

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1175 OF 2009

MAHESH

.....

APPELLANT

VERSUS

STATE OF DELHI

.....

RESPONDENT

O R D E R

1. Three persons Mahavir, Jalvir, Mahesh were brought to trial for offences punishable under Sections 394/302/34 IPC for an incident that happened in the residential house of Seema Sharma -P.W. 4., the first informant at about 4:15p.m. on the 24th February, 1997. A fourth person, Roopa also involved in the incident died during the trial. The trial court on a consideration of the evidence convicted the three accused and sentenced each of them to undergo imprisonment for life for the offence under Section 302 IPC and to a sentence of 10 years for the offence under Section 394 of the IPC, both the sentences to run concurrently. Three appeals thereafter were filed before the Delhi High Court which, by its judgment dated 08th March, 2007, dismissed the appeals. Jalvir, one of the accused thereupon filed Criminal Appeal No. 1475 of 2007

which came up before this Court on 11th April, 2008. A Bench of this Court held that the only witness of the incident was P.W. 4 Seema Sharma who claimed and she knew Jalvir personally and having held as above dismissed the appeal. Mahavir also filed Criminal Appeal No. 932 of 2007 in this Court. This appeal was allowed with the positive finding that Seema Sharma - P.W. 4 had not been able to identify the accused as she was unaware of his identify and as the police had shown the accused to the witness which justified their refusal to participate in the identification parade and as such the only evidence against Mahavir was the identification by P.W. 4, Seema Sharma in Court and as this identification was a weak kind of evidence Mahavir was entitled to acquittal. Mahesh, the third accused has subsequently filed the present appeal in this Court claiming parity with the facts in Mahavir's case.

2. We have taken up this matter for hearing today and have heard the learned counsel for the parties and perused the documents on record. We see from the record that the role attributed to Mahesh and the evidence against him is identical with that of Mahavir who has already been acquitted by this

Court. We called upon Mr. P.P. Malhotra, the learned Additional Solicitor General to tell us if there was any difference in the nature of the evidence with respect to the case of Mahesh and Mahavir. The learned Additional Solicitor very fairly stated that it was not possible to identify any difference with respect to the evidence against Mahavir and Mahesh. We are thus of the view that Mahesh too is entitled to acquittal. We are informed by the learned counsel for the appellant that he has undergone about 13 years of the sentence. It is indeed a travesty of justice that a person who has almost completed the sentence should get an acquittal after such a delay. There is, therefore, little satisfaction for him but a sad commentary on our criminal justice system.

3. The appeal is, accordingly, allowed. The appellant is acquitted of the charges levelled against him. He is directed to be set at liberty if not required in connection with any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
APRIL 15, 2010.



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We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed this appeal. It is stated by the learned counsel for the appellant that he is in custody and has almost undergone the complete sentence imposed for murder. The appellant is acquitted of the charges levelled against him. We direct that the appellant shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order is separately placed on record.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
APRIL 15, 2010.

