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

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Date of Decision: August 30, 2017

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CRL.A. 344/2017

KAMENDER

..... Appellant

Through: Mr.Vikas Padora, Advocate
with appellant from J/C.

versus

STATE OF DELHI

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with SI Shailender
Kumar and ASI Puran Singh,
PS Gokal Puri.

PRATIBHA RANI, J. (Oral)

1. The appellant has preferred the instant appeal under Section 374 (2) Cr.P.C. assailing the judgment dated 16th November, 2016 and order on sentence dated 28th November, 2016 vide which he has been convicted for committing the offence punishable under Section 307 IPC and under Section 25 Arms Act and sentenced as under:-

- (i) U/S 307 IPC : to undergo RI for ten years with fine of ₹25,000/- and in default of payment of fine, to undergo SI for one year.
- (ii) U/S 25 Arms Act : to undergo RI for one year.

Both the sentences were ordered to run concurrently.

2. In brief, the prosecution case is that on 24th August, 2011 an information was received at PS Gokal Puri regarding an incident of stabbing, which was reduced into writing vide DD No.22-A. The DD

was assigned to SI Dev Raj who alongwith Ct.Shivendra Kumar reached the spot. There he came to know that injured Pradeep and accused Kamender had been removed to hospital. Since no eye witness was present at the spot, ASI Dev Raj went to GTB Hospital and obtained the MLC of the injured, who was in OT. The injured was opined to be 'unfit for statement'. Pw-2 Mr.Anil Kumar – brother of the injured was present in the hospital who made statement to the effect that his brother PW-1 Pradeep (injured) had a quarrel with accused on 14th August, 2011 with regard to some money transaction but matter was sorted out on that day. On 24th August, 2011 at about 2.00 pm again there was some hot words exchanged and quarrel between the injured and the accused. When he (PW-2 Anil Kumar) intervened to pacify them, the accused told him that he could not protect his brother forever. Thereafter at about 4.00 pm on the same day, when he alongwith his brother Pradeep was going to have tea and reached in front of house of Vikram Singh, accused suddenly took out a knife and stabbed his brother in his stomach, back and neck. When he raised alarm, the public persons apprehended the accused as he was trying to flee from the spot. He was given beating by the public persons. PCR was informed and injured was removed to the hospital by PCR.

3. On the basis of above statement, FIR No.296/2011 under Section 307 IPC and under Section 25 Arms Act was registered at PS Gokal Puri. The appellant/accused was arrested and after completion of investigation, the chargesheet was filed.

4. On the basis of material placed on record by the prosecution,

the appellant was charged for having committed the offence punishable under Section 307 IPC and under Section 25 Arms Act, to which he pleaded not guilty and claimed trial.

5. The learned Trial Court after concluding the trial, held the appellant guilty for committing the offence punishable under Section 307 IPC and under Section 25 Arms Act and sentenced him in the manner aforesaid.

6. Feeling aggrieved, the appellant has challenged his conviction and sentence by filing the present appeal.

7. Pursuant to the production warrants issued, the appellant has been produced from J/C.

8. Mr. Vikas Padora, Advocate (DHCLSC) for the appellant, on instructions, submits that the appellant is not challenging his conviction in this case. However, prayer has been made by the appellant to take a lenient view on the quantum of sentence.

9. Since the appellant is not challenging his conviction under Section 307 IPC and under Section 25 Arms Act, the same is upheld.

10. Now coming on the quantum of sentence, the appellant submits that he was the sole bread earner in the family and was working as tailor for earning the livelihood. The appellant submits that the dispute with the injured PW-1 Pradeep was on account of some money transaction as Pradeep was not returning the amount taken from him and whenever he demanded the same, he used to quarrel with him. The incident took place in a heat of moment though earlier they had cordial relations and he is remorseful for whatever he has done to the injured. Except this case, he is not involved in any other case. He

requests that a chance may be given to him to reform and sentence of ten years awarded to him in this case being very harsh, may be reduced. The appellant also submits that since his family members i.e. his wife and two children are living in poverty and are not in a position to deposit the fine of ₹25,000/- imposed on him, the sentence of one year to be undergone in default of payment of fine of ₹25,000/- may also be reduced.

11. Taking into consideration the submissions made on behalf of the appellant and the offence proved against the convict/appellant, it would meet the ends of justice if the sentence of ten years awarded to the appellant for committing the offence punishable under Section 307 IPC is reduced to five years.

12. Accordingly, the substantive sentence awarded to him under Section 307 IPC is reduced from ten years to five years. The sentence of fine of ₹25,000/- is maintained, however the period of sentence to be undergone by the appellant in default of payment of fine is reduced from one year to three months.

13. The appeal is allowed only to the extent of modification of order on sentence to the above extent.

14. TCR be sent back alongwith copy of this order. Copy of this order be sent to the concerned Jail Superintendent for information.

As prayed, copy of the order be given dasti to learned counsel for the appellant.

PRATIBHA RANI
(JUDGE)

AUGUST 30, 2017/‘st’