

\$~2

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

Judgment dated: 2nd June, 2017

+ CRL.A. 1050/2016 & CRL.M.(Bail) 1983/2016

GAGAN DEV VYAS

..... Appellant

Through: Mr. Ankur Sood, Adv. with Ms. Romila
Mandal and Mr. Uday Bedi, Advs.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State
SI Pankaj Kumar, PS-Vasant Kunj
(South)

CORAM:

HON'BLE MR. JUSTICE I.S. MEHTA

I.S. MEHTA, J (ORAL)

1. The instant appeal is arising out of the judgment dated 16.09.2016 and order on sentence dated 17.09.2016 wherein the appellant- Gagan Dev Vyas was convicted for committing offences punishable under Section 308 IPC. Aggrieved by the said judgment and order on sentence, the appellant has preferred the instant appeal.

2. Briefly facts stated are that on 29.01.2015 at about 8.00 p.m., the complainant namely Mohan Rao was present at his Jhuggi bearing Jhuggi No.39, Malikpur Kohi, Inder Camp, Rangpuri, New Delhi and in the neighbouring jhuggi No.229 the convict/appellant was hurling abuses in filthy language with his children in front of his jhuggi and when the complainant objected, the convict/appellant hit him on his head twice with a chainni type instrument/object. Blood started oozing from the head of the complainant and he

fell down on the ground. The complainant made a call at 100 number and thereafter he was removed to ISIC Hospital by the PCR officials, where he was got admitted and his statement was recorded by the police. After completion of the investigation, charge sheet was filed for the offence punishable under Section 308 IPC. After filing the charge sheet, prosecution examined 7 witnesses in order to prove its case. Upon appreciation of evidence and after considering the contentions of the appellant, he was convicted by the impugned judgment. By an order dated 17.09.2016, the appellant was awarded Rigorous Imprisonment for two years with fine of Rs.2,000/- and in default of payment of fine he shall undergo simple imprisonment for one month. 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 has argued that the appellant is an old man of 64 years and he has to maintain his family consisting of wife and five children. It is further submitted that the appellant is the sole bread earner of the family and the sentence given by the Court below is too harsh. It is submitted that the appellant was awarded imprisonment for 2 years and he has already undergone more than 10 months imprisonment.

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 ten months and fifteen days incarceration as on 21.04.2017. The unexpired portion of sentence was only eleven months and 21 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 senior citizen who is the sole bread earner of his family and has to support his dependants i.e. his children and wife 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. ten months and fifteen days is taken as his substantive sentence under Section 308 IPC.

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.

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

JUNE 02, 2017
'km'