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

DECIDED ON : 5th JULY, 2013

+ **CRL.A. 30/2012 & CRL.M.B. 837/2013**

SAJID ALAM Appellant
Through : Mr.S.B.Dandapani, Advocate.

versus

THE STATE (GOVT. OF NCT) Respondent
Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Open Court)

1. The appellant- Sajid Alam challenges a judgment dated 08.06.2011 of learned Additional Sessions Judge in Sessions Case No. 16/2010 arising out of FIR No. 49/2009 PS Paharganj by which he and his associate Moinudin @ Chhotu were held guilty for committing offence punishable under Section 307/34 IPC. By an order dated 07.07.2011, the appellant was sentenced to undergo RI for six years with fine ₹ 10,000/- and failing to pay the fine to undergo SI for six months.

2. Allegations against the appellant were that on 04.03.2009 at 11.00 P.M. at Chitragupta Road, the appellant- Sajid Alam and his

associate- Moinudin @ Chhotu attempted to kill Ashfaq Alam. Moinudin threw acid on him and Sajid Alam stabbed him with knife. After completion of the investigation, a charge-sheet was submitted against both the accused persons and they were duly charged and brought to Trial. The prosecution examined fourteen witnesses to establish the guilt of the appellant. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the present appellant- Sajid Alam and Moinudin perpetrators of the crime. Being aggrieved, the appellant- Sajid Alam has preferred the appeal.

3. During the course of arguments, learned counsel on instructions from the appellant- Sajid Alam stated that the appellant has opted not to challenge the conviction under Section 307/34 IPC. He however, prayed for modification of the order on sentence as the appellant has already undergone more than three years sentence.

4. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellant has not opted to challenge the findings of the Trial Court on conviction under Section 307/34 IPC, the order of conviction of the Trial Court stands affirmed.

5. Regarding modification of order on sentence, it reveals that the appellant was sentenced to undergo RI for six years with fine ₹ 10,000/-. Nominal roll dated 16.04.2013 reveals that the appellant has already undergone three years, seven months and twenty two days incarceration as on 16.04.2013. He also earned remission for seven months and eight days. It is further reveals that he is not a previous convict and involved in any other criminal case. His overall jail conduct is satisfactory. The appellant is aged about 27 years and is the sole bread earner of his family consisting of his old mother, wife, one child and three younger sisters. There were three criminal cases under Arms Act against injured Ashfaq Alam. The appellant was related to him. The prosecution did not examine the doctor who had given nature of injuries 'grievous'. Only PW-12 (Laxmi), Record Clerk RML Hospital was examined to prove the MLC (Ex.PW-12/B).

6. Considering the mitigating circumstances, order on sentence is modified and the appellant is sentenced to undergo RI for five years instead of six years. Other terms and conditions of the order on sentence are left undisturbed.

7. The appeal is disposed of in the above terms. Pending bail application also stands disposed of. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

JULY 05, 2013

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