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

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Judgment Reserved on: May 19, 2016

Judgment Delivered on: May 27, 2016

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CRL.A. No.1005/2014

RASHID

..... Appellant

Through : Mr.M.L.Yadav, Advocate

Versus

STATE

..... Respondent

Through : Mr.Amit Ahlwata, APP for the State.

PRATIBHA RANI, J.

1. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than seven years and upto ten years).
2. The appellant has preferred this appeal against the judgment dated 22.04.2014 and order on sentence dated 29.04.2014 whereby he has been convicted for committing the offence punishable under Section 307 IPC and sentenced to undergo RI for ten years with fine of ₹10,000/- and in default of payment of fine, to undergo SI for one year.
3. Briefly stating, the case of the prosecution is that on 26.04.2012 at 7.37 am information was received at PS Lajpat Nagar about a lady, who was brought by some persons at the entry gate of MCD Hospital. The said information was recorded vide DD No.12A which was assigned to SI Satbir Singh who reached the hospital alongwith Ct.Praveen. There he met the

complainant who was crying. On inquiry, she disclosed her name to be Momin Tara and complained about some inflammable material being thrown on her by her husband which was causing irritation. ASI Satbir Singh informed PCR. The complainant Momin Tara was removed to Safdarjung Hospital by PCR and information was conveyed to PS Lajpat Nagar vide DD No.23A. Information was also given to the SDM who directed the IO to contact Executive Magistrate. As none of them could be made available for recording the statement of the complainant/injured, ASI Satbir Singh himself recorded the statement of Momim Tara, which is extracted in the impugned judgment and read as under :-

'I am residing at address mentioned above i.e. Dharam Kanta (weighing machine), near Kalawati School, Police Post Rasool Pur, Firozabad, U.P. I was married with Rashid s/o Sh.Samsuddin 4-5 years back i.e. on 10.02.2008. I have one son namely Shahbuddin aged about two years from Rashid. My another son had died, who was elder to Shabuddin. Since the time of my marriage, my husband used to quarrel and beat me. My brother-in-law Raja used to save me from my husband and hence my husband started leveling allegation against him about our illicit relationship. My father and two brothers are residing at Vill. Poch, Dist. Jalon, U.P. 5-6 months back, my husband brought me to Mathura. My mother-in-law, who resides at native village used to beat me. After coming Mathura, we started residing in the house of one Babloo R/ Bhesbhagoda PS Govind Nagar, Mathura. My husband used to beat me here also. He started selling vegetables on a handcart. Day before yesterday i.e. 24.04.2012, my husband gave me severe beatings. I reported matter to the police. Police facilitated a compromise between us. Yesterday i.e. 25.04.2012, my husband asked me to go to Gurgaon stating that he will earn more there. Between 10-11 pm, we got off train and went inside public park situated in Okhla Subzi Mandi. He asked me to sleep there overnight. He started pressing my neck at about 3-4 am. He threw some

(unknown) material upon me and fled away after taking our son with him. To save my life, I went to road from that park. People took me for a lunatic and none became ready to help me. Clothes on my body remained in the name sake (almost burnt). I begged for some help. Someone gave me ₹10/-, some other ₹5/-. I hired a rickshaw for ₹30/-. Rickshaw puller took me to police post but there was no police present. He i.e. rickshaw puller brought me to hospital and dropped there.'

4. On the basis of above statement, FIR No.134/2012 has been registered at PS Amar Colony against the appellant initially for committing the offence punishable under Section 326 IPC which was subsequently converted into Under Section 307 IPC. After completion of investigation, chargesheet was filed against the appellant for the offences complained of.
5. After committal of the case to the Court of Sessions, the appellant has been charged for committing the offence punishable under Section 307 IPC to which he pleaded not guilty and claimed trial.
6. The prosecution examined fourteen witnesses in all in support of its case. Statement under Section 313 CrPC of the appellant has also been recorded to enable him to explain the incriminating evidence against him.
7. After conclusion of trial, the appellant has been convicted for the offence punishable under Section 307 IPC and sentenced in the manner stated above.
8. Pursuant to the order dated 16.05.2016, the appellant has been produced from J/C. He is represented by Mr.M.L.Yadav, Advocate.
9. I have heard the appellant through his counsel. The appellant has submitted that the complainant Momin Tara is his second wife. He suspected that the complainant is having illicit relationship with his younger brother and that was the real dispute between the parties. The appellant has

further submitted that he has not thrown any inflammable substance on her as claimed in the complaint though factum of her receiving burn injuries is not disputed. The appellant has submitted that even now his wife is residing with his younger brother and he has severed all his relations from her. Even his son, who was aged about two years at that time, is staying with his (appellant) wife. He does not want to keep any connection with his wife and son. He further submits that in view of the MLC, which shows that she suffered 10% burn injuries, he only prays for reduction of substantive sentence submitting that award of rigorous imprisonment of ten years is very harsh. He has further submitted that he is not even able to arrange the fine amount imposed on him, hence period to be undergone in default of payment of fine may also be reduced.

10. The appellant has also given in writing that he is not challenging his conviction in this case and his only prayer is to take a lenient view on the quantum of sentence.

11. I have perused the record. As per the FIR, the complainant has stated that when she alongwith her son was sleeping in the park, her husband has thrown some unknown substance on him and ran away from there. However, statement of PW-12 Dr. Sanjay Mishra is to the following effect:-

‘On 26.04.2012 I examined Momin Tara female aged about 26 years brought by SI Virender Singh with alleged history of thermal burns. After examining said witness, I prepared MLC Ex.PW12/A signed by me at point-A. I observed injuries on the face of said patient which have been described by me in MLC.’

In his cross examination, he has stated that :

*‘The patient was found having thermal burn injuries on her abdomen and on thighs. **The injuries were caused by flames.***

Said injuries were not possible by throwing acid.'

12. Thus, cause of burn injuries as stated by PW-12 Dr. Sanjay Mishra is due to flames whereas as per the complainant it was due to throwing of some substance like acid.

13. Taking into consideration that the appellant has clear antecedents and accepts his involvement in this case wherein his wife received burn injuries to the extent of 10%, I find that the sentence of ten years awarded to the appellant is on higher side.

14. In view of submissions made by the appellant, his conviction under Section 307 IPC is maintained. The order on sentence dated 29.04.2014 is modified to the extent that substantive sentence of the appellant is reduced from ten years to five years. The sentence of fine of ₹10,000/- is maintained. However, in default of payment of time, the sentence of one year is reduced to one month.

15. The appeal stands allowed in above terms.

16. TCR be sent back alongwith copy of this order.

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

PRATIBHA RANI, J.

MAY 27, 2016

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