

\$-20

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

DECIDED ON : 10th SEPTEMBER, 2015

+ **CRL.A.85/2015**

MOHD.RIYAZ

..... Appellant

Through : Mr.Dinsh Malik, Advocate with
Mr.Gurpreet Singh, Advocate.

versus

THE STATE

..... Respondent

Through : Mr.Sanjeev Sabharwal, APP with
SI Bharat, PS Kotwali.
Complainant in person.

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

S.P.Garg, J. (Oral)

1. Aggrieved by a judgment dated 14.10.2014 of learned Special Judge, NDPS, in Sessions Case No. 91/12 arising out of FIR No.152/12 PS Kotwali by which Mohd. Riyaz (the appellant) was held guilty for committing offences under Sections 307 IPC and 25 Arms Act, he has filed the instant appeal. By an order dated 18.10.2014, he was sentenced to undergo RI for five years with fine ₹10,000/- under Section

307 IPC and SI for one year with fine ₹5,000/- under Section 25 Arms Act. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 27.06.2012 at about 10.10 p.m. complainant – Mohd. Shahid was going towards his house. When he reached in front of House No.4897, Gali Kucha, Ustad Dagg, Chandni Chowk, Delhi, the appellant threatened to kill him. He inflicted 3 – 4 knife blows on his body. The Investigating Officer (PW-10 ASI Naresh Kumar) took over the investigation. Statements of the witnesses conversant with the facts were recorded. Upon completion of the investigation, a charge-sheet was filed against the appellant in the Court. The prosecution examined ten witnesses to substantiate its case. In 313 Cr.P.C. statement, the appellant pleaded false implication. He did not examine any witness in his defence. The trial resulted in his conviction as aforesaid.

3. During the course of arguments, learned counsel for the appellant, on instructions, stated at Bar that the appellant has given up challenge to the findings recorded by the Trial Court on conviction. He, however, prayed to take lenient view as the matter has been settled with the complainant / victim and the appellant has remained in custody for sufficient duration. Learned APP has no objection to take lenient view.

4. Since the appellant has opted to give up challenge to the findings on conviction, it is affirmed.

5. Nominal roll dated 13.05.2015 reveals that the appellant has already undergone two years, two months and twenty days incarceration besides remission for two months and thirteen days as on 12.05.2015. Nominal roll further reveals that the appellant is a first time offender and is not involved in any other criminal case. His overall jail conduct is satisfactory. He was aged around 19 ½ years on the day of occurrence. The parties are related to each other and the occurrence had taken place due to a family dispute. The complainant, who has appeared today has been identified by the Investigating Officer. He has reported to have settled the dispute with the appellant and has no objection to modify the sentence order. Status report also reveals that the complainant has amicably settled the dispute with the convict with his free consent without any undue pressure. Settlement deed dated 12.05.2015 is on record.

6. Considering the changed circumstances, Sentence Order is modified to the extent that period already undergone by the appellant in this case shall be treated as substantive sentence. He shall, however, deposit fine ₹15,000/- in Court / Jail.

7. The appeal stands disposed of in the above terms. The appellant shall be released forthwith if not required to be detained in any other criminal case on deposit of fine ₹15,000/- in Court / Jail.
8. Trial Court record (if any) be sent back immediately with the copy of the order. Intimation be sent to the Superintendent Jail immediately for information.
9. Pending application (if any) also stands disposed of.

(S.P.GARG)
JUDGE

SEPTEMBER 10, 2015 / tr