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

+ CRL.A. 467/2015

JAGBIR

..... Appellant

Through Mr. Sumit Chaudhary, Advocate
versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for State
SI Harpal, PS Darya Ganj.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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28.07.2016

Crl. M A No. 8760/2016

Allowed, subject to all just exceptions.

Crl. M A No. 8759/2016 (for early hearing)

Appeal was admitted on 25.05.2015. The appellant has filed an application for early hearing which was allowed vide order dated 20.01.2016 and the matter was ordered to be listed on 11.02.2016 for hearing in the category of 'After Notice Miscellaneous Matters'. Accordingly, the appeal is taken up for hearing.

The application is disposed of.

Crl. A No. 467/2015

The Trial Court has convicted the appellant under Section 308 IPC and vide order on sentence dated 24.03.15 has sentenced him to undergo RI for four years. Benefit of Section 428 has also been given to him.

Prosecution story, as is unfolded is that on 16.12.2010, at about 9:30 p.m., an information was received in the Police Control Room that one person had been stabbed at telephone exchange Delhi Gate. Head

Constable Ishwar Singh along with Constable Manoj Kumar reached there and met the eye-witness PW-2 Mukesh Kumar and recorded his statement, pursuant whereof, FIR under Section 324 IPC was registered at Police Station Darya Ganj.

Mukesh Kumar alleged in the FIR that appellant was posted as a Guard in the same office. On 16.12.2010, the appellant quarrelled with PW-1 Mahesh Negi on the point of payment of money. During the quarrel, appellant stabbed PW-1 Mahesh Negi on his chest by some pointed object.

PW-1 – Mahesh Negi was removed to Lok Nayak Jai Prakash Narayan Hospital and was declared unfit for statement. Therefore, his statement could not be recorded on 16.12.2010. After he was declared 'fit for statement', Investigation Officer recorded his statement on 20.12.2010.

PW-2 Mukesh Kumar has not supported the prosecution. With regard to the stabbing incident according to him he has not seen appellant stabbing the PW-1. However, PW-1 has supported the prosecution version. He has deposed that on 16.12.2010, he was on duty at Telephone Exchange, Delhi Gate, from 8.00 P.M to 8.00 A.M. At about 9:30 P.M. appellant came to him and demanded money. He told him that he was busy and he should go and perform his duty at the Gate. Appellant abused him and went away. After about five minutes, he returned with a knife and stabbed him near his heart. His testimony has remained unshattered, in his cross-examination. Other witnesses examined before the IO are police officials and Doctors. Injuries of Mahesh Negi were opined as grievous.

On detailed scrutiny of the entire evidence, the Trial Court has

found the statement of PW-1 to be trustworthy and reliable and has convicted the appellant for having committed offence under Section 308 IPC. Keeping in mind the circumstances in which injury was caused on the vital part of the body, the trial Court has concluded that ingredients of offence under Section 308 were attracted in this case.

During the Court hearing, learned counsel for the appellant, on instructions, has given up the challenge to the conviction of appellant on merits. He has only prayed for leniency in sentence, on the ground that the incident took place all of a sudden and the appellant due to rush of blood caused injury to the injured. Appellant has no past criminal record. He is 54 years of age and is the sole bread earner in the family. His old and ailing parents are also dependent on him besides his college going children. Appellant has suffered incarceration of about 3 years. In his absence whole family is suffering great financial hardship and are at the verge of starvation.

A perusal of nominal roll shows that jail conduct of the appellant is satisfactory. He has no past criminal record. He is in incarceration for about 2 years including the remission period.

Keeping in mind the totality of circumstances, while affirming the conviction the sentence is reduced to the period already undergone by him. The appellant be released from jail forthwith if not wanted in any other case.

The appeal is disposed of in the above terms. Copy of the order be sent to the Superintendent Jail.

A.K. PATHAK, J

JULY 28, 2016

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