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

+ **Crl.A.No.1293/2012 & Crl.M.B.1992/2012**

% **Judgment dated 08 November, 2013**

PRAMOD @ PAMMI Appellant
Through: Mr.A.J. Bhambhani and Mr.Apurv
Chandola, Advocates

versus

STATE Respondent
Through: Mr.Mahipal Malik, Adv. for State
Appellant was produced in custody.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Present appeal is directed against the impugned judgment dated 19.11.2011 and order on sentence dated 23.11.2011, by which the appellant has been sentenced to undergo SI for 5 years and to pay a fine of Rs.5000/-, in default of payment of fine appellant was to further undergo imprisonment for 6 months under section 307 IPC.
2. It may be clarified that the order placed on record along with the appeal is dated 22.11.2011, but a corrigendum was issued on 23.11.2011, which reads as under:

“Corrigendum
to
ORDER ON SENTENCE

23.11.2011

Paragraph 4 of order on sentence dated 22.11.2011,

Instead of

“Keeping in view the submissions and all relevant factors of the present case, convict Pramod @ Pammi is sentenced to undergo simple imprisonment for a term of five year and he is also sentence to pay fine of Rs.5,000/- ID SI for six months for the offence punishable u/s.307 IPC. Lenient view in sentence is being taken keeping in view the young age of the convict, illness of convict and to give him a chance to reform himself.”

be read as

“Keeping in view the submissions and all relevant factors of the present case, convict Pramod @ Pammi is sentenced to undergo simple imprisonment for a term of five year and he is also sentence to pay fine of Rs.5,000/- ID SI for six months for the offence punishable u/s.307 IPC. Accused is further sentenced to undergo simple imprisonment for a term of 3 years and also to pay fine of Rs.1000/- ID SI for 2 months for the offence punishable u/s.27 Arms Act. Both the sentences will run concurrently. Lenient view in sentence is being taken keeping in view the young age of the convict, illness of convict and to give him a chance to reform himself.”

3. The case of the prosecution as noticed by the trial court reads as under:

“On 19.05.2008 at about 9:30 pm when Bijender @ Charbi (PW2) was going to his jhuggi No.307, 18 Block, Indira Camp, Kalyan Puri accused Raj Rani, his maternal aunt called him to her jhuggi on the pretext that she wanted to have some conversation with him. When he arrived on her jhuggi No.18/173, accused Pramod @ Pammi, accused Shunti and accused Mukesh, were already present there. Accused Pammi on seeing him exhorted “Saale Ko Khatam Kar Do”. Accused Pammi took out a knife from his pocket

and hit on his head. Accused Shunti by his knife stabbed him on his both legs. Accused Mukesh, with his knife stabbed him on his stomach. He raised alarm "Bachao Bachao". His brother Birju arrived there on hearing him. Accused persons escaped. His brother took him to LBS hospital from where he was referred to GTB hospital as he was in serious condition. The duty constable, vide DD No.39A dated 19.05.2008, informed PS Kalyan Puri about admission of injured. IO SI Ombir Singh (PW6) arrived in LBS hospital. He collected MLC of injured Bijender @ Charbi. Doctor also handed over him one pullinda duly sealed with the seal of hospital containing blood stained pant Ex.P-1 of injured. It was seized by IO vide seizure memo. (Ex.PW6/A). He arrived at GTB hospital. He recorded statement of Bijender @ Charbi, made his endorsement thereon and got the FIR No.151 dated 20.05.2008 recorded at PS Kalyan Puri. He arrived at the place of occurrence with Birju brother of injured and prepared site plan (Ex.PW6/C). At the instance of Birju, he arrested accused Raj Rani from her jhuggi and prepared arrest memo dated 20.05.2008 (Ex.PW6/D). Personal search memo dated 20.05.2008 (Ex.PW6/E), after taking search of accused Raj Rani by lady Ct. Omwati was also prepared. He deposited the case property in the malkhana. She made disclosure statement (EX.PW6/L) disclosing that under a criminal conspiracy she brought Bijender @ Charbi at her jhuggi at the instance of Pramod @ Pammi, Shunty and Mukesh. On 22.5.2008 accused Mukesh was arrested and his arrest memo (EX.PW5/B) and personal search memo. (EX.PW5/A) were prepared. He also made disclosure statement (EX.PW6/F). On 31.5.2008 accused Pramod @ Pammi was arrested and his arrest memo (EX.PW6/H) and personal search memo (EX.PW6/I) were prepared. He also made disclosure statement (incorrectly marked as EX.PW6/F instead of EX.PW6/G). He led the police officials to hedges near the canal adjoining to village Ghazipur, Lal Batti chowk and got recovered a knife (chura). That was measured and its sketch (EX.PW6/J) was prepared and it was seized vide seizure memo (EX.PW6/K) dated 31.5.2008. Investigation Officer also obtained opinion from Department of Forensic Medicine, LBS Hospital, Delhi wherein it was opined that injury no. 1, 2 and 3 on the body of injured could be caused by the said weapon examined or by some similar weapon.

After completion of investigation police filed a charge sheet against accused Mukesh, Pramod and Raj Rani before the Ld. Metropolitan Magistrate for their trial for the offences punishable u/s 307/120-B/34 IPC and Section 25 Arms Act.

2. Ld. Metropolitan Magistrate after supplying of copies of charge sheet and documents committed this case to the court of sessions and the case was assigned to my Ld. Predecessor.

3. On 17.7.2008 accused Pankaj @ Shunty was arrested and his arrest memo (EX.PW13/A) and personal search memo (EX.PW13/B) both dated 17.7.2008 were prepared. He also made disclosure statement (EX.PW13/C). Pankaj @ Shunty also led the police party to the place of occurrence and on his pointing out, pointing out memo (EX.PW13/D) dated 17.7.2008 was prepared. IO prepared supplementary charge sheet and submitted it in the court for his trial for the offences punishable u/s 307/120B/34 IPC”

4. The appellant has been produced in court, in custody. Counsel for the appellant submits that the appellant does not wish to contest the appeal on merits, however, he prays that the order on sentence be modified and the appellant be released on the period already undergone. As per the nominal roll dated 5.7.2013 placed on record, the appellant has already undergone 4 years and 16 days and he has earned total remission of 5 months and 14 days and the unexpired portion of sentence is six months. In effect the appellant has served 4 years 4 months and 19 days, besides remission which he has earned up to date.
5. The appellant is a young man, he was merely 29 years of age when the offence was committed; he submits that he does not have a father; he has an old ailing widowed mother and only one younger brother, hence, prays that the order on sentence be modified to the period already undergone.
6. Taking into consideration the facts of this case, the age of the appellant, his family condition and the period already undergone, the prayer made by the appellant is allowed. The appellant shall be released on the period

already undergone.

7. Appeal and all pending applications stand disposed of.
8. DASTI under the signatures of the Court Master.
9. Copy of this order be sent to the Jail Authority for compliance.

NOVEMBER 08, 2013
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G.S.SISTANI, J