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

+ **CRL.A. 226/2016**

SONU

.....Appellant

Through: Mr.Ashutosh Kaushik, Advocate with
appellant in person

versus

STATE

.....Respondent

Through: Mr.Pradeep Gahalot, APP for State with
SI Omesh

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

24.09.2025

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1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 14.12.2015 and order on sentence dated 21.12.2015 passed by the learned Additional Sessions Judge-03 (Central), Delhi in Sessions Case No.153/2011 arising out of FIR No. 134/2009 registered under Sections 326/34 at P.S. Timarpur. The charges were framed on 25.10.2010 under sections 307/34 IPC.

Vide the impugned order on sentence, the appellant was sentenced to undergo RI for a period of 6 years along with fine of Rs.5,000/-, in default whereof he would undergo SI for 3 months, for the offence punishable under Section 307/34 IPC. The appellant was also extended the benefit under Section 428 Cr.P.C.

Vide order dated 10.04.2017 the sentence of the appellant was suspended during the pendency of the appeal.



2. Pithily put, the case of the prosecution is that the appellant had faced trial alongwith co-accused *Rajiv@Raj* and *Sunil Kumar*. The appellant was declared a proclaimed offender and his trial was separated. The trial of co-accused *Rajiv@Raj* and *Sunil Kumar* have resulted in conviction and they were directed to undergo RI for a period of 8 years alongwith the payment of fine of Rs.5,000/- each.

3. As per the case of prosecution, the incident occurred on 05.08.2009 at about 9.30 p.m. at Budh Bazar, Timar Pur when the accused with the co-accused persons acted in furtherance of their common intention to inflict injuries on the complainant/*Tahir* with an attempt to kill him. The information about the admission of *Tahir* in the Trauma Centre which was recorded vide D.D. No.41-B at about 11:35 p.m. The said DD was assigned to ASI Mahender Singh (PW10) who recorded the statement i.e., PW-10/A (PW-3/A in the main case file) and on the basis of which, the FIR came to be registered. In his complaint, the injured ascribed the role of knife blow injury on his head to the accused *Rajiv@Raj* and assault on the neck with a sharp edged object by the accused *Sunil Kumar*.

4. Insofar as the present appellant is concerned, he deposed that on the day of the incident, he had gone to purchase household articles where *Rajiv*, *Sunil* and the present appellant met him near *Arya Samaj Mandir*. The appellant and his associates stopped him and told “*tu bara hoshiaar banta hai tune Rajiv ke bhai ke khilaf apni dukan ki chori ki shikayat ki thi, to Rajiv ne kaha aaj tujhe aisa sabak sikhayengay ke tu yaad rakhega*”. While role of infliction of knife injuries on the head was attributed to *Rajiv*, injuries on the neck with a sharp edged was attributed to *Sunil Kumar*. Insofar as the present appellant is concerned, the complainant stated that he was caught



hold of by the present appellant.

5. The prosecution had examined one *Salman*, an eyewitness to the incident as PW-3. He deposed that he had accompanied the complainant on the day of the incident to the *Budh Bazar*, while the appellant had caught hold of Tahir, the other two accused inflicted injuries on his head and neck.

6. Dr. Dhiraj Kumar, Medical Officer, Sushruta Trauma Centre, Delhi was examined as PW-7. He proved the MLC of Tahir and stated that at the time of the medical examination the following injuries were noted on *Tahir*:-

- “1. Lacerated wound on right side of neck, size 7 cm x .5 cm x .5 cm*
- 2. Penetrating injury on the left temporal with knife present which is partly penetrating the skull.”*

In his opinion, the injuries were sharp and penetrating. He was cross-examined. He had stated that *Tahir* was found having a penetrating object/weapon in his head and as such there was no possibility of a two side edged or one side edged weapon, making any difference in the nature of injury.

7. The prosecution had examined Dr. P.N. Pandey, Specialist and Head of Neuro surgery department, LNJP Hospital, New Delhi as PW-13. He stated that during treatment, CT Scan of the head of the injured was done and it was reported that metallic foreign object was found in the “*parietal region evading the skull*” was found and on the “*left front temporal parietal sub dural hamotoma with foreign object reaching upto brain parenchyma*”. After surgery, the said object was removed.

8. The appellant took a stand in his statement under section 313 Cr.P.C. that it was a case of mistaken identity as he claims it is not him who was known by the name *Lalla*, but rather his brother. It was further the defence



of the appellant that he was implicated at the instance of the eyewitness *Salman*. It is stated that *Salman* had caused grievous injuries on the appellant's brother and a complaint was pending against him, which became the reason for false implication.

9. Insofar as the contention that it is not the appellant who was known by the name of *Lalla* and rather his brother is concerned, a suggestion was given to the complainant as well as the eyewitness, the said suggestion was denied. The complainant rather positively identified the person who had caught hold of him at the time of the incident. As such, the appellant's presence at the spot and his role stands established through the testimony of PW-1 and PW-3.

10. At this stage, learned counsel for the appellant, on instructions from the appellant who is present in the Court, submits that considering the appellant's role and that the appellant is the sole bread earner of his family and that the incident pertains to the year 2009, his case may be considered for being released on the period already undergone. In this regard, he further submits that the appellant has undergone half of the sentence imposed upon him and undertakes to deposit the fine within 4 weeks. Reliance is further placed on the decision in Sonadhar Vs. State of Chhattisgarh, reported as **2021 SCC OnLine SC 3682**,

11. The law regarding release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in Sonadhar (Supra) and the relevant portion of the same is extracted hereinunder:

"28. We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the



exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts."

12. The appellant, who is present in person in the Court, submits that presently he works in a factory as supervisor and living in a rented accommodation and has to look after his wife and son.

13. Learned APP for the State submits that a Co-ordinate Bench of this Court vide decision dated 08.07.2014 had dismissed the appeals being CRL.A. 1226/2011 and CRL.A. 1536/2011 filed by co-accused Rajiv@Raj and Sunil Kumar. He also refers to paragraph 5 of the said decision to submit that the appellants therein were found involved in many other cases. He, however, submits that the present appellant is not found involved in any other case. He was gainfully employed prior to his incarceration and is stated to be responsible for maintaining his wife and son.

14. The latest nominal roll is on record which reflects that the appellant has already undergone 3 ¼ years of his substantive sentence including remission.

15. Having regard to the fact that the incident pertains to the year 2009 and considering the facts, law, and the aforementioned mitigating circumstances,



the appellant's prayer for release on the period already undergone is accepted. The conviction of the appellant under Section 307/34 IPC is upheld; however, the substantive sentence awarded to him is modified to the period already undergone by him, subject to the appellant depositing the fine amount of Rs.5,000/- within a period of 4 weeks from today. The receipt be furnished to the concerned I.O. In case, the appellant fails to deposit the fine within the permitted time, he shall undergo the sentence in default of payment of fine, i.e. 3 months SI, as imposed by the Trial Court.

16. The present appeal is partly allowed in the above terms.

17. A copy of this order be communicated to the Trial Court and concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI, J

SEPTEMBER 24, 2025

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