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

Judgment dated: 7th June, 2017

+ CRL.A. 640/2015

TONY @ AFROZ

..... Appellant

Through: Mr.Imran Khan, Adv.
Mr.Amar Nath, amicus curiae with
Mr.Love Deep Gaur, Adv.

versus

STATE

..... Respondent

Through: Mr.Raghuvinder Varma, APP for State

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

I.S.MEHTA, J (ORAL)

1. The instant appeal is arising out of the judgment dated 21.01.2015 and order on sentence dated 22.01.2015 wherein the appellant-Tony @ Afroz was convicted for committing offences punishable under Sections 395/365/323/34 IPC. Aggrieved by the said judgment and order on sentence, the appellant has preferred the instant appeal.

2. Briefly facts stated are that on 06.04.2011 at around 10.45 PM, information was received in Police Station-Sangam Vihar about a quarrel. The information was recorded as DD No.34 A and marked to ASI Rajender Singh for investigation, who reached at the spot but no eye witness was found there. At around 3.15 a.m., another information was received from Batra Hospital regarding admission of the injured of the said incident in that hospital. IO went there and came to know that the injured has already been shifted to Safdarjung Hospital. IO went there and found that the patient was unfit for giving statement.

Sh.Janmejay, brother of the injured went to IO and gave statement narrating the incident. On the basis of said statement, FIR No.106/2011 was registered. After completion of investigation, charge-sheet was filed and the appellant and his associates were charged for committing various offences. The prosecution examined 13 witnesses in order to prove its case. Upon appreciation of evidence and after considering the contentions of the appellant and his associates, they all were convicted by the impugned judgment. By an order dated 22.01.2015, the appellant was awarded Rigorous Imprisonment for seven years and also a fine of Rs.10,000/- for offence punishable under Section 395 IPC and in default of payment of fine to undergo one year Simple Imprisonment. He was also awarded five years Rigorous Imprisonment and fine of Rs.5,000/- for offence punishable under Section 365 IPC and in default of payment of fine to undergo six months Simple Imprisonment. For offence punishable under Section 323 IPC, he was also awarded six months Rigorous Imprisonment. All the sentences were to operate concurrently. 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 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 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 and learned

amicus curiae have argued that the appellant is not a previous convict and belongs to a poor family and that the sentence given by the Court below is too harsh. It is submitted that the appellant was awarded imprisonment for 7 years and he has already undergone more than 2 years imprisonment. It is further submitted that a fine of Rs.15,000/- has been imposed on the convict which he could not pay as he is very poor and prays that the fine imposed on the convict be waived off.

6. In ***B. G. Goswami vs Delhi Administration; 1973 AIR 1457, 1974 SCR (1) 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 has already undergone two years, seven months and 29 days incarceration as on 31.05.2017. The unexpired portion of sentence was 3 years, 8 months and 10 days 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 is a young man of 25 years who is the sole bread earner of his family and has to support his dependants i.e. his children, wife and parents 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, 7 months and 29 days is taken as his substantive sentence under Sections 395/365/323/34 IPC including for the sentence for default in non payment of fine of Rs.15,000/- 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 order. Intimation be also sent to the Superintendent Jail.

JUNE 07, 2017/sr

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

