

IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of Decision: 3rd March, 2016**+ **CRL.A. 1292/2012**

AJAY @ DABBU S/O BIRBAL

..... Appellant

Through

Mr.Manoj Kumar Singh, Advocate
Appellant produced for J.C

versus

THE STATE (GOVT. TO NCT) DELHI

..... Respondent

Through

Ms.Neelam Sharma, APP for the State
alongwith SI Ranbir Singh from Police
Station Kashmere Gate, Delhi.

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CORAM:**HON'BLE MS. JUSTICE SUNITA GUPTA****J U D G M E N T****: SUNITA GUPTA, J. (Oral)**

1. Challenge in this appeal is to the judgment and order on sentence dated 18.01.2012 and 31.01.2012 passed by learned Additional Sessions Judge, Delhi in SC No.26/11 in case FIR No.32/10 under Section 308/325 IPC registered with police station Kashmere Gate Metro vide which the appellant was convicted under Section 308 IPC and was sentenced to undergo rigorous imprisonment for a period of 5 years and fine of Rs.10,000/- in default of payment of fine to undergo simple imprisonment for three months.

2. At the outset, learned counsel for the appellant, under instructions from the appellant who has been produced from jail, submits that he does not challenge the conviction of the appellant under Section 308 IPC, however, he submits that the appellant has undergone almost the entire period of sentence leaving behind one month. Moreover, he, being very poor, is not in a position to pay fine as such, the default sentence be reduced to minimum.

3. The allegations against the appellant are that he hit the complainant with a stone on his head due to which complainant fell down and his teeth were broken and he also sustained injuries on his head. Accused was apprehended at the spot itself by the parking attendants and the complainant was removed to the hospital. Accused was also

medically examined and arrested in this case. After completion of investigation chargesheet was submitted against him. The accused pleaded not guilty to the charge under Section 308 and 325 IPC and claimed trial.

4. In order to substantiate its case, prosecution examined in all 14 witnesses. The complainant Mohan Chandra Uprati is the author of the first information report wherein he stated that when he went to the parking near his Maruti 800 car accused came from behind and hit him with stone due to which his teeth were broken. In the meanwhile, parking attendants namely Ravi and Vinay Kumar Jha apprehended the accused and other persons also gathered there. Accused was under the influence of liquor at the time of commission of the offence. He substantiated the averment made by him in his initial report Ex.PW7/A. His testimony was duly corroborated by PW-2 Ravi and PW-3 Vinay Kumar Jha, the parking attendants. The ocular testimonies of all these witnesses find confirmation from the medical evidence which proved that the complainant sustained injuries on his skull as well as his two lower incisor teeth were broken. The injury to the teeth was grievous whereas the injuries to occipital region was simple. The accused having assaulted the complainant on vital parts of his body was rightly convicted for offence under Section 308 IPC which was not challenged by the appellant. As such, the findings of the learned Additional Sessions Judge in this regard is confirmed.

5. Coming to the quantum of sentence. As per the nominal roll dated 08.10.2015, the appellant had undergone a period of 4 years 3 months 16 days besides earning remission of 2 months and 26 days. The unexpired portion of sentence as on that date was 5 months 18 days. That being so, approximately one month remains as the unexpired portion of sentence. Under the circumstances, the substantive sentence of the appellant is reduced to the period already undergone.

6. Keeping in view the financial inability of the appellant, the default sentence in payment of fine is reduced from three months simple imprisonment to one month simple imprisonment. With this modification, the appeal stands disposed of.

Superintendent Jail be informed accordingly.

(SUNITA GUPTA)
JUDGE

MARCH 03, 2016

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