

\$~R-10

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

% Date of Decision : September 25, 2017

+ **CRL.A. 614/2017**

ABDUL NAFIS

..... Appellant

Through : Mr.M.L.Yadav, Advocate with
Sh.Iqbal Miyan – brother of the
appellant.

versus

STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP for the
State.
Complainant/injured in person.

PRATIBHA RANI, J. (Oral)

1. The appellant has filed the instant appeal impugning the judgment dated 9th May, 2017 and order on sentence dated 24th May, 2017 whereby he has been convicted for committing the offence punishable under Section 307/34 IPC and sentenced to undergo RI for ten years and to pay a fine of ₹50,000/-, which shall be paid to the injured/victim, and in case the fine amount is not deposited, to undergo SI for two years.

2. Briefly stating, the case of the prosecution is that on 11th November, 2015 at 10.45 p.m. an information was received at PS Seelam Pur from B-51 Operator, Police Control Room to the effect that '*E-Block Seelam Pur Thane ke samne park ke kone par yahan ek aadmi ki garden aadhi kati padi hai*' which was recorded vide DD No.33-B. The said DD was marked to SI Rizwan Khan who was informed on phone. SI Rizwan Khan reached the spot alongwith Ct.Nareshveer and found the injured lying there. The identity of the

injured was revealed as Mohsin, S/o Late Sh.Hanif R/o H.No.169, G.No.5, Ambedkar Basti, Maujpur, New Delhi. No eye witness was found at the spot. In the meantime ERV vehicle from the police station also reached there and SI Rizwan Khan took the injured to GTB Hospital. Since the injured was opined 'unfit for statement' and no eye witness was available, he collected the MLC of the injured and got the case registered under Section 307 IPC. Crime team was called and spot was got inspected.

3. On 17th November, 2015 SI Rizwan obtained the opinion from the doctor about the condition of the injured who was opined to be fit and conscious. On the same day i.e. on 17th November, 2015 the injured Mohsin made statement to the following effect:-

'Mera naam Mohsin hai. Mere papa ka naam Mohd. Hanif hai. Makan No.D-169 Maujpur Ambedkar Basti.

Nafis ne phone karke bulaya Mohsin bhai apne paise le jao main seelampur aaya. Nafis ne apne ke paas ek makan mein bitha diya jo ban raha tha aur kaha main paise leke aata hoon. Wo ghar gaya phir do jane aaye mere samne khade ho gaye. Maine kaha lao bhai paise to Nafis ne jeb mein haath diya aur kisi tej dhar wali cheez se meri garden par waar kiya. Dusre ne mere chehre par. Nafis ne to mujhe jaan se maarne ki niyat ki thi. Main wahan se bhaga aur Naqi doctor ki dukan ke paas ja gira. Uske baad mujhe kuch pata nahi.

Nafis patli gali mein rehta hai Seelampur mein D-Block mein aur ek Baawarchi ka bhai hai'

4. The above statement was signed by the injured Mohsin at point-A and by Taseem – brother of the injured at point-B.

5. On the basis of above statement, accused/appellant Abdul Nafis

was arrested. During investigation, call detail record of mobile phone numbers of the accused/appellant and that of injured Mohsin were obtained and exhibits were sent to FSL. Since the identity of the associates of accused/appellant Abdul Nafis could not be ascertained, the chargesheet was filed against appellant Abdul Nafis only for committing the offence punishable under Section 307/34 IPC.

6. Appellant Abdul Nafis was charged for committing the offence punishable under Section 307/34 IPC to which he pleaded not guilty. To bring home the guilt of the accused, the prosecution examined 15 witness in all. Accused/appellant was also examined under Section 313 CrPC to explain the incriminating evidence appearing against him wherein he stated that he had been falsely implicated in this case. He had purchased an inverter from Mohsin (injured) and payment of inverter had also been made by him. But Mohsin was demanding interest for the said amount which he refused to pay and that is why he had been implicated in this case.

7. The learned Trial Court after concluding the trial held the appellant guilty for committing the offence punishable under Section 307/34 IPC and sentenced him in the manner aforesaid.

8. Feeling aggrieved, the appellant has challenged his conviction and sentence by filing this appeal.

9. Pursuant to the production warrants issued, the appellant was produced from custody on 2nd August, 2017. Mr.M.L.Yadav, learned counsel for the appellant, on instructions, submitted that the appellant is not challenging his conviction in this case, however, prayer has been made that a lenient view may be taken on the quantum of

sentence. The appellant submitted that the incident took place in the heat of moment for which he is regretting. He being the first offender seeks pardon from the injured and also ready to compensate him.

10. On 21st September, 2017 the brother of the appellant as well as injured Mohsin were present in the Court. After some deliberations, the parties jointly submitted in writing that appellant through his family (brothers) is ready to pay ₹1.5 lakhs (in three equal installments) to the injured towards compensation which includes fine of ₹50,000/- imposed by the learned Trial Court and was payable to the injured as compensation.

11. Today Sh.Iqbal Miyan - brother of the appellant has handed over to the injured/complainant Mohsin ₹50,000/- (first installment) in cash which is accepted by him. The brother of the appellant also assured the injured to pay the remaining amount of ₹1 lacs to the injured in two installments i.e. ₹50,000/- on 27th November, 2017 and ₹50,000/- on 22nd December, 2017.

12. The injured/complainant has submitted that though he has received grievous injuries in this incident and he remained hospitalized for about nine days but since appellant is remorseful for his acts and also compensating him by agreeing to pay ₹1.5 lacs, a lenient view may be taken on the quantum of sentence awarded to the appellant.

13. Mr.M.L.Yadav, learned counsel for the appellant submits that the appellant is a young boy aged about 24 years and has clean antecedents. He further submits that in view of submissions made by the injured, a lenient view may be taken on the quantum of sentence.

14. Taking into consideration that the appellant is not challenging his conviction about the injuries caused on vital parts which as per him was done in the heat of moment and that the appellant has agreed to compensate the injured/complainant for the injuries received by him in this incident, it would meet the ends of justice if the sentence of rigorous imprisonment for ten years awarded to the appellant for committing the offence punishable under Section 307 IPC is reduced to five years.

15. Accordingly, while maintaining the conviction of the appellant for committing the offence punishable under Section 307 IPC, the substantive sentence awarded to him is reduced to five years which shall be subject to payment of balance compensation of ₹1 lakh to the injured against receipt, copy of which shall be placed on record by learned counsel for the appellant within two weeks after 22nd December, 2017 on which date the last installment of compensation shall be paid to the injured.

16. The appeal is allowed only to the extent of modification of order on sentence to the above extent.

17. TCR be sent back alongwith copy of this order.

18. Copy of this order be sent to the concerned Jail Superintendent for information.

19. As prayed, copy of the order be given dasti to learned counsel for the appellant.

PRATIBHA RANI
(JUDGE)

SEPTEMBER 25, 2017/ 'st'