

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1022 OF 2009**With****CRIMINAL APPEAL NO.1023 of 2009**

Ashi Devi & Ors. .. Appellant(s)

versus

State (NCT of Delhi) .. Respondent(s)

J U D G M E N T**C. NAGAPPAN, J.**

1Both the appeals have been preferred against the judgment and final order dated 23.1.2009 passed by the High Court of Delhi at New Delhi in Criminal Appeal No.932 of 2004.

2The appellants in Criminal Appeal No.1022 of 2009 Smt. Ashi Devi, Smt. Munni Devi and Smt. Sheela @ Lali were accused nos.4, 8 and 10 respectively and the appellants in Criminal Appeal No.1023 of 2009 Uday Ram, Om Prakash, Kishan and Kishori were accused nos.2, 5, 6 and 9 respectively in the Sessions case in SC No.54 of 2001 on the file of Additional Sessions Judge, New Delhi. The appellants along with three others were tried for the charges under Sections 147/395/448 read with Section 149 IPC and the Trial Court found them guilty of the offence under Section 379 read with Section 34 IPC and Section 448 read with Section 34 IPC and convicted and sentenced them each to undergo 1 year rigorous imprisonment for the offence under Section 448 IPC and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for 3 months and further sentenced each of them to undergo rigorous imprisonment for 3 years for the offence under Section 379 IPC and to pay

a fine of Rs.25000/- each, in default to undergo simple imprisonment for 1 year and directed the sentence to run concurrently. Challenging the conviction and sentence seven accused preferred appeal in Criminal Appeal No.932 of 2004 and the High Court dismissed the appeal by confirming the conviction and sentence passed by the Trial Court. Aggrieved by the same they have preferred the present appeals.

3The prosecution case in brief is that PW11 Smt. Prakash Kaur and her son PW9 Jagjit Singh were running crockery shops in premises nos. T-56 and T-57 Takriwalan, till two months prior to the riots of 1984 and the accused persons were residing in the neighbourhood of the said shops and after the riots they were informed that their shops had been looted and some persons are occupying the same and on 20.11.1984 PW11 Smt. Prakash Kaur visited the shop and found goods looted and the accused persons in possession of the shops and despite her persistent

complaints police did not register any case and when Jain Aggarwal Committee was constituted they filed affidavits about the incident and on its direction a F.I.R. was registered against accused persons in January 1993 and charge sheet came to be filed. The Trial Court found the accused guilty of the offences and convicted and sentenced them as narrated above and the appeal preferred came to be dismissed and challenging the same the present appeals have been filed.

4Shri Ashok Kumar Panda, learned senior counsel appearing for the appellants in both the appeals, contended that there was delay of nine years in lodging the F.I.R. and there was no ocular testimony to the occurrence and the prosecution has not proved the charges and the conviction and sentence imposed on the appellants are not sustainable and liable to be set aside. Per contra, Shri K. Radhakrishnan, senior counsel appearing for the respondent-State,

contended that the occurrence took place as aftermath of unfortunate assassination of former Prime Minister Indira Gandhi by her own Sikh bodyguards and Sikh community became the target of assault and their houses and shops were ransacked and looted and there was large scale violence and the Riot Commission conducted enquiry and issued direction for registering the cases and thereafter the F.I.R. came to be registered in the present case and the delay has been satisfactorily explained by the prosecution and though there is no ocular testimony the prosecution has proved the charges by adducing circumstantial evidence and the conviction and sentence imposed on the accused are sustainable and needs no interference.

5It is known fact that there was large scale violence targeting the Sikh community when the former Prime Minister was assassinated by her own bodyguards in 1984. The crockery shops run by PW11 Smt. Prakash

Kaur and her son PW9 Jagjit Singh were also ransacked and in spite of their complaints to the police no F.I.R. was registered and only when Jain Aggarwal Committee was constituted they got an opportunity to file affidavits about the incident and direction came to be issued for registering the F.I.R. and in the process the delay of nine years has occurred. The Courts below have held that the delay has been reasonably and satisfactorily explained by the prosecution and delay by itself cannot be a ground for disbelieving and discarding the prosecution case. In our view also there is satisfactory explanation which deserves acceptance.

6The riots spearheaded at Delhi and during vandalism the occurrence had taken place and there is no ocular testimony. The premises no.T-56 and T-57 belonged to PW10 Inder Singh and his wife PW11 Smt. Prakash Kaur and their son PW9 Jagjit Singh. They have testified about the running of the crockery shops in

the said premises. PW12 Prem Kumar and PW14 Raj Pal Khurana were dealing with wholesale business of crockery and they have testified about supply of crockery to M/s. Jagjit Crockery House running in the said premises and invoice copies have also been marked. It stands established that PW9 Jagjit Singh and his mother PW11 Smt. Prakash Kaur were running crockery business in the said shops.

7It is the testimony of PW11 Smt. Prakash Kaur that she visited the shop on 20.11.1984 and found accused persons in occupation of the shops and when questioned, they threatened her to go away otherwise she would be killed. PWs 9 to 11 have filed individual affidavits about the occurrence before the Jain Aggarwal Committee and have also deposed in the enquiry. Copies of the affidavits and statements are marked as documents in the present case. Besides PW10 Inder Singh also filed suit for possession of the said premises against the accused and obtained a

decree. In fact the accused have squattered on the property and the High Court passed order dated 8.12.2004 directing the S.H.O. to remove the accused from the premises in terms of the order passed by the Trial Court and after the decree of the Civil Court the possession was handed over to the complainants. The Trial Court found that the accused trespassed into the premises by breaking open the locks and looted the goods and held them guilty for the offences under Section 379 and Section 448 IPC. The said finding is based on proper appreciation of evidence on record as rightly held by the High Court.

8Taking advantage of the riots the appellants broke open the locks of the shops and looted the goods and continued to be in illegal possession of the shops for nearly two decades. The Trial Court observed that any lenient view against the accused persons in sentencing shall amount to putting premium on the crime and the High Court has reiterated the same. In

our view the conviction and sentence imposed on the appellants are correct and proper. However, the learned senior counsel appearing for the appellants pleaded for leniency in sentence, considering the age of the first appellant Smt. Ashi Devi, in Criminal Appeal No.1022 of 2009. In the Memorandum of Appeal herein her age is mentioned as 88. As on date she is aged 93 years. The jail certificate dated 1.4.2009 states that she was admitted to Tihar Jail on 5.2.2009. This Court granted bail to her by order dated 13.5.2009. The above shows that she has undergone a part of the sentence. Considering her old age we are inclined to modify the sentence awarded to her

9We accordingly direct that the sentence of 3 years rigorous imprisonment for the conviction under Section 379 IPC and one year rigorous imprisonment for the conviction under Section 448 IPC imposed on Appellant No.1 Smt. Ashi Devi shall stand reduced to the period already

undergone by her. The conviction and sentences imposed on other appellants shall remain unaltered. Criminal Appeal No.1022 of 2009 is thus allowed in part and to the extent indicated above. Criminal Appeal No.1023 of 2009 is dismissed.

.....J.
(Jagdish Singh Khehar)

.....J.
(C. Nagappan)

**New Delhi;
June 9, 2014**