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

+ **CRL.A. No.683/2000**

**Date of Decision: 09.11.2016**

MOHAMMED IRSHAD ALIAS RAJU ..... Appellant  
Through: Mr.Sitab Ali Choudhary,  
Adv.

versus

STATE ..... Respondent  
Through: Mr.Varun Goswami, APP  
for the State

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**GITA MITTAL, J (Oral)**

1. The appellant Mohd. Irshad @ Raju was sent up for trial alongwith co-convicts Salaudin and Satish in the case arising out of the FIR No. 52/98, registered at P.S. Welcome under Sections 307/324/34 IPC. After joint trial they stand convicted for the commission of offence under Section 307/34 and 324/34 IPC by the impugned judgment dated 29.06.1999. Pursuant to the order of the same date the appellant stands sentenced to rigorous imprisonment for life and fine of Rs.10,000/-. In default it has been directed that the appellant Irshad shall undergo imprisonment for six months for commission of the offence under Section 307/34 IPC. For the offence under Section 324/34 IPC the appellant stands sentenced to undergo rigorous imprisonment for three years

and fine of Rs.2000/-. In default simple imprisonment for one month has been imposed.

2. By the same judgment, co-accused Satish and Salauddin were sentenced to undergo imprisonment of 10 years and fine of Rs.5000/- each for commission of the offence under Section 307/34 IPC and for commission of the offence under Section 324/34 IPC they stand sentenced to rigorous imprisonment for three years each and fine of Rs.2000/- each and in default a further sentence of three months and one month respectively was imposed.

3. The co-convicts Satish and Salauddin assailed this conviction by way of Criminal Appeal Nos. 350/99 and 351/99 respectively. These appeals came up for hearing before the learned Single Judge and were disposed of by judgment recorded on 06<sup>th</sup> February, 2009 by the learned Single Judge. It appears that these appellants took the decision not to press the appeals on merits and instead contended that the evidence on record did not disclose commission of an offence only under Section 307/34 IPC but in fact disclosed the commission of an offence only under Section 324/34 IPC given the roles attributed to them. So far as the appellant was concerned, it was contended that at the most he had inflicted grievous injuries to the injured victim.

4. On this submission, the convicts Satish and Mohd. Sallauddin pressed for reduction of the sentence imposed upon them.

5. For reasons of expediency, we extract the submissions made before the learned Single Judge and the order passed on the

findings and sentence imposed by the trial court on the two co-convicts Satish and Sallauddin here under:

*“9. Upon perusal of the evidence of the injured-Irshad (PW-5) on record, I find learned Senior Counsel has rightly contended so. The offence made out against these two appellants would fall within the ambit of Section 324/34 of the IPC and not within the four corners of Section 307/34 of the IPC. Therefore, conviction of these two appellants for the offence under Section 307/34 IPC, is not sustainable and is accordingly set aside. However, their conviction for the offence under Section 324/34 of the IPC, is maintained.*

*10. On the quantum of sentence, learned Senior Counsel for these two appellants contends that they have remained behind for a period of more than a year and they have already faced the agony of trial and appeal proceedings in this case since March, 1998 and as per the Nominal Roll of these two appellants, their conduct, in jail had been satisfactory and they are on bail since July, 2000 and now they are earning livelihood and are supporting their respective families and their antecedents are clean and that the fine imposed upon them, already stands deposited. Therefore, it is submitted that the substantive sentence of these two appellants deserves to be reduced to the period already undergone by them.*

*11. Learned Additional Public Prosecutor for the State confirms that as per the Nominal Roll of these two appellants, appellant-Satish has already undergone sentence of seventeen months and their*

conduct in jail has been satisfactory and that there is no previous conviction of these two appellants.

12. It appears from the record of this case that these two appellants were aged About 20-21 years respectively at the time of this incident and they have remained behind bars for a reasonable time and are now on bail for the last about 8 ½ years and their antecedents are clean.

13. The offence under Section 324 of IPC committed by these two Appellants does not carry any minimum sentence. It would be too harsh to now send these two appellants behind bars to serve out the remainder of the sentence of three years, as it is found that a long period of their prosecution and a reasonable period imprisonment already suffered by them, would be sufficient deterrent for them to not to commit any offence in future.

14. In the peculiar, facts and circumstances of this case, the substantive sentence of these two appellants, stands reduced to the period already undergone by them. However, the fine imposed upon these two appellants stands correspondingly enhanced from Rupees fourteen thousand each and these two appellants are granted two weeks time to deposit the enhanced fine, failing which, they shall be taken into custody to serve out the sentence of SI for three months each."

(Emphasis supplied)

6. Before us Mr.Sitab Ali Choudhary, learned counsel for the appellant submits that given the submissions made in Criminal

Appeal Nos350-351/1999 as well as the observations made in the order dated 06.02.2009, he would not press the appeal on merits but would submit that given the established facts on record, his client, the present appellant, can at the most be held guilty for commission of an offence under Section 326/34 IPC i.e. infliction of grievous hurt for which offence the appellant has not even been charged with. He would submit that for reasons of parity his client deserves to be also treated in the manner co-convicts Satish and Salauddin were treated so far as the sentence is concerned and that his client should also be given the same benefit and the sentence imposed upon him should be reduced to the period of imprisonment which he has already undergone. In support of this submission reliance is place on the pronouncement of the Supreme Court reported as JT 2002 (7) SC 512 *Sattan Sahani vs. State of Bihar.*

7. We have given our considered thought to the submissions made by the learned counsel for the appellant Mr.Sitab Ali Choudhary and Mr. Varun Goswami, learned APP for the State and have also considered the material on record.

8. The appellant alongwith co-convicts Satish and Sallauddin has been found guilty of causing injuries to Aslam as well as Akram and the appellant has been found guilty of commission of offence under Section 307/324/34 IPC. By the order dated 29the June, 1999 the appellant was sentenced to undergo life

imprisonment and to pay a fine of Rs.10,000/- in default to undergo SI for six months. For the commission of the offence under Section 324/34 the appellant was sentenced to undergo RI for three years and a fine of Rs. 2000/- and in default to undergo SI for one month. Both the sentences were to run concurrently.

9. In as much as the appellant is not contesting the judgment on merits and is placing reliance on the findings returned by the learned Single Judge in criminal appeal No. 350-351/1999, we are also of the view that the conviction of the appellant for the commission of offence qua Akram under Section 307/34 IPC would not be sustainable and is hereby set aside. We, however, find the evidence on record and established role of the appellant sufficient to bring home guilt for commission of the offence under Section 326/34 IPC.

10. We maintain the appellant's conviction for commission of the offence qua Aslam under Section 324 of the Indian Penal Code. So far as reliance by appellant on the judgment of Sattan Sahani is concerned, the same would not apply to the instant case. The judgment of the Supreme Court in Sattan Sahani was rendered on a compromise and does not lay any binding principle of law.

11. So far as the sentence of the appellant is concerned it has been submitted by Mr. Sitab Ali Choudhary, learned counsel for the appellant that the appellant was around 20-21 years of age on the date of the offence. The co-convicts were also in the same age

group. He further submits that this was the first offence and the appellant has not been implicated in any other criminal case either before or thereafter till date. As per the nominal roll, the appellant has already undergone 2 years 11 months and 16 days till his sentence was suspended by the order dated 27.02.2002. As per the nominal roll dated 28.10.2016 on record, the conduct of the appellant while in custody was also satisfactory.

12. The appellant is present in court and informs us that he is the sole bread earner of the family consisting of aged parents, one minor brother of 13-14 years, wife and a minor daughter of 9 years. Learned counsel submits that if the appellant is incarcerated, all these people would suffer extreme deprivation inasmuch as they would have no source of income or sustenance.

13. It has been pointed out on behalf of the appellant that the co-convict Satish had undergone a sentence of only 19 months while Sallauddin had undergone a sentence of only 17 months before the sentence imposed upon them was suspended. No further imprisonment has been directed. The appellant has undergone rigorous imprisonment of almost three years.

14. Keeping in view the totality of the circumstances of the matters and the circumstances of the appellant, we are of the view that interests of justice would be met if the sentence for the offence under Section 326 of the IPC is reduced from life imprisonment to three years RI in addition to the fine of Rs.3000/-, in default of

payment of fine he shall undergo SI for one month. So far as the sentence for commission of offence under Section 324/34 is concerned, we uphold the sentence awarded by the order dated 29<sup>th</sup> June, 1999. so far as the imprisonment is concerned, the sentences under Section 326 & 324 of the IPC shall run concurrently. The appellant shall surrender to the Superintendent Tihar Jail on 12<sup>th</sup> December, 2016, to serve the remainder of the sentence imposed upon him by this order.

15. The appellant is to additionally deposit the fines of Rs.3000/- and Rs.2000/-. The fine shall be deposited before his release from the Tihar Jail before the Trial Court. In default he would have to undergo the additional imprisonment.

16. Copy of the order be sent to Superintendent Tihar Jail, in case of non-compliance he shall inform the SHO of the P.S. Welcome, who shall take appropriate steps to take him into the custody to undergo the remaining sentence.

17. The appeal is disposed of with the above terms.

**GITA MITTAL, J**

**ANU MALHOTRA, J**

**NOVEMBER 09, 2016/*mr***