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

% *Date of Decision: July 31, 2017*

+ **CRL.A. 287/2002**

DESRAJ Appellant

Through: Mr.M.L.Yadav, Advocate

versus

STATE OF DELHI Respondent

Through: Ms.Kusum Dhalla, APP for the
State with ASI Tulli Ram
PS Badarpur

PRATIBHA RANI, J. (Oral)

1. The appellant Desraj has preferred the appeal under Section 374 (2) Cr.P.C. assailing the judgment dated 22nd March, 2002 and order on sentence dated 23rd March, 2002 vide which he has been convicted for committing the offence punishable under Section 307 IPC and sentenced to undergo RI for one year with fine of ₹1000/- and in default of payment of fine, to undergo SI for two months.

2. In brief, the prosecution case is that on 24th June, 2000 on receipt of DD No.6A, SI Vijay Kumar along with Constable Ramesh reached at the place of occurrence at D-Block, Gali No.7, Om Vihar, Delhi. On coming to know that injured Ram Ji Chorasias has been removed to AIIMS, he reached there and found PW-2, Ram Ji Chorasias admitted there. After obtaining opinion of the Doctor that the

injured was fit to make the statement, he recorded the statement of injured Ram Ji Chorasias. He made statement to the effect that he was running a 'Paan' shop at Lajpat Nagar. In February/March, 2000, his daughter was enticed away by Guddu, who is brother of Rai Singh. A missing report was lodged at PS Badarpur. His daughter was recovered about 10-12 days prior to this incident and police was searching for Guddu. Rai Singh, brother of the Guddu, used to threaten them. A day before the incident at about 9.30 p.m. at the house of Sunil, who is his neighbour, Rai Singh along with his co-brother, Desraj (appellant herein) and Kanchan Singh gathered. After taking his food, the injured Ram Ji Chorasias along with his wife and children was sleeping on the roof top. At about 3.00 a.m. Rai Singh came to his roof through a ladder. Rai Singh was holding a pistol type weapon and fired at him causing injury to him. He was also hit with some heavy object on his head. The injured tried to apprehend Rai Singh but he managed to jump from the roof top. When he peeped down he saw that a ladder had been put on the back of the house and Desraj, co-brother of Rai Singh was holding the ladder. He raised alarm but both of them managed to escape.

3. In the impugned judgment, learned ASJ has specifically noted that Rai Singh was not arrested till the trial against Desraj was completed. Even as per the complainant/injured, Desraj is neither the assailant nor he was present at the roof top at the time of occurrence. He has not been charged under Section 307/34 IPC. PW-2 Ram Ji Chorasias, the injured in his deposition before the Court stated that he was attacked by Rai Singh by firing from a pistol. He received wound

on his chest. Against the appellant, Desraj he deposed to the effect that when he (injured) peeped down and tried to bend to catch hold of Rai Singh he found Sunil and appellant Desraj running from the side of his house and Sunil was running ahead of Desraj. He has also stated that Rai Singh was sitting on the back portion of the house due to the injuries suffered while jumping from the roof. Sunil, who was seen running ahead of Desraj has not been charge-sheeted. So far as appellant Desraj is concerned, the limited role assigned to him in the complaint exhibit PW-2/A was that when the injured peeped down, he saw Desraj holding the ladder. It is his own case that the main assailant Rai Singh had not got down from the ladder but jumped from the roof. In his deposition before the Court he did not state that he had seen the appellant Desraj holding the ladder to facilitate the main assailant Rai Singh to get down from the roof after committing the offence.

4. In the absence of there being any evidence on record against the appellant Desraj that he shared a common intention with the main assailant Rai Singh or Desraj was seen by the PW-2, the complainant in facilitating the crime, learned trial Court could not have convicted him for committing the offence punishable under Section 307 IPC, that too, without being charged with the aid of Section 34 IPC for sharing the common intention with Rai Singh, the main assailant.

5. Considering the testimony of the injured and there being no other evidence available on record describing the role of the appellant, Desraj, to infer that he shared common intention with Rai Singh, I am of the considered view that prosecution was unable to prove the guilt

of the appellant for committing the offence punishable under Section 307 IPC.

6. Thus, conviction and sentence awarded to the appellant for the offence punishable under Section 307 IPC are set aside.

7. The appeal is allowed and the appellant is acquitted.

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

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

Order *Dasti*.

**PRATIBHA RANI
(JUDGE)**

JULY 31, 2017

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