

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

% *Date of Decision : August 03,2017*

+ **CRL.A. 166/2002 & CrI.M.A. No.6367/2017**

SAMODH @ JONI & ANR. .... Appellants

Through: Mr.Raman Sahney, Advocate.

versus

STATE .... Respondent

Through: Ms.Kusum Dhalla, APP for the  
State

**PRATIBHA RANI, J. (Oral)**

1. The instant appeal has been preferred by the appellants Samodh @ Joni and Sanjay assailing the judgment and order on sentence dated 11<sup>th</sup> February, 2002 and order on sentence dated 12<sup>th</sup> February, 2002 respectively whereby they have been convicted for committing the offence punishable under Section 307/323/34 IPC and sentenced as under:-

- (i) U/S 307/34 IPC : to undergo RI for three years with fine of ₹2000/- each and in default of payment of fine to undergo RI for one month.
- (ii) U/S 323/34 IPC : to undergo RI for one year.

Both the sentences were ordered to run concurrently.

2. Briefly stating, the case of the prosecution is that the complainant/injured Phool Singh was running a dairy in his jhuggi. On 31<sup>st</sup> October, 1995 at about 9.15 pm when he was present in his

jhuggi, accused Sanjay and Joni, whom he knew, alongwith two-three other persons came there. They were having lathis, hockey and knife. They attacked him with lathis, hockey and knife saying that they will not spare him. When he raised alarm, his cousin Rohtas came there who was also assaulted. Thereafter the accused persons ran away on scooter from the spot.

3. On the basis of statement made by injured/complainant Phool Singh, FIR No.544/1995 under Section 307/323/34 IPC registered at PS Shalimar Bagh. After completion of investigation, the chargesheet was filed.

4. Both accused persons pleaded not guilty and claimed trial. The learned Trial Court after concluding the trial held both the appellants guilty for committing the offence punishable under Section 307/323/34 IPC and sentenced them in the manner aforesaid.

5. Feeling aggrieved, the appellants have challenged their conviction and sentence by filing this appeal.

6. During the pendency of this appeal, appellant No.1 Samodh @ Joni has expired.

7. The appellant is present in person alongwith the counsel.

8. During the course of hearing, learned counsel for the appellant No.2 Sanjay submits that the appellant No.2 is not challenging his conviction under Section 307/323/34 IPC. He further submits that as per the school leaving certificate, date of birth of appellant No.2 Sanjay is 1<sup>st</sup> April, 1982 which has been verified by the State. Even at the stage of his examination under Section 313 CrPC he had mentioned is age to be 21 years. Thus, on the date of occurrence i.e.

31<sup>st</sup> October, 1995, he was just about 16 years old.

9. Learned counsel for the appellant No.2 Sanjay submits that except this case, the appellant No.2 has not been convicted in any other case and the role attributed to him is that he hit with a hockey but there is no medical opinion of the doctor that nature of injury caused to the complainant was grievous or dangerous.

10. Learned APP for the State submits that date of birth of the appellant No.2 being 01<sup>st</sup> April, 1982 has been duly verified and admittedly on the date of occurrence i.e. on 31<sup>st</sup> October, 1995 he was about 16 years old but he was not tried as juvenile.

11. Taking into consideration that the appellant No.2 Sanjay was about 16 years of age at the time of occurrence, the role attributed to him that he caused injury with hockey, the nature of injury is not available on record as well the fact that the appellant No.2 has not been convicted in any other case from 1995 till date, while maintaining his conviction under Section 307/323/34 IPC, his substantive sentences awarded for committing the offence punishable u/s 307/323/34 IPC are reduced to the period already undergone by him in judicial custody in this case. However, the fine imposed on the appellant No.2 Sanjay is enhanced from ₹2000/- to ₹20,000/-. In default of payment of enhanced fine amount, he shall undergo simple imprisonment for three months.

12. It is informed that fine of ₹2000/- imposed by the learned Trial Court vide impugned order on sentence has already been deposited by the appellant No.2.

13. The appellant No.2 is directed to deposit the balance fine

amount with the Registrar General of this Court by 5<sup>th</sup> August, 2017 place on record the proof of depositing the fine amount within two days thereafter. However, if the appellant No.2 fails to deposit the balance fine amount by 5<sup>th</sup> August, 2017 he shall surrender before the concerned Jail Superintendent for undergoing the sentence awarded in default of payment of fine.

14. The appeal is partly allowed and impugned order on sentence is modified to the extent aforesaid.

15. Copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

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

17. As prayed, copy of the order be also given dasti to learned counsel for the appellant under the signature of Court Master.

**PRATIBHA RANI**  
**(JUDGE)**

**AUGUST 03, 2017**  
**'st'**