

(2013) 07 DEL CK 0393

Delhi High Court

Case No: Criminal A. 480 of 2012

Ashok

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 25, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 395, 412

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

Bench: Single Bench

Advocate: Sunil Tiwari, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision: Disposed Off

Judgement

S.P. Garg, J.

Crl. M.A. 272/2013 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

Crl. A. 480/2012 & Crl.M.B. 68/2013

1. Ashok (the appellant) challenges a judgment dated 30.03.2012 of learned Additional Sessions Judge in Sessions Case No. 122/2011 arising out of FIR No. 158/2007 PS Civil Lines by which he was convicted u/s 395 IPC and sentenced to undergo RI for five years with fine Rs. 5,000/-. Allegations against the appellant were that on 26.06.2007 at about 03.15 A.M. at Outer Ring Road near CNG Pump, Chandgiram Akhara, Delhi he with his associates Vikram @ Ganja, Sameer @ Sonu, Raj Kumar and Amit committed dacoity of 28 bags of plastic raw material (plastic dana) loaded in Tempo No. DL-1LH-4864 driven by Jahangir Ali. Vikram @ Ganja was armed with a knife and it was used by him while committing dacoity. Saleem @ Khan was arrested for receiving robbed articles u/s 412 IPC. During the course of

investigation, statements of the witnesses conversant with the facts were recorded. The accused persons were arrested. After completion of investigation, a charge-sheet was submitted against the appellant. The prosecution examined fourteen witnesses. In his 313 statement, the appellant pleaded false implication. After considering the rival contentions of the parties and appreciating the evidence on record, the Trial Court, by the impugned judgment, held the appellant guilty for the offence mentioned previously and sentenced him accordingly. Being aggrieved, he has preferred the appeal.

2. During the course of hearing, appellant's counsel on instructions stated at Bar that the appellant has opted not to challenge his conviction u/s 395 IPC and accepts it voluntarily. He however, prayed to take lenient view as the appellant has already undergone substantial period of sentence awarded to him and he is not a previous convicts.

3. I have heard the learned counsel for the parties and have examined the record. Since the appellant has not opted to challenge findings of the Trial Court on conviction u/s 395 IPC, his conviction stands affirmed.

4. The appellant was sentenced to undergo RI for five years with fine Rs. 5,000/-. Nominal roll dated 26.11.2012 reveals that he has already spent two years, eight months and sixteen days in custody as on 26.11.2012. He also earned remission for one month and twenty five days. The period undergone has since increased to more than three years. Nominal roll further reveals that he is not a previous convict and is not involved in any criminal case. His overall jail conduct is satisfactory.

5. Taking into consideration all these mitigating circumstances, the substantive sentence of the appellant - Ashok is reduced from five years to four years. Other terms and conditions of the sentence are left undisturbed. Appeal stands disposed of in the above terms. Pending application also stands disposed of.