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

+ **CRL.A. 213/2014**

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Date of Judgment : 17.03.2016

WASIM

..... Appellant

Through : Ms. Manika Tripathy Pandey,
Advocate (DHCLSC) with
Mr. Ashutosh Kaushik and Mr. Raiz
Mohd, Advocates.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through : Ms. Anita Abraham, APP for State.

CORAM :

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

CRL.M.(BAIL) 283/2016

1. By the present application, the appellant seeks regular bail. The learned counsel for the petitioner does not press the present application. The application is dismissed as not pressed.

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2. With the consent of the parties, the appeal itself is taken up for final hearing and disposal.
3. Learned counsel for the appellant at the outset submits that he has instructions not to contest the matter on merits. She further submits that she does not contest the conviction but challenge is limited to the order on sentence.

4. In this case on 21.02.2011 at 08.45 a.m., Duty Officer at PS Bhajanpura received an information regarding firing of gun shot to some person at B-85, near Munna Halwai, Bhajanpura, through B-62 Operator conveyed by L/Ct. Sunita-3777/PCR received by her from phone No. 9718250090. Duty Officer recorded the said information as DD No. 8-A and handed over the same to SI Sunil Kumar for investigation. SI Sunil Kumar alongwith Ct. Jagmohan (2829/NE) reached at the spot i.e. 1st Floor, B-85, House of Munna Halwai, Subhash Mohalla, Bhajanpura where blood was lying on the floor and he came to know that injured Shahnaj had already been shifted to GTB Hospital by her husband. Other police staff had also reached at the spot and leaving Ct. Bhagwan Sahay (No. 1489/NE) at the spot to guard the same, SI Sunil Kumar alongwith Ct. Jagmohan reached at GTB Hospital from where he obtained MLC NO. B-798/11, dated 21.02.2011 of injured Shahnaj Begum w/o Sabir Khan. On the MLC, doctor had made endorsement that the patient was unfit for statement and nature of injury was opined as u/o fire arm. Husband of injured who was the eye-witness of the incident, namely Sabir Khan S/o Banke Khan R/o B-85, House of Munna Halwai, Subhash Mohalla, Bhajanpura, Delhi, aged 42 years, Ph-9013489818, was present in the hospital and he got his statement recorded as under:

“I have been residing with my family at above address for the last 11 years and doing the embroidery work in another room of the house. One Wasim, native of Rampur (UP) had also been doing embroidery work alongwith me for the last 4-5 months and was living in the said room. He had become habitual drunkard for last many days and one week back, I had removed him from

the job after clearing all his dues and I had also removed him from the room but he was demanding more money and was extending threat of facing the consequences in case of non-payment. Today at about 08:00 a.m., I was present at my home and my wife Shahnaj was doing household work outside the room. Suddenly, I heard the voice of Wasim and I came outside the room and saw that Wasim was standing at a distance of 2-3 steps away from my wife Shahnaj and was having a pistol in his right hand. On seeing me, saying that “aaj tumhara kaam tamam kar deta hun”, Wasim fired gun shot at Shahnaj and the bullet hit on her right hand due to which she fell down. I tried to apprehend Wasim by chasing him but he fled away and I returned back home and with the help of other persons, I removed my wife in a auto to GTB Hospital where her treatment is going on. Thus, Wasim has intentionally fired gun shot at my wife with the intention to kill her. I know Wasim very well. My statement has been recorded in the hospital. Legal action be taken against Wasim.”

5. The prosecution examined twenty witnesses. Statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure. One witness was examined by the defence.
6. Learned counsel for the appellant submits that he does not contest the matter on merits as far as the judgment of conviction is concerned, however, he contests the matter as far as the order on sentence is concerned.
7. Taking into consideration, the testimony of PW-1 Shahnaj Begum, the victim as also the testimony of PW-2 Sabir Khan, the husband of the injured person who is also an eye witness and also the testimony of PW-3 Shahjad, we find no infirmity in the judgment of the trial court as far as the order of conviction is concerned.

8. Learned counsel for the appellant has submitted that the learned trial court has failed to apply the law to the facts of the present case and failed to appreciate that the prosecution could not prove the most important ingredients that the act done was not with the intention or knowledge that it is likely to cause death. Counsel submits that the judgment of the trial court is perverse in relation to the order on sentence. Counsel submits that the trial court has failed to appreciate that there was no intention to kill the injured PW-1 Shehnaj Begum who has in her examination-in-Chief dated 20.7.2011 stated that the appellant said “*aaj tumhara kam tamam kar deta hu*” and shot the fire which hit near her right shoulder. It is, thus, contended that in fact the firearm was pointed out towards the husband of the victim and it was accidentally fired which hit the shoulder of PW-1. It is further contended that even as per the testimony of PW-1 more particularly, in her cross examination which shows that the appellant had no intention to kill PW-1 and the shot was accidentally fired which hit the shoulder of PW-1. Counsel also submits that the testimony of PW-2 i.e. the husband of the injured would also show that it is on seeing him, the appellant took out a *katta* from his pant and fired which hit his wife on her right shoulder.
9. Counsel for the appellant has relied upon the case of ***Sumer Singh Vs. Surajbhan Singh & Ors. reported in 2014 (3) JCC 2282*** wherein it has been held that in identical facts where the hand of the victim was cut off, the trial court had awarded 7 days imprisonment and a fine of Rs.50,000/- and the Hon’ble Supreme Court had increased the same to two years.

10. Learned counsel for the appellant further submits that the appellant is the only male member in his family, he has to look after his widowed sister and ailing father suffering from Tuberculosis and there is no other member in the family to look after his ailing father to provide the medical assistance. His jail conduct is satisfactory and no other case is pending against him.
11. Counsel for the State submits that the victim has lost her arm from the shoulder. The appellant was carrying the *desi katta* and thus it cannot be said that there was no intention to kill neither it can be said that the appellant was not aware that by using the *katta* it could result in death of the victim.
12. We have heard the learned counsel for the parties and also examined the judgment of the trial court and the evidence on record.
13. Before delving into the merits of the submissions made by the counsel for the parties it would be relevant to peruse Section 307 of the Indian Penal Code which reads as under:

Section 307: Attempt to murder:

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

14. It would be relevant to peruse the settled position of law on this aspect. In ***Bappa @ Bapu vs. State of Maharashtra and Another***

reported in (2004) 6 SCC 485, the Hon'ble Supreme Court held as under:

“Section 307 makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section 307. Thus, it is sufficient to justify a conviction under section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. In the instant case, the accused-appellant has been rightly convicted under Section 307 IPC”

15. In *State of Madhya Pradesh vs. Kashiram and others.* reported in (2009) 4 SCC 26, the Hon'ble Supreme Court made the following observations:

“This position was highlighted in State of Madhya Pradesh v. Saleem @ Chamaru and Anr. 2005 Cri LJ3435 :

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12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual

wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* (1983) 2 SCC 28, *Girija Shanker v. State of U.P.* (2004) 3 SCC 793 : and *R. Prakash v. State of Karnataka* [(2004) 9 SCC 27 : 2004 SCC (Cri) 1408 : *JT* (2004) 2 SC 348].

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16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances

that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.”

16. The next question that is required to be addressed is whether adequate sentence has been imposed for the offence under Section 307 of the Indian Penal Code with regard to the facts and circumstances of the present case.
17. In the case of ***Sumer Singh Vs. Surajbhan Singh & Ors. reported in 2014 (3) JCC 2282***, it was held as under:-

“32. Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is,

it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society. Therefore, striking the balance we are disposed to think that the cause of justice would be best subserved if the Respondent is sentenced to undergo rigorous imprisonment of two years apart from the fine that has been imposed by the learned trial judge.”

18. In the case of **Ram Kumar vs. State (NCT) of Delhi** reported in (1999) **9 SCC 149**, the Hon’ble Supreme Court while reducing the order of sentence held as under:

“4. It is urged by the learned counsel for the appellant that the sentence imposed upon the appellant for the offence punishable Under Section 307 IPC is rather harsh and it deserves to be reduced. Considering the near relationship of the injured and the appellant and other facts and circumstances of the case, we are of the view that the ends of justice would be met if the sentence of rigorous imprisonment for 10 years, for the offence punishable Under Section 307 IPC, is reduced to 7 year's rigorous imprisonment.”

19. Furthermore, reading of the testimony of the witnesses would show that the appellant had no intention to fire at the victim. PW-2, the husband of the injured has testified that on seeing him, the appellant pulled out a *katta* from his pants. The testimony of PW-2 would further establish the same while counsel for the appellant has strongly

urged before this court that the firearm was fired accidentally and it was not fired on the vital part of the body which is evident from the fact that in case the appellant had any intention to kill the victim or her husband, he would not have fired at the shoulder.

20. In the light of the aforesaid dictum and the circumstances of the present case, the intention to kill cannot be fastidiously imputed on the appellant. We find no infirmity in the order of conviction, however, the order of sentence is modified and the sentence of the appellant is reduced to rigorous imprisonment for 7 years.
21. Appellant is under custody and has already undergone 5 years and 26 days of imprisonment, hence he will suffer the remaining period of sentence.
22. The appeal stands disposed of. Trial court record be sent back.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 17, 2016

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