



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

Reserved on : 29.01.2024

Pronounced on : 30.01.2024

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+ CRL.A. 1187/2012

SUBHASH @ SATYA PRAKASH

..... Appellant

Through: Mr. L. K. Passi and Ms. Ruby,
Advocates.

versus

STATE

..... Respondent

Through: SI Deepak Kumar, PS Jahangir Puri.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal under Section 374 Cr.P.C. has been filed by the appellant seeking setting aside of the impugned judgment of conviction dated 29.03.2012 and order on sentence dated 08.06.2012.
2. Vide the impugned judgment and order on sentence, the appellant has been convicted and sentenced under Section 394/34 r/w 120-B IPC to undergo rigorous imprisonment for five years, under Section 307/34 r/w 120-B IPC to undergo rigorous imprisonment for seven years, under Section 395/34 r/w 120-B IPC to undergo rigorous imprisonment for seven years and under Section 397 IPC to undergo rigorous imprisonment for seven years. Fine of Rs. 3,000/- was also imposed on the appellant and all the sentences were ordered to be run concurrently. Benefit of Section 428



Cr.P.C was also given to the appellant.

3. Briefly stated, the facts of the case are that on 04.08.2004, complainant-Moti Lal who was on a two wheeler scooter while on his way to Azad Pur Subzi Mandi was stopped by accused- Haridwar @ Chacha by parking his scooter in front of the scooter of the complainant. Thereafter, Babloo Pasi @ Bhola fired at Kishan Lal who was the pillion rider on the said scooter with the complainant. Subhash @ Satya Prakash put a knife on the handle of the scooter of the complainant meanwhile Jiya Lal kept a watch from distance. The accused persons snatched a bag from Kishan Lal which was containing 3,00,000/- in cash. Subsequently, inter alia on the testimony of Kishan Lal (PW-4), the accused persons including the appellant were convicted vide the impugned judgment.

4. Learned counsel for the appellant submitted that one of the accused, namely, Haridwar @ Chacha has been let out vide order dated 06.12.2013 passed by this Hon'ble Court in Crl. A. 1252/2013 on the basis of sentence already served by him. He further submitted that a lenient view be taken and present appellant be treated at par with the said accused Haridwar @ Chacha and thus, be released on the basis of the period already undergone by him which is more than four years and ten months, on the ground of parity with co-accused and also, the relied upon order dated 06.12.2013 passed by this Hon'ble Court.

5. I have perused the Nominal Roll of the appellant as per which he has undergone more than four years and ten months and his jail conduct has also been satisfactory. According to the Nominal Roll, the appellant has no past criminal record.



6. I have also perused the order dated 06.12.2013 passed this Court in Crl. A. 1252/2013 which reads as follows:

“Appellant has been convicted under Sections 307/394/395/120-B IPC by the Trial Court by way of the impugned judgment and order on sentence dated 29.03.2012 and 08.06.2012 respectively. The applicant-appellant has been sentenced to rigorous imprisonment for seven years and fine of 3,000/- and in default of payment of fine he shall undergo simple imprisonment for three months. The appellant has been granted benefit of Section 428 Cr.P.C.

As per the prosecution on 04.08.2004, complainant Moti Lal while on his way to Azad Pur Subzi Mandi on a two wheeler scooter was stopped by the appellant. One Babloo Pasi, co-accused of the appellant fired at Kishan Lal, who was the pillion rider on the said scooter with the complainant Moti Lal. Co-accused Subhash @ Satya Prakash put a knife on of the complainant Moti Lal and co-accused Jiya Lal kept a watch from a distance. A bag containing cash of 3,00,000/- was thereafter snatched from the complainant Kishan Lal.

Inter alia on the testimony of PW-4 Kishan Lal, the appellant and his co-accused were convicted by the Trial Court.

Learned counsel for the appellant submits on instructions from the appellant not to challenge his conviction on merits. However, she contends that a lenient view be taken and the appellant be released for the period already undergone by him which is more than five years and five months, including remission, out of a sentence of seven years awarded to him by the Trial Court. It has been contended that the appellant is 58 years old and he has one old age widowed mother, wife and five children who are unmarried and are being deprived of his support and care. Thus, it is prayed that leniency be shown in the sentence awarded to him and he be released for the period already undergone by him.

I have perused the nominal roll of the appellant. His conduct in jail has been satisfactory. According to the nominal roll, the appellant has no past criminal record. The appellant has suffered incarceration for a period of more than five years and five months, including the period of remission, out of the imprisonment of seven years awarded to him. Having regard to the totality of the circumstances, while upholding the



conviction, sentence of appellant is reduced to the period already undergone by him subject to payment of fine and in default of payment of fine the appellant shall undergo simple imprisonment for one month in lieu of three months simple imprisonment as directed by the Trial Court.

The appellant shall be set free if not wanted in any other case.

The appeal is disposed of in the above terms.”

7. Having regard to the totality of the circumstances and keeping in view the period of sentence undergone by the appellant as well as on the ground of parity, while upholding the conviction, sentence of the appellant is reduced to the period already undergone by him subject to payment of fine and in default of payment of fine, the appellant shall undergo simple imprisonment for one month in lieu of three months simple imprisonment as directed by the Trial Court. The appellant shall be set free if not wanted in any other case.
8. The appeal stands disposed of in the above terms.
9. Bail bonds are cancelled and surety stand discharged.
10. A copy of this order be sent to the office of the concerned Superintendent for information and compliance.

RAJNISH BHATNAGAR, J

JANUARY 30, 2024/ib