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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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DATE OF DECISION : MAY 01, 2012

+ CRL.A. 1121/2011

SUGRIV TYAGI

..... Appellant

Through: Mr.L.K.Verma, Advocate with
petitioner in person.

versus

STATE

..... Respondent

Through: Mr.Navin Sharma, APP for the
State with SI Kailash Chand, P.S.
Mehrauli, New Delhi.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

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1. The present appeal has been filed by the appellant Sugriv Tyagi challenging the impugned judgment dated 03.08.2011 and order on sentence dated 06.08.2011 passed by the learned Addl. Sessions Judge, Saket Courts, New Delhi, vide which the appellant was sentenced to undergo RI or a period of three years and fine of Rs.5,000/- in default of payment of fine to further undergo SI for six months for having committed the offence punishable under Section 325/34 IPC.

2. Brief facts leading to filing the present appeal and as stated in para-1 of the impugned judgment are extracted as under:-

Complainant and accused persons are closely related to each other. So much so, that complainant Murat Singh and accused Sugreev Singh are real brothers. Both the parties are locked in several litigations over the property dispute. Murat Singh in his complaint Ex.PW2/A alleged that around 4-5 days before the incident i.e. 06.11.06, accused Sugreev took over the possession of plot forcibly on which their father Sh. Dal Chand had made a complaint to the police. For inquiry of that complaint, a police official came to the house of complainant. Complainant along with his father Sh. Dal Chand went along with police official to point out the house of accused Sugreev. However, at that time, Sugreev was available at his home and he started abusing them. Accused challenged the complainant and his father that why they have come to their house and started beating them. In the meanwhile, Amit Tyagi, Mona Tyagi i.e. son and daughter of the accused, respectively and one Ravi Dutt Tyagi came armed with rod and danda. Sugreev assaulted the complainant on his head with iron rod. When his father Sh. Dal Chand, came for rescue, Sugreev hit him also on his head with an iron rod. On coming to know about the quarrel, Smt.Krishna Devi i.e. mother of complainant Murat Singh and accused Sugreev along with Archana Devi W/o Sh. Murat Singh, reached on the spot for the rescue of complainant. Complainant alleged that Mona hit his wife Archana on her head with danda and Amit and Ravi Dutt gave beatings to his mother Krishna Devi with lathi and rod. Saroj and Sushil Tyagi rescued the injured from the accused persons and the matter was informed to the police. Police took the injured persons to the AIIMS hospital. Complainant alleged that the accused persons have assaulted them with lathi, danda and rod in furtherance of common intention.

On this complaint, Ex.PW2/A, IO made an endorsement Ex.PW11/A and FIR No.777/06, Ex.PW8/A was lodged. Injured persons were medically examined vide MLC Ex.PW5/A (Krishna Devi) Ex.PW1/C (Dal Chand), Ex.PW1/B (Murat Singh) and Ex.PW1/A (Archana Devi). As per MLC of Krishna Devi, Ex.PW5/A she suffered grievous injuries having suffered fracture in right leg along with multiple injuries on the body. As per MLCs Ex.PW1/C, Ex.PW1/B and Ex.PW1/A, injured Murat

Singh, Archana Devi and Dal Chand suffered simple injuries. IO prepared the site plan Ex.PW11/D. Accused Usha Devi was arrested on the same day. Pursuant to her disclosure statement, Ex.PW2/D, a cane danda was seized from her house vide seizure memo Ex.PW2/E. Accused Mona Tyagi after having been admitted to anticipatory bail was formally arrested on 15.04.07 vide arrest memo Ex.PW11/E. Similarly, accused Ravi Dutt Tyagi was admitted to anticipatory bail by the Sessions court vide order dated 23.11.06 and he was formally arrested on 23.04.07 vide arrest memo Ex.PW11/F. Accused Amit Tyagi was also initially admitted to anticipatory bail by the Hon'ble High Court vide order dated 22.11.2006. However, subsequently, he was found to be juvenile and proceeded accordingly. Accused Sugreev was formally arrested on 05.12.06 vide arrest memo Ex.PW11/C."

3. After considering the testimonies of the material prosecution witnesses, who are close relations being mother, father and brother of the appellant, the learned Addl. Sessions Judge acquitted the co-accused Mona Tyagi but accused Usha Devi and Sugriv Tyagi were convicted for having committed the offence punishable under Section 325/34 IPC. After hearing on the point of sentence, the learned Addl. Sessions Judge had given benefit of probation to the accused Usha Devi wife of the appellant Sugriv Tyagi by ordering to release her on probation for a period of one year. However, benefit of probation was declined to the appellant in view of his involvement in some other case and he was sentenced to undergo R.I. for three years and fine of Rs.5,000/-, in default of payment of fine to further undergo S.I. for six months.

4. The impugned judgment and order on sentence passed by the learned Addl. Sessions Judge have been challenged by

the appellant on the ground that the learned ASJ failed to take into account that a cross-case was also pending and was required to be tried along with this case. The cross-case filed by this appellant was required to be tried and disposed of along with this case. Had it been so, the fate of this case would have been different. Referring to the case of the prosecution wherein it is the complainant party who was none else but the brother, father and mother of the appellant, who had gone to the house of the appellant when a quarrel took place over the possession of a plot, which as per the complainant had been forcibly possessed by the appellant. Learned counsel for the appellant submitted that the case filed by the appellant against the complainant/injured of this case (Sessions Case No.142/08, FIR No.777/2006, P.S. Mehrauli) is still pending and without prejudice to his rights to prosecute them in that case, he is not challenging his conviction in this case. He submitted that since the appellant is the sole bread earner in his family, a driver by profession and that the co-accused have already been acquitted and his wife has been released on probation, a lenient view may be taken against the present appellant also and the substantive sentence awarded to him may be reduced to the period already undergone by him during investigation/trial of this case.

5. After taking into account the entire facts & circumstances and submissions made by counsel for the appellant, while maintaining the conviction of the appellant for having committed the offence punishable under Section 325/34 IPC, the substantive sentence awarded to the appellant is reduced

to the period already undergone by the appellant. However, the amount of fine which was Rs.5,000/- imposed by the Trial Court, is enhanced to Rs.15,000/-. It is stated by counsel for the appellant that the appellant has already deposited the fine amount of Rs.5,000/- as imposed by the Trial Court. Hence, the appellant shall now deposit an amount of Rs.10,000/- in the concerned Trial Court within a period of two weeks from today, in default of which the appellant shall further undergo simple imprisonment for 2 months. Receipts showing the said deposit shall also be placed on record by the appellant.

6. The appeal is allowed to the aforesaid extent and the impugned judgment dated 03.08.2011 passed by the learned Trial Court is partially modified.

7. CRL.A. No.1121/2011 stands disposed of accordingly.

8. *Dasti.*

**PRATIBHA RANI
(JUDGE)**

MAY 01, 2012
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