

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

Date of order: June 07, 2017

+ **CRL.A. 244/2016**

SITA RAM

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae
with Mr. Dinesh Malik, DHCLSC
Panel Counsel

+ **CRL.A. 268/2016**

AKHILESH

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae
with Mr. Neeraj Bhardwaj,
DHCLSC Panel Counsel

Versus

STATE

..... Respondent

Through: Mr. Kamal Kumar Ghei,
Additional Public Prosecutor for
respondent-State with SI Raj Pal,
Police Station Uttam Nagar

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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ORAL

1. The above captioned two appeals are directed against common impugned judgment of 12th January, 2016 vide which the appellants in these two appeals have been held guilty for the offence under Section 392/34 of IPC and vide impugned order on sentence, they have been sentenced to rigorous imprisonment for eight years with fine of ₹5000/- each, with default clause.

2. Since these appeals arise out of common impugned judgment and order on sentence, therefore, with the consent of counsel for the parties, these two appeals have been heard together and are being decided by this common judgment.

3. The facts as noted in the impugned judgment are as under :

“As per the case of the prosecution are that on the intervening night of 09/10.01.2011 at about 09.45 pm, the accused persons namely, Akhilesh, Sita Ram and Shafique Khan alongwith their fourth associate namely Jafar (not arrested so far) entered in the house of complainant, committed robbery of several articles of jewellery, mobile phones and keys of shop. They were having pistol and knives in their hands at the time of commission of robbery. It is also alleged that after committing robbery in the house of complainant, they also committed robbery at the shop of witness namely Hari Kishore where gun shots were also made. Accused Akhilesh and Sita Ram were arrested while in possession of robbed articles on 22.01.2011 and weapons were also recovered at their instance. After completion of investigation, charge-sheet qua accused Akhilesh and Sita Ram was filed.

Accused Shafique Khan was initially declared proclaimed offender but he was subsequently arrested on 15.06.2012 and one some stolen article was also recovered from his possession. One supplementary charge-sheet was filed qua him.”

4. Trial court has relied upon evidence of the complainant and other witnesses to convict and sentence appellants for the offences as noted herein above. At the outset, learned counsel for the appellants submit that appellants are poor persons and they have family responsibilities to shoulder. It is further submitted that appellants have already undergone

sentence of more than six years and as per Nominal Roll on record, their conduct in jail has been satisfactory. It is also submitted on behalf of appellants that no minimum sentence is prescribed for the offence under Section 392 IPC and so, the sentence awarded to appellants be reduced to the period already undergone by them and the sentence of fine imposed upon appellants and also the sentence in default of payment of fine, be suitably reduced.

5. On the other hand, learned Additional Public Prosecutor supports the impugned judgment and submits that the sentence awarded is just and appropriate. However, learned Additional Public Prosecutor for respondent-State does not dispute that offence under Section 392 IPC does not carry any minimum sentence.

6. Upon hearing and on perusal of the evidence on record, I find that conviction of appellant is well merited but order on sentence needs to be varied, as appellants are said to be poor persons and they have families to support. As per the nominal roll of the appellants, their conduct in jail has been satisfactory and by now, they have undergone more than six years of sentence including remission.

7. In the facts and circumstances of the case, the substantive sentence awarded to both the appellants is reduced from eight years to six years, while sentence of fine is maintained but the period in default of payment of fine is reduced from six months to one month. It is made clear that if appellants have served out the modified sentence of six years and have paid fine or have already undergone the period in default, then they be released forthwith, provided they are not wanted in any other case.

8. Accordingly, both the appeals are partly allowed to the extent indicated above.

9. The concerned Jail Superintendent be intimated forthwith to apprise appellants about the fate of these appeals.

(SUNIL GAUR)
JUDGE

June 07, 2017

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