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

DECIDED ON : 19th JULY, 2013

+ **CRL.A. 844/2011 & CRL.M.A. 10515/2013**

MOHAMMAD NAIR Appellant

Through : Ms. Arundhati Katju, Advocate.

versus

STATE (N.C.T. OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

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

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

1. Mohd.Nair (the appellant) impugns a judgment dated 17.02.2011 of learned Additional Sessions Judge in Sessions Case No. 105/2008 arising out of FIR No. 74/2007 PS J.P.Kalan by which he was convicted under Sections 323/395 IPC. By an order dated 19.02.2011, he was sentenced to undergo RI for five years with fine ₹ 10,000/-.

2. Allegations against the appellant were that on the night intervening 15/16.05.2007 at about 11.00 P.M. he and his associates Mohd.Tehkhan (since PO), Mohd. Shahnawaj Alam and Mohd.Chunna

(both facing trial before Juvenile Justice Board) and other 5 – 6 associates barged into the fields of Naresh Kumar with common intention to steal the CI Pipes kept in the godown. Naresh Kumar was sleeping on the roof of the godown. Chet Ram, Ramashish, Avdesh and Vinod were sleeping in the room below. The assailants on arrival near the godown gave beatings to the labourers, locked them in the room and started loading pipes in the truck bearing registration No. DLIM-2599 make Tata. Naresh Kumar woke up and ran into the village to seek assistance of the villagers. When they reached the spot, the assailants started fleeing in different directions. They were apprehended. A knife, a chura, an iron rod and wooden rods were recovered from their possession. The Investigating Officer recorded statements of the witnesses conversant with the facts during investigation. After completion of investigation, the accused were charge-sheeted. The prosecution examined fourteen witnesses to prove the guilt of the accused. In their 313 statements, they pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held Mohd.Matin, Mohd. Nair and Mohd.Tassivul guilty for committing the various offences and sentenced them. Being aggrieved, the appellant- Mohd. Nair has preferred the appeal.

3. During the course of arguments, Mohd.Nair's counsel on instructions stated at Bar that he (Mohd.Nair) has opted not to challenge the findings of the Trial Court by which he was convicted under Sections 323/395 IPC. She however, prayed to take lenient view and to release the appellant as he has served substantial portion of the sentence awarded to him.

4. Since the appellant (Mohd.Nair) has opted not to challenge conviction under Sections 323/395 IPC and accepts it, the findings of the Trial Court on conviction qua him are affirmed.

5. The appellant was sentenced to undergo SI for one year under Section 323 IPC and RI for five years with fine ₹ 10,000/- under Section 395 IPC. Nominal roll dated 03.07.2013 reveals that he has already undergone three years, one month and eight days incarceration as on 29.06.2013. He also earned remission for eight months and sixteen days. The unexpired portion of sentence is one year, two months and six days. It further demonstrates that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. Application moved by him for release reveals that he is the only bread earner in the family and is to take care of his wife and three children. Due to poverty no family member was in a position to visit him

in jail for the last more than one year. Taking into consideration all these mitigating circumstances, modifying the order on sentence, the appellant-Mohd. Nair is sentenced to undergo RI for four years with fine ₹ 1,000/- and failing to pay the fine to undergo SI for fifteen days.

6. The appeal stands disposed of in the above terms. Pending application also stands disposed of. Copy of the order be sent to the appellant through Superintendent jail for information.

(S.P.GARG)
JUDGE

JULY 19, 2013

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