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

+ **CRL.A. 867/2002**

RAJ KUMAR @ BADSHAH

..... Appellant

Through: Ms. Kiran Bairwa, Advocate (M-9654029294).

versus

STATE

..... Respondent

Through: Ms. Rajni Gupta, APP.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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26.07.2018

1. This is an appeal preferred by Raj Kumar @ Badshah impugning judgment dated 16th July, 2002 in Sessions Case No. 63/2000 by which he was convicted under Section 452 read with Section 34 IPC, Section 394 read with Section 34 IPC and Section 398 IPC. He was sentenced to five years rigorous imprisonment and seven years rigorous imprisonment, all to run concurrently.
2. The incident took place on 10th January, 2000 when the accused is stated to have entered the house of one Sh. V. Krishnan at C-276, Defence Colony, New Delhi along with three other accomplices. FIR No. 28/2000 was lodged on 10th January, 2000.
3. As per the case of the complainant, all four accused including the Appellant were carrying deadly weapons and they went into the house of the complainant along with pistols and knives. The evidence which has come on

record by the complainant PW-1, his wife, his daughter and the domestic help shows that all four accused had caused injuries to the complainant and when an alarm was raised and neighbours arrived at the scene, they tried to flee from the place. The accused in this appeal was nabbed by the complainant and his wife on the spot but at the time when he was caught, he did not possess any deadly weapon on his person. All four witnesses identified the accused and he was accordingly convicted along with the co-accused under the above provisions.

4. The accused was arrested on 10th January, 2000 and underwent five years and eleven months imprisonment (including remission) as per the nominal role. On 18th August, 2004, the sentence was suspended by this court on the ground that out of seven years, he has already undergone more than five years of imprisonment. On 27th October, 2004, the accused moved this court for reduction of surety and personal bond amount. The appeal was thereafter called on 19th May, 2018 and the accused today is present in court.

5. Ld. Counsel for the accused has taken the court through the oral evidence of the witnesses. A perusal of the evidence reveals that though there is a general statement that all the accused were armed with deadly weapons even at the time of the incident itself, when the accused was nabbed, no deadly weapon was found on his person. It is highly unlikely that a person who was armed with a deadly weapon and fled from the place of incident which was the house of the Complainant and was nabbed within a few minutes was not in possession of the deadly weapon and the same was not even recovered from the premises.

6. Insofar as he being an accomplice to the crime is concerned, there is no doubt as all the witnesses have identified him and he was also nabbed at

the spot. Accordingly, the conviction under Sections 452 and 392 is upheld. The accused has already undergone the sentence in respect of these offences.

7. Insofar as the conviction under Section 398 is concerned, the facts point to a situation, none of the witnesses mentioned the accused specifically as having carried a deadly weapon. Insofar as the testimony of PW-4 is concerned, the said witness does make a statement that the accused was carrying a knife, however, nothing was recovered even at the time when he was caught within a few minutes after the incident itself. The, recovery of the deadly weapon is not needed for a conviction under Section 398, but, in the chronology of events which have transpired in the present case, the non-recovery of the alleged knife gives the benefit of doubt to the accused.

8. In view of this, the conviction in respect of offences under Sections 452 and 394 and the sentence is deemed to have been served. Insofar as the conviction under Section 398, the same is set aside and the appeal is allowed to this extent.

PRATHIBA M. SINGH, J.

JULY 26, 2018

Rahul