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S-27/28

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.A. 278/2015

TONI OJHA

..... Appellant

Through Mr. Bir Singh, Adv.

versus

STATE

..... Respondent

Through Ms. Manjeet Arya, APP

AND

+ CRL.A. 503/2015

TONI OJHA

..... Appellant

Through Mr. Bir Singh, Adv.

versus

STATE

..... Respondent

Through Ms. Manjeet Arya, APP

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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03.04.2018

1. Vide judgment dated 26th November, 2014 passed in Sessions Case no. 102/2011 arising from FIR No. 419/2010 under Sections 394/397/411/34 IPC and Sections 25/27 of the Arms Act registered at Police Station Pandav Nagar, appellant has been convicted under Sections 392/394/34 IPC read

with Section 397 IPC and Section 411 IPC. Vide order on sentence dated 29th November, 2014 appellant has been sentenced to undergo rigorous imprisonment for seven years with fine of ₹5,000/- under Sections 392/394/397/34 IPC and in default of payment of fine, to undergo simple imprisonment for six months. He has also been sentenced to undergo rigorous imprisonment for three years with fine of ₹5,000/- under Section 411 IPC and in default of payment of fine, to undergo simple imprisonment for six months. Both the sentences have been directed to run concurrently. It has been further ordered that appellant would be entitled to the benefit of Section 428 Cr.P.C.

2. Vide judgment dated 26th November, 2014 passed in Sessions Case no. 93/2011 arising from FIR No. 1/2011 under Sections 307/397/393/34 IPC and Sections 25/27/54/59 of the Arms Act registered at Police Station Mandawali, appellant has been convicted under Sections 365/511/34 IPC; under Sections 393/34 IPC read with Section 397 IPC; under Section 307/34 IPC and Section 27 of the Arms Act. Vide order on sentence dated 29th November, 2014 appellant has been sentenced to undergo rigorous imprisonment for three years with fine of ₹5,000/- under Sections 365/511/34 IPC and in default of payment of fine, to undergo simple

imprisonment of six months. He has also been sentenced to undergo rigorous imprisonment for seven years with fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for six months under Sections 393/34 IPC read with Section 397 IPC. He has been further sentenced to undergo rigorous imprisonment of seven years with fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for six under Sections 307/34 IPC months. Further sentence of three years with fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for six months under Section 27 of the Arms Act. All the sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given to appellant.

3. Aggrieved by his conviction vide the above stated judgments as also the orders of sentences handed down to him, appellant has filed the above appeals, which are being disposed of by this order.

4. During the course of hearing, learned counsel for the appellant, on instructions, has given up challenge to the conviction of appellant in both the cases. The only prayer pressed by the learned counsel for appellant is that sentences passed in two different cases may be ordered to run concurrently, under Section 427 Cr.P.C.

5. As regards, sentences awarded to the appellant for different offences in the same case have already been directed to run concurrently. It is contended that unless the sentence awarded in subsequent case is not directed to run concurrently, appellant will have to remain in jail for fourteen years as the sentences awarded in the subsequent case will commence only on expiry of the sentences awarded in the first case. Appellant is a young man. He must be given a chance to reform himself. Appellant belongs to a poor family and whole family is suffering financially due to long incarceration of the appellant.

6. Even though, conviction of the appellant in the above noted cases has not been assailed by the appellant on merits, but to satisfy my conscience, I have gone through the impugned judgments and also the trial court records, which have been received. Prosecution story as set up in the FIR No. 1/2011 is that appellant along with his co-accused Manoj Ojha attempted to rob a car bearing registration No. DL-3CBM-6594 from its driver Dalip Singh at about 10.20 pm on 31st December, 2010. Appellant was armed with a katta, so was his co-accused Manoj Ojha. Katta was used by them in attempting to commit robbery, inasmuch as co-accused Manoj Ojha had fired at Dalip Singh, resulting injuries to him. Dalip Singh has been

examined before the trial court as PW1 and supported the prosecution story. He has deposed that he was working as driver of Aprajito Mukherjee, resident of R.K. Puram. He was driving the car bearing registration no. DL-3CBM-6594, owned by Shri Aprajito-Mukherjee, on 31st December, 2010 at about 9 pm. He had gone to Desh Bandhu Apartments, behind Mother Dairy, I.P. Extension, Delhi at about 10/10:15 pm when both the accused came there, took out pistols in their hands and thereafter, accused Manoj put pistol on his stomach and asked him to sit in the car and accompany them. When both the accused were forcing him to sit in the car, he tried to run away, at which Manoj fired at him, resulting injuries to him. Testimony of this witness has remained unshattered in his cross-examination by the counsel for the appellant. PW1 Dalip Singh has correctly identified the appellant in court. Mr. Aprajito Mukherjee was examined as PW5. He has corroborated the statement of PW1. He deposed that Dalip Singh was his driver. On 31st December, 2010 at about 9 pm he had gone to Flat no. 100, Deshbandhu Apartments, I.P. Extension, Patpar Ganj, Delhi. Car was parked outside the gate of society. At about 10:30 pm he received a call that his driver had been shot. Injuries of PW1 were opined dangerous in nature by the doctor. PW8 Dr. M.N. Singh had prepared the MLC and has deposed

in this regard. Other police officials also supported the prosecution story. Appellant refused to participate in the TIP and has been correctly identified by the victim in Court. In my view trial court has rightly found the testimonies of witnesses trustworthy and reliable to reach the conclusion that prosecution had proved its case against the appellant beyond shadow of reasonable doubt.

7. Prosecution story as set up in FIR No. 419/2010 is that appellant along with his co-accused Manoj Ojha stopped a Tata Sumo vehicle bearing registration No. UP-16S-9444 at about 10/10:15 pm on 31st December, 2010 near Akshardham Temple Flyover by jumping in front of the said car. PW2 Ganesh, driver of the Tata Sumo car, got down from the vehicle, when appellant and co-accused pushed him inside the vehicle. Co-accused took the wheels; while appellant occupied the passenger seat. Driver was made to sit in between. Appellant and co-accused were armed with kattas. They drove the car towards Noida. After crossing the flyover, the car was stopped and Ganesh was thrown out of the vehicle, inasmuch as he was shot resulting injuries to him. Thereafter, Appellant and co-accused ran away with the said car towards Noida. Police was informed. Statement of PW2 was recorded on the basis whereof FIR was registered. During the trial,

Ganesh was examined as PW2. He has fully supported the prosecution story. Shri J.P. Nahar, Metropolitan Magistrate was examined as PW3. He deposed that TIP was conducted by him. He stated that appellant had declined to participate in the TIP. Shri Shiv Nath Singh is owner of the aforesaid vehicle. He deposed that Ganesh was employed with him as driver. He deposed that Tata Sumo bearing registration No. UP-16S-9444 was driven by Ganesh Prasad on the fateful day at about 10:30/10:45 pm. Ganesh informed him that he was shot by the robbers who had taken away the Tata Sumo with them. Other police officials also supported the prosecution version. Testimony of PW2 had remained unshattered in his cross examination. Medical evidence also corroborates the statement of PW2. In my view, trial court has rightly accepted the testimonies of the witnesses, more particularly of PW2, to conclude that prosecution had proved the charges framed against the appellant beyond the shadow of reasonable doubt.

8. As already stated above, Appellant has already given up challenge to his conviction on merits.

9. For the foregoing reasons, conviction of the appellant by the impugned judgments is upheld. Sentences handed down to the appellant in

individual cases are also not reduced. However, benefit of Section 427 Cr.P.C. is extended to appellant. Sentences awarded to the appellant in Sessions Case no. 102/2011 (FIR No.419/2011, PS Pandav Nagar) shall run concurrently with the sentences awarded in Sessions Case No. 93/2011 (FIR No.1/2011 Police Station, Mandawali). Appellant shall also be given benefits under Section 428 Cr.P.C.

10. Both the appeals are disposed of in the above terms.

11. Dasti


A.K. PATHAK, J.

APRIL 03, 2018
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