
(2014) 1 JCC 61

Delhi High Court

Case No: Criminal A. 469 of 2000

Mohd. Yusuf

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision: Nov. 27, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 34, 393, 397

Citation: (2014) 1 JCC 61

Hon'ble Judges: S.P. Garg, J

Bench: Single Bench

Advocate: Ajay Verma, for the Appellant; Lovkesh Sawhney, APP, for the Respondent

Final Decision: Disposed Off

Judgement

S.P. Garg, J.

Mohd. Yusuf (the appellant) and Charanjeet @ Bittoo were arrested in case FIR No. 261/1997 under Sections 393/307/397/34 IPC registered at Police Station Shalimar Bagh and sent for trial on the allegations that on 23.04.1997 at about 09.00 P.M. in front of House No. AH-61, Shalimar Bagh, they attempted to rob Inderjit Kapoor while armed with country made revolvers. Mohd. Yusuf fired from the revolver and attempted to murder Ct. Shambhu Dayal who chased him after the robbery attempt. First Information Report was lodged after recording Inderjit Kapoor's statement (Ex. PW3/A) at 10.50 P.M. The appellant was caught hold at the spot by the police officials whereas Charanjeet @ Bittoo fled the spot. Statements of the witnesses conversant with the facts were recorded. The exhibits were sent to Forensic Science Laboratory. After completion of investigation a charge-sheet was submitted against both of them in the court and they were duly charged and brought to trial. The prosecution examined 11 witnesses to prove their guilt. In their 313 statements, they denied their complicity in the crime and pleaded false implication. On appreciating the evidence and after considering the rival contention of the parties, the Trial Court by the impugned judgment held Mohd. Yusuf guilty for committing offence only u/s 307 IPC. It is relevant to note that Charanjeet @ Bittoo was acquitted of all the

charges and the State did not challenge the acquittal. Being aggrieved, the appellant has preferred the appeal. During the course of arguments, the learned counsel on instructions stated at Bar that appellant has opted not to challenge the findings of the Trial Court on conviction u/s 307 IPC. He, however, prayed to modify the sentence order as the appellant had no history of criminal record and had remained in custody for more than five years in the case. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances. By an order dated 17.05.2000 Mohd. Yusuf was awarded Rigorous Imprisonment for ten years with fine Rs. 5,000/-. Nominal roll dated 25.12.2010 shows that he remained in custody for five years two months and nine days besides earning remission for one year, one month and five days as on 06.04.2004. He was not involved in any criminal case and his overall jail conduct was satisfactory. After his enlargement on bail on 06.04.2004 nothing has emerged to show involvement in any criminal case. Co-accused Charanjeet @ Bittoo was acquitted on the same set of evidence. In the incident, none suffered any injury. The complainant did not implicate the present appellant for committing robbery. Considering the mitigating circumstances, the period already spent by the appellant in custody in this case is taken as substantive sentence. He shall, however, deposit the unpaid fine (if any) in the Trial Court within one month and in default, shall undergo Simple Imprisonment for two months.

2. The appeal stands disposed of in the above terms. Trial Court record along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.