

\$~9

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

*Judgment dated: 6<sup>th</sup> June, 2017*

+ CRL.A. 54/2017

MAHESH CHAND

..... Appellant

Through: Mr. Mukesh Kr. Singh, Adv.  
Mr. Amar Nath, Amicus Curie with  
Mr. Love Deep Gaur, Adv.

versus

STATE

..... Respondent

Through: Mr. Raghuvinder Varma, APP for State  
with ASI Rajbir Singh

**CORAM:**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**I.S. MEHTA, J (ORAL)**

1. The instant appeal is arising out of the judgment dated 30.08.2016 and order on sentence dated 31.08.2016 wherein the appellant-Mahesh Chand was convicted for committing offences punishable under Sections 307/34 IPC. Aggrieved by the said judgment and order on sentence, the appellant- Mahesh Chand has preferred the instant appeal.

2. Briefly facts stated are that on 12.06.2014, on receiving information vide DD No.27-A, ASI Rajbir Singh reached at the spot at X-256, Camp No.1, Nangloi, Delhi, pertaining to quarrel and inquired about the same. On inquiry it was revealed that injured was shifted to hospital where he collected the MLC of the injured Inderpal . IO met father of the injured namely Nanak Chand who is stated to be the eye witness of the incident and his statement was recorded. On the basis of statement of witnesses, FIR No.402/2014, under Sections 307/34 IPC was registered. During the course of investigation, the appellant was

arrested and got recovered the weapon of offence. After completion of the investigation, charge sheet was filed under Section 307/34 IPC. After filing the charge sheet, prosecution examined 14 witnesses in order to prove its case. In their defence, the convict persons also examined 2 witnesses. Upon appreciation of evidence and after considering the contentions of the appellant, he was convicted by the impugned judgment. By an order dated 31.08.2016, the appellant-Mahesh Chand was awarded Rigorous Imprisonment for five years with fine of Rs.10,000/-, in default of payment of fine he shall undergo six months simple imprisonment. Being aggrieved and dissatisfied, the appellant has filed the instant appeal.

3. During the course of arguments, on instructions, the appellant's counsel stated that the appellant- Mahesh Chand has opted not to challenge the findings of the Trial Court on conviction. He, however, prayed to modify the sentence order and to release the appellant for the period already undergone by him. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances.

4. Since the appellant- Mahesh Chand has given up challenge to the findings on conviction and there is ample evidence to base conviction, the conviction for the aforesaid offences stands affirmed.

5. On the quantum of sentence, learned counsel for the appellant- Mahesh Chand and learned amicus curiae have argued that the appellant is a young man of 29 years and he has four brothers and his parents have already passed away and he has the responsibility of his unmarried sister. It is further submitted that the appellant-Mahesh Chand is the sole bread earner of the family and is not previous convict and the sentence given by the Court below is too harsh. It is submitted that the appellant-Mahesh Chand was awarded imprisonment for 5 years and he has already undergone more than 2 ½ years imprisonment. It is

further submitted that a fine of Rs.10,000/- has been imposed on the convict which he could not pay as they are very poor and prays that the fine imposed on the convicts be waived off.

6. In ***B. G. Goswami vs Delhi Administration; 1973 AIR 1457, 1974 SCR (I) 222*** the Hon'ble Supreme Court while dealing with the quantum on sentence has observed that:

*“Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act, which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs- 200/- to Rs. 400/-. Period of imprisonment*

*in case of default will remain the same.”*

7. Nominal roll dated 31.05.2017 reflects that the appellant- Mahesh Chand has already undergone 2 years, 11 months and 18 days incarceration as on 31.05.2017. The unexpired portion of sentence was only 1 year, 10 months and 1 day on that date.

8. Considering the facts and circumstances of the case and the substantive period already undergone by him in this case and the fact that the appellant- Mahesh Chand is of young age who is the sole bread earner of his family and has to support his dependants i.e. his sisters and brothers and he has realized the mistake committed by him and is remorseful of his act to the society to which he belongs and now he wants to transform himself as well as to the society to a right direction, I am of the considered opinion that he should be given a chance to reform himself and his better contribution in the society to which he belongs to. Consequently, the sentence order is modified and the period already undergone by him in this case i.e. 2 years, 11 months and 18 days is taken as their substantive sentence under Sections 307/34 IPC including for the sentence for default in non payment of fine of Rs.10,000/- too.

9. The appeal stands disposed of in the above terms. All pending application(s) also stand disposed of. Trial Court record be sent back forthwith along with the copy of the judgment. One copy of the judgment be also sent to the Jail Superintendent for necessary compliance for release of appellant- Mahesh Chand.

**I.S. MEHTA  
(JUDGE)**

**JUNE 06, 2017**  
'sr'