

#R-16A

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15.09.2015

CRL.A.686/2008

MONTY SEHGAL

..... Appellant

Through: Mr. Bishwajit Kumar Patra, Advocate

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an appeal under section 374 (2) of the Code of Criminal Procedure, 1973 assailing the impugned judgment and order dated 14.03.2008 and 19.03.2008 convicting the appellant under section 308/34 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- and in default thereof to further undergo rigorous imprisonment for nine months.

2. Mr. Patra, learned amicus curiae appearing on behalf of the appellant, on instructions from the latter states that the appellant does not wish to

challenge his conviction on merits. However, he contends that a lenient view may be taken and the appellant may be released on the period already undergone by him.

3. As per the case of the prosecution, on 24.09.2003 the co-accused of the appellant is alleged to have assaulted the victim namely Abbas with *palta*. The allegation against the appellant is that he assaulted the victim with iron rod on his right hand and left leg. The victim is alleged to have suffered grievous injuries.

4. The commission of the offence is alleged to have been sudden and spontaneous and is not the consequence of any premeditated action on the part of the appellant.

5. Mahatma Gandhi said, "*hate the sin, love the sinner*". The Hon'ble Supreme Court in case of **B.G. Goswami vs. Delhi Administration, 1973** SCC (Crl.) 796 observed as under:-

"Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to

protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs 200 to Rs 400. Period of imprisonment in case of default will remain the same.”

6. I have perused the nominal roll of the appellant. The appellant has already suffered incarceration for a period of seven and half month including remission out of a total sentence of three years rigorous imprisonment imposed on him by the trial court. His conduct in jail has been satisfactory from the beginning of his incarceration.

7. Keeping in view the fact that the appellant has suffered incarceration for a period of 7½ months and the offence committed goes back to the year 2003 i.e. twelve years back, while upholding the conviction, the sentence

awarded to the appellant is reduced to the period already undergone by him subject to payment of fine imposed by the impugned judgment and order.

8. The appeal is disposed of in the above terms.

SIDDHARTH MRIDUL, J

SEPTEMBER 15, 2015

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