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

+ **CRL. REV. P.319/2015 & CRL. M.B.7106/2015**

Date of decision: 06.08.2015

SACHIN Petitioner

Through: Mr.Habibur Rahman, Adv.

versus

STATE Respondent

Through: Mr.M.P. Singh, APP for the State with SI
Narinder, PS H.N. Din

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Sachin, the petitioner, impugns the judgment and order of conviction dated 3.10.2013/11.10.2013 passed by the learned Metropolitan Magistrate, Saket Courts in connection with FIR No.580/2003 (PS H.N. Din) whereby he has been convicted under Sections 452, 324, 506 and 34 IPC and has been sentenced to undergo RI for two years, fine of Rs.2,000/- (in default SI for one month for the offence under Section 452 IPC); RI for two and a half years, fine of Rs.3,000/- (in default SI for one month for offence under Section 324 IPC) and RI for two years for the offence under Section 506 IPC, the sentences, however, having been ordered to run concurrently; as well as the Appellate Court judgment dated 5.11.2014 passed by the learned District & Sessions Judge, South East, Saket Courts, New

Delhi in Crl. Appeal Petition No.54/2013 whereby the conviction recorded by the Trial Court was maintained but the sentence under Section 324 IPC was reduced and modified from two and a half years to two years.

2. The petitioner is alleged to have trespassed into the house of Afzal Ali (PW1) on 17.11.2003 at about 2:15 p.m. along with one Rajesh (since dead). It has been further alleged that co-accused Rajesh enquired from PW1 about his wife but the answer of PW1 did not satisfy Rajesh. The petitioner and Rajesh are then said to have attacked PW1 by means of barber's razor. Rajesh thrust the razor in the stomach of PW1 as a result of which the shirt and vest of PW1 was torn. The attack by petitioner was warded off by PW1 but he was hurt in his finger and thumb.

3. FIR No.580/2003 (P.S. H.N. Din) was registered on the basis of complaint made by PW1 (Ex.PW1/A) under Sections 452, 341, 324, 506 and 34 IPC.

4. The torn clothes of PW1 were seized.

5. The petitioner and Rajesh (since dead) were arrested.

6. The barber's razor (ustura) was seized from the house of PW1 (Ex.P1 and P2). Afzal Ali (PW1) deposed before the Court that on 17.11.2003 while he was working with his employer, Asgar, the petitioner and Rajesh came and inflicted injuries on his person. PW1 was not cross-examined by the defence. PW2 also claims to be an eye witness and has corroborated the incidence as has been done by PW1, the complainant.

7. From the deposition of PW1 and PW2, it stands established that the petitioner and Rajesh entered into the premises where PW1 was working and attacked the complainant resulting in injuries on his person.

8. Ram Rattan (PW3), a constable on duty on 17.11.2003 received a call regarding quarrel. On such information, he along with ASI Hawa Singh (PW4) reached the spot and found the complainant and the accused persons. The razors used in the occurrence were seized vide memo Ex.PW1/C.

9. Nature of injuries suffered by PW1 was opined to be simple and caused by a sharp object.

10. ASI Hawa Singh (PW4) has also supported the prosecution version.

11. The Trial Court did not find any discrepancy in the deposition of PWs 1 and 2. It was held by the Trial Court that the petitioner failed to avail the right of cross-examining PW1 despite sufficient opportunity to him and, therefore, the statement of PW1 unrebutted. There was no other way but to accept the testimony of PW1.

12. The fact that PWs 3 and 4 reached the spot and saw the complainant as well as two accused persons namely; the petitioner and Rajesh further weighed with the Trial Court that the offence of trespass and simple hurt was committed by the accused persons.

13. The weapon of assault was correctly identified by all the witnesses.

14. The petitioner, though denied the substance of allegation in his statement under Section 313 Cr.P.C. but did not offer any explanation

on his behalf. No statement was made by him regarding his false implication in this case by two eye-witnesses.

15. The statement of PWs 1 and 2 regarding threats doled out by petitioner and Rajesh, make out a case under Section 506 IPC.

16. The Appellate Court did not see anything to differ with the findings arrived at by the Trial Court .

17. Perused the Trial Court as well as the Appellate Court judgment. Section 452 IPC provides for punishment for house trespass. Section 506 IPC deals with the offence of criminal intimidation. Section 324 IPC provides for punishment to a person who voluntarily causes hurt by dangerous weapons or means.

18. The petitioner committed house trespass, intimidated PW1 and also inflicted injuries on the finger and thumb of PW1.

19. The Trial Court rightly did not convict the petitioner for the offence under Section 341 IPC for which separate charge was framed as there was no evidence of any wrongful restraint of PW1.

20. This Court finds that the conviction of the petitioner is justified and no fault could be found with the reasoning given by the Trial Court as well as the Appellate Court. However, this Court is of the opinion that the sentences awarded to the petitioner, even the reduced and modified sentence by the Appellate Court, is excessive and harsh and is not commensurate with the nature of crime and the circumstance in which it was committed.

21. Sentencing of an accused in a criminal case is a serious exercise and the quantum of sentence ought to be commensurate with the gravity of offence committed by the accused and the circumstances

under which it was committed. The punishment is both punitive and reformatory. The punitive aspect of the punishment deals with the concept of deterrence whereas the reformatory aspect cares for providing opportunity to a convict to repent and grieve and ultimately be acceptable by society as a useful social being.

22. Considering the circumstances, mainly the first attack having been made by co-accused Rajesh (since dead), the attack by the petitioner having been warded off but leading to injuries only on finger and thumb, no reflection of any depravity while committing the crime, absence of any diabolical approach while dealing with PW1, no repetition of attack and the tender age of the petitioner, I am inclined to reduce and modify the sentence imposed upon the petitioner while maintaining the conviction. The sentences awarded to the petitioner is hereby reduced and modified to the period of custody which the petitioner has already undergone.

23. The petitioner has remained in custody for more than a year.

24. This revision petition is partly allowed, subject to the aforesaid modification in the sentence.

25. The payment of fine is also waived.

26. The petitioner be released from jail forthwith if not required in any other case.

A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

ASHUTOSH KUMAR, J

AUGUST 06, 2015/ns