

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

Date of decision: 02.12.2019

+ **CRL.A. 288/2010**

ASHOK KUMAR & ANR. Appellants

Through: Mr. Rajpal Kasana, Mr.
Nagender Kasana, Mr.
Vinayak Pant & Ms. Palak
Munjhal, Advocates

Versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr. G.M.Farooqui,
Additional Public Prosecutor
for respondent No.1/State
with Insp. Vinay Kumar-ATO
Khajoori Khas
Mr. K.K.Jha, Adv. for
complainant with complainant.

AND

+ **CRL.A. 289/2010**

VIJAY PAL & ORS. Appellants

Through: Mr. Rajpal Kasana, Mr.
Nagender Kasana, Mr.
Vinayak Pant & Ms. Palak
Munjhal, Advocates

Versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr. G.M.Farooqui,
Additional Public Prosecutor
for respondent No.1/State
with Insp. Vinay Kumar-ATO

Khajoori Khas.
Mr. K.K.Jha, Adv. For
complainant with complainant.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI,J(*Oral*)

1. This is an appeal under Section 374 Cr.P.C. filed by the petitioners against the order of conviction dated 28.01.2010 and against the Order on sentence dated 01.02.2010, passed by Ld. ASJ in Session case No. 73/2007 vide which the all the appellants were sentenced to five years of RI with fine of Rs.500/- each for the offence under section 307 IPC and in default of payment of fine, they shall further undergo simple imprisonment for one month. All the appellants were also sentenced to one year of RI with fine of Rs.250/- each for the offence under section 148 IPC and in default of payment of fine, they shall further undergo simple imprisonment for 15 days. All the sentences were ordered to run concurrently.

2. Status report along with Nominal Rolls in respect of all the appellants has been filed in compliance of previous order.

3. At the very outset, learned counsel for the appellants states that he does not want to argue on the merits of the case and will confine his arguments on the order on sentence only. It is further submitted that the

matter has already been settled with the complainant and the settlement deed is also placed on record and the terms of the settlement deed are as follows:-

- a. *That the party of the first part (Ashok Kumar, Rakesh, Vijay Pal, Satish @ Dhara, Vinod and Bed Pal @ Bedi) shall give a sum of Rs. 10,00,000/- to the party of the second part (Kedar Prasad, Om Prakash, Mohd. Salamat, Phool Kant Mishra, Mohd. Sahamat, Anmol Choudhary, Parasu Ram Jha and Surender Rajak) to be divided amongst them as per their own wishes/desires and willingness.*
- b. *That the party of the first part shall deposit the said sum of Rs. 10,00,000/- with Sh. K.K.Jha, Advocate to be given to the second party, particularly to Sh. Anmol Choudhary who will distribute the said amount of Rs. 10,00,000/- among the party to second part including himself or use that money with the consent of the party of the second part.*
- c. *That the party of the first shall not claim their ownership or possession in respect of the piece of land which was/is in the name of Smt. Sunaina Devi which become the reason for quarrel/dispute between the parties on 20.01.2000.*
- d. *That the party of the first part undertakes not to dispute the ownership and possession of Smt. Sunaina Devi in respect of the piece of land measuring 100 Sq.Yds as on 20.01.2000 i.e. the date of incident/quarrel/disputes between the parties.*

e. That the party of the second part shall co-operate with the party of the first part by giving their no objection to the quashing of FIR No. 16/2000 under Section 148/149/307 IPC and further under Section 25/27 Arms Act registered in the police station Khajoori Khas.

f. That Sh. Vinod Kumar who is a petitioner in Cr. L.P. No. 148/2000 shall withdraw his petition unconditionally.

4. It is prayed that in view of the above settlement, the FIR/Judgment be quashed or the petitioner should be released on probation or sentence awarded to them may be reduced in the interest of justice.

5. Ld. APP for the state has submitted that settlement deed placed on record cannot be considered as the offences alleged in the present case are non-compoundable in nature. It is further submitted that the offence committed by the appellants is serious in nature and, therefore, they do not deserve any leniency.

6. I have considered the rival submissions. I am in agreement with the contention of Ld. APP for the State that this court cannot look into the factum of compromise entered into between the parties at this stage for quashing of FIR/Judgment. However, it can no doubt be a mitigating circumstance so far as sentence awarded to the petitioners is concerned. Ld. Counsel for the appellants has further submitted that alleged incident is of the year 2000 and the appeal is pending before this court since 2010. Out of the nine accused persons, three namely Badle, Hari Kishan and Jagger Singh (one of the appellant in the appeal no. 288/2010) have

already been expired. Ld. Counsel for the appellants has prayed for taking lenient view.

7. Perusal of record reveals that as per nominal rolls, the appellants have already served the following period of sentence:-

Sl.No.	Name of the Appellant	Period of sentence already undergone.
1	Ashok Kumar	01 Year, 03 months and 26 days (Remission earned 04 months and 09 days)
2	Jagger Singh (already expired)	01 year, 02 months and 27 days (Remission earned 04 months and 09 days)
3	Vijay Pal	05 months and 27 days (Remission earned-10 days)
4	Rakesh	05 months and 28 days (Remission earned 08 days)
5	Satish @ Dhara	05 months and 19 days (Remission earned 10 days)
6	Vinod	03 months and 22 days (Remission earned 10 days)
7	Bed Pal @ Bedi	04 months and 24 days (Remission earned 10 days)

8. The incident in the present case pertains to the year 2000 and as stated above, three accused persons have already expired and out of them, one is the appellant i.e. Jagger Singh in the appeal no. 288/2010. The parties have settled the dispute between themselves and compromise deed has been placed on record but this court is of the opinion that this settlement is of not much use to the appellants at this stage for quashing

of proceedings/Judgment. However it can be a mitigating circumstance so far as sentence awarded to the petitioner is concerned. **All the accused persons are aged and they are residents of the same village and also residing peacefully now for the last 19 years.** There is no dispute between the rival fractions now. Since the purpose of sentencing is reformative also and the incident is of the year 2010 and appellants have already undergone sentence for the period as mentioned above, it would be in the interest of justice if their sentence is reduced to the period already undergone. Accordingly, the order on sentence dated 01.02.2010 passed in case FIR No. 16/2000 under Section 307/149/148 IPC PS Khajoori Khas is modified to the effect that all the appellants are sentenced to the period already undergone by them in jail.

9. Copy of this Judgment be sent to the concerned Jail Superintendent.

10. The appeals stand disposed of accordingly.

BRIJESH SETHI, J

DECEMBER 2, 2019

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