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

DECIDED ON : 7th SEPTEMBER, 2015

+ **CRL.A.1371/2013, CRL.M.B.133/2015, 7436/2015,**
CRL.M.A.Nos.3444/2015, 5964/2015, 6098/2015 & 10290/2015

NEM SINGH Appellant

Through : Mr.Mir Akhtar Hussain, Advocate.

versus

STATE Respondent

Through : Mr.Sanjeev Sabharwal, APP.
Mr.Kunwar C.M.Khan, Advocate
with Ms.Aasma Chaudhary,
Advocate for the complainant.

AND

+ **CRL.A.1372/2013**

NEM SINGH Appellant

Through : Mr.Mir Akhtar Hussain, Advocate.

versus

STATE & ORS. Respondents

Through : Mr.Sanjeev Sabharwal, APP.
Mr.Kunwar C.M.Khan, Advocate
with Ms.Aasma Chaudhary,
Advocate for R2 & R4 to R6.

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

S.P.Garg, J. (Oral)

1. Aggrieved by a judgment dated 21.08.2013 of learned Additional Sessions Judge in Sessions Case No.73/2009 arising out of FIR No.768/2007 PS Ambedkar Nagar by which Nem Singh (the appellant) was held guilty for committing offence under Section 307 IPC, Crl.A.1371/2013 has been preferred by him. By an order dated 29.08.2013, the appellant was sentenced to undergo RI for seven years with fine ₹20,000/-.

2. Allegations against the appellant as reflected in the charge-sheet were that on 26.10.2007 at 10.03 p.m. an information about a quarrel was conveyed at PS Ambedkar Nagar vide Daily Diary (DD) No.25. The investigation was assigned to HC Birbal who along with Const.Hanuman went to the spot. Victim Kailash had suffered bullet injury. The investigation was taken over by SI Rajesh Kumar, who after recording statement of one Harbir Singh lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The appellant – Nem Singh, Ravinder Singh @ Ravi and Sanjay were arrested during investigation. Upon completion of the investigation, a charge-sheet

was filed against all of them in the Court for committing offences under Sections 307/34 IPC and 27/54/59 Arms Act. The prosecution examined fifteen witnesses to prove its case. In 313 Cr.P.C. statement, the accused persons denied their involvement in the crime and pleaded false implication. The trial resulted in appellant's conviction whereas Ravinder Singh @ Ravi and Sanjay were acquitted of all the charges. It is relevant to note that the State did not challenge their acquittal.

It is pertinent to note that cross FIR No.769/2007 was registered under Sections 323/341/308/34 IPC at PS Ambedkar Nagar against Kailash Bhardwaj, Vijay Pal @ Dodo, Dev Raj @ Deva, Harbir Singh @ Monu and Jagbir Singh @ Kalu. Upon completion of investigation in the said FIR, a charge-sheet was filed against them. By a judgment dated 21.08.2013 in Sessions Case No.291/2009 arising out of FIR No.769/2007 PS Ambedkar Nagar, they all, however, were acquitted of the charges. The appellant – Nem Singh has filed Crl.A.1372/2013 against acquittal which is pending before this Court. It is further informed that the complainant has filed Crl.A.1636/2013 titled '*Harbir Singh vs. State*' presently pending before Division Bench of this Court for enhancement of sentence awarded to the appellant.

3. During the course of arguments, the appellant opted to give up challenge to the findings of the Trial Court whereby he was convicted under Section 307 IPC. Prayer was made to modify the sentence order by taking lenient view as the matter has been settled with the victim and the appellant has agreed to pay ₹2 lacs as compensation to him for the expenses incurred for treatment of the injuries sustained by him. Learned counsel for the complainant, after seeking instructions from the complainant / victim, stated at Bar that the complainant has no objection to modify the sentence order in view of the changed circumstances whereby he has agreed to accept ₹2 lacs as compensation.

4. Since the appellant has given up challenge to the findings on conviction, judgment under Section 307 IPC on conviction is affirmed. Regarding Sentence Order - nominal roll dated 27.02.2015 reveals that the appellant has already suffered incarceration for two years, one month and eight days besides remission for six months and twenty days as on 23.02.2015. 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. Sentence order records that the appellant is the only bread-earner of his family consisting of his wife and two school going minor sons. He is to take care of his aged parents. He also sustained

injuries on his body. The complainant has settled the dispute with the appellant of his free will without any fear or pressure and has agreed to accept ₹2 lacs offered by the appellant as compensation. ₹50,000/- have been given today in the Court to the victim's counsel. ₹1.5 lac have been agreed to be paid to the victim within two weeks. It is agreed that the appellant would not pursue Crl.A.1372/2013 pending before this Court. The complainant has also agreed not to pursue the appeal for enhancement of sentence pending before Division Bench of this Court.

5. In view of the mitigating circumstances, Sentence Order is modified and the period already undergone by the appellant is taken as substantive sentence. He shall pay fine of ₹2,000/- and shall suffer default sentence SI one month. The appellant shall be at liberty to deposit the fine ₹2,000/- in jail.

6. Crl.A.1371/2013 stands disposed of in the above terms. While maintaining conviction under Section 307 IPC, the sentence order is modified to the extent that the period already remained in custody shall be the substantive sentence with fine ₹2,000/- and default sentence for its non-payment would be SI for one month.

7. Crl.A.1372/2013 filed by the appellant – Nem Singh is dismissed for non-prosecution / withdrawn.
8. The appellant shall be released forthwith if not required to be detained in any other criminal case on deposit of fine ₹2,000/- in Court / Jail. Trial Court record (if any) be sent back immediately with the copy of the order. Intimation be sent to the Superintendent Jail immediately.
9. Pending applications also stand disposed of.

(S.P.GARG)
JUDGE

SEPTEMBER 07, 2015 / *tr*