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

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Date of decision: 1st September, 2018

+ CRL.A. 340/2016

SHAFIQUE KHAN

..... Appellant

Through : Mr. B.S. Chowdhary and Ms.
Sneh Lata Rana, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Ms. Meenakshi Chauhan, APP
for the State
SI Anup Rana from PS Uttam
Nagar

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. In the appeals filed by co-accused, co-accused Sita Ram and Akhilesh in this case, the following order was passed by this court on 7th June, 2017 :

“* 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.”

2. Mr. B.S. Chowdhary, appearing for the appellant-accused submits that the case of the appellant is identical to that of Sita Ram and Akhilesh, the appellants in the appeals decided by the aforeextracted order. Para 3 of the said order reveals that, this is, indeed true.

3. Ms. Meenakshi Chauhan, learned APP submits that the only distinction between the case of the appellant and those of the appellants in CRL.A. 244/2016 and CRL.A.268/2016 is that the present appellant was also declared as a proclaimed offender. However, she admits that, insofar as the substantive offence under Section 392 of the IPC is concerned, the case of the appellant cannot really be distinguished from those of Sita Ram and Akhilesh.

4. The appellant has undergone more than eight years incarceration. The nominal roll indicates that his conduct during incarceration has been found to be satisfactory.

5. Hence, following the order dated 17th June, 2017 passed by this court in CRL.A. 244/2016 and CRL.A.268/2016, the substantive sentence awarded to the present appellant is reduced to six years, maintaining the sentence of fine and reducing the default sentence from six months to one month in the imprisonment. Inasmuch as the appellant has admittedly served more than eight years, the present appeal stands allowed. The appellant shall be entitled to be released forthwith unless required to be incarcerated in any other case.

C.HARI SHANKAR, J

SEPTEMBER 01, 2018/kr