

(2011) 09 DEL CK 0023

Delhi High Court

Case No: Criminal Appeal No. 104 of 2008

Abdul Shahzad

APPELLANT

Vs

The State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision: Sept. 8, 2011**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 34, 394
- Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3, 4, 6

Hon'ble Judges: Ajit Bharihoke, J**Bench:** Single Bench**Advocate:** J.C. and Ashutosh Bhardwaj, for the Appellant; Fizani Husain, APP, for the Respondent

Judgement

Ajit Bharihoke, J.

1 Abdul Shahzad, the Appellant herein, on being convicted for the offence punishable u/s 394 Indian Penal Code read with Section 34 Indian Penal Code and sentenced to undergo RI for the period of 07 years as also to pay fine of Rs. 5,000/-, in default to undergo SI for the period of 06 months, has preferred this appeal.

2. Briefly stated, allegations against the Appellant are that he, in furtherance of his common intention with his co-accused Mohd. Sueb and Ors. robbed the complainant Taufiq Mohd of Rs. 10,000/- on the point of knife used by the accused Mohd. Sueb.

3. In order to bring home the guilt of Appellant and his co-accused, prosecution examined as many as eight witnesses, including the complainant. Statements of the Appellant and his co-accused were recorded. Both of them denied the prosecution version and pleaded innocence. No. witness in defence was preferred.

4. Learned Counsel for the Appellant, on instructions, at the outset submitted that the Appellant admits his guilt on merits and does not press his appeal against the

judgment of conviction. The Appellant, however, has confined his argument to the quantum of sentence awarded to him. Learned Counsel for the Appellant has submitted that the sentence of RI for the period of 07 years is too harsh and requested for a lenient view. It is contended that the Appellant is a young man aged about 27 years. He has a younger brother and unmarried sister. His parents have expired during the period of his incarceration and younger siblings are dependent upon him as he is the only one to take care of them. It is also submitted that the Appellant has realized his mistake and given a chance, he would make sincere effort to prove to be a useful member of the society.

5. Learned APP, on the contrary, has argued in support of the order on sentence and submitted that the sentence of 07 years RI and fine of Rs. 5,000/- awarded to the Appellant is commensurate with the offence committed by him. Thus, the learned APP has urged for dismissal of the appeal.

6. I have considered the rival contentions. Sentencing of an accused in a criminal matter is a serious exercise and the quantum of sentence imposed should be commensurate with the gravity of the offence committed by the accused and the circumstances under which the offence was committed. While dealing with the issue of sentence for the offences under Sections 3, 4 & 6 of Terrorist and Disruptive Activities (Prevention) Act, 1987, Supreme Court in the matter of [Karamjit Singh Vs. State \(Delhi Admn.\)](#), wherein the Supreme Court, has inter alia, observed thus:

"7.....Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the Appellant and objected to on behalf of the Respondent, we

have come to the conclusion that some consideration should be shown to the Appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the Appellant in the matter of punishment we have reposed confidence in goodness of human character which is a part of the personality of every human being. We hope and believe that our confidence will not be belied in the case of the Appellant. In the facts and circumstances of the case and the changed social environment which has taken place in the meantime, it is our considered view that the sentence of life imprisonment should be modified to the period already undergone (about 13 years 7 months). Before being released from jail in the case, the Appellant will notify the jail authority the place and the address at which he intends to stay, on receipt of which the jail authority will intimate the Superintendent of Police of that place with a request to him to keep the Appellant under observation. If the Superintendent of Police finds that the Appellant is indulging in any illegal activity which amounts to an offence under any law, he shall immediately send a report to the Registrar General of this Court. With this modification of sentence as noted above, this appeal is dismissed.

7. In the case in hand, the Appellant is a young man aged about 27 years. He has a younger brother and unmarried sister. His parents have expired during the pendency of his appeal and his younger siblings are dependent upon him to take care of them. As per the nominal roll received from Central Jail No. 1, Tihar, the Appellant has undergone incarceration for a period of 04 years and 10 months (approximately), including remission as on 07.09.2011. Taking into account the nature of the offence committed by the Appellant, to my mind, the imprisonment of 07 years RI for offence u/s 394/34 Indian Penal Code is too harsh. He deserves at least a chance to mend his ways and become a useful member of the society.

8. In view of the discussion above, while maintaining the conviction of the Appellant u/s 394 Indian Penal Code and also maintaining the sentence of fine imposed upon the Appellant, the substantive sentence awarded to the Appellant for offence u/s 394 Indian Penal Code is reduced from 07 years RI to 05 years RI.

9. Appeal is disposed of accordingly.

10. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.