twenty four days and the unexpired portion of his sentence is barely two months, we are inclined to agree with the submission of learned counsel for the appellant.

19. Accordingly, we reduce the sentence of the appellant to the period already undergone which is more than two years nine months. The order with regard to the fine remains the same. The appellant shall be released forthwith, if not required in any other case.

20. The appeal is disposed of in the above terms.

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21. This is an application seeking suspension of sentence on behalf of the appellant. In view of the order passed in the appeal, no further orders are required to be passed. The application stands disposed of.

G.S.SISTANI, J.

REKHA PALLI, J.

MAY 16, 2017

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