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

+ CRL.A. 855/2017 & CRL.M. (BAIL) 1604/2017

Date of decision: 16.11.2017

SHAHID

..... Appellant

Through: Mr. Vikas Padora with Mr.
Dipanshu Chugh, Advocate.

versus

STATE

..... Respondent

Through: Dr. M.P. Singh, APP for State.
SI Ashish Kumar, PS
Bhajanpura, Delhi.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. This appeal has been heard on merits.
2. Shahid, the appellant has been convicted under Section 324 of the IPC by judgment dated 23.12.2016 passed by the learned Additional Sessions Judge, North East Karkardooma Courts, Delhi in SC No. 47 (1)/2016 arising out of the FIR no. 427/2016 which was instituted for the offence under Section 307 of IPC.
3. By order dated 26.12.2016, the appellant has been sentenced to undergo RI for 2 years, to pay fine of Rs. 5,000/- and in default of payment of fine, to further suffer SI for 3 months.
4. The appellant is alleged to have made attempts to commit murder of his wife, Mehnaj, by inflicting injuries on her neck and hand by a razor. The injured is stated to have received lacerated wounds on her left forearm and on her left ear.

5. The wife of the appellant, namely, Mehnaj, who has been examined as PW-1, gave her statement before the police alleging that she was married to the appellant in accordance with Muslim Religious Rites. The appellant, according to PW-1, was in the habit of drinking recklessly and assaulting her. Fed up by all this, PW-1 had left his company and had come to her parent's house at Noor-E-Ilahi. On the day of the occurrence, it was alleged by PW-1 that he came to the house of her parents and inflicted razor injuries on her left hand and left ear and thereafter, ran away. The neighbours, after hearing her cries, assembled and called the police.

6. After investigation, charge-sheet was submitted under Section 307 of the IPC; whereupon, cognizance was taken; charges were framed; and the case was tried.

7. The Trial Court, after examining 10 witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant under Section 324 of the IPC and sentenced him to undergo RI for 2 years, to pay fine of Rs. 5,000/- and in default of payment of fine, to further suffer SI for 3 months.

8. Mehnaj, PW-1, who is the wife of the appellant and an injured, has supported the prosecution version of her having been hit by a razor.

9. HC Raj Kumar (PW-7), had investigated the case in the first instance and had recorded the statement of PW-1 and had prepared ruqqa which is Ex. PW7/A. SI Prem Pal Singh (PW-10), is the Investigation Officer, who had arrested the appellant and had interrogated him.

10. The appellant in his statement under Section 313 of Cr.P.C had a different story to narrate. He had stated before the Trial Court that over petty issues, PW-1 fought with him and had, in the past, threatened to implicate him in false cases. The appellant has denied to have made any attempts to eliminate his wife/ PW-1.

11. The learned counsel appearing for the appellant has argued that PW-1 could not state about the nature of the weapon used. The occurrence is said to have taken place in the house of PW-1, whereas neither of the parents of PW-1 were examined at the trial nor any plausible explanation was offered for their non-examination.

12. It was further submitted that the Investigation Officer had not seized the clothes of PW-1 and had also not collected the blood from the place of the occurrence. Lastly, it was argued that Ex. P1, the weapon of assault, could not be matched with the injuries suffered by PW-1. Dr. Adiba (PW-3), has deposed before the Trial Court that the nature of weapon used for causing injuries was a blunt weapon. The doctor who had given an opinion regarding the nature of injuries has also not been examined.

13. However, from the records, it appears that PW-1, who is the wife of the appellant had given birth to two children from the wedlock with the appellant. This fact is not denied.

14. From the statement made by the appellant under Section 313 of Cr.P.C., it stands established that PW-1 was not staying with the appellant but with her parents. This can only be, if the relationship between the appellant and his wife was not cordial. Though, there has not been any cross-examination on this aspect of the matter, but what

remains, completely substantiated is that the victim was staying away from the appellant.

15. From the deposition of PW-1, it is very clear that the appellant entered in the room of PW-1 after breaking its latch and had hit her with a razor which he was carrying in his trouser. There was another attempt to hurt PW-1 and that resulted in injuries on the left hand of PW-1. Nothing has been brought on record to suggest that PW-1 had made any wrong statement before the Court.

16. Similarly, Nasir (PW-2), who is one of the neighbours of PW-1, has testified to the effect that an occurrence of the kind as was reported by PW-1, had taken place on 08.06.2016 at about 8.42 PM. Thus, finding that there was no delay in reporting the case and the correctness of the allegation in as much as PW-1 was injured for which she was treated, the Trial Court convicted the appellant under Section 324 of the IPC.

17. While convicting the appellant, the trial court took note of Ex. PW4/A which is DD no. 94B, which was recorded on 08.06.2016 at 9.00 PM indicating that a woman was hit and injured by a blade (razor) by one person and the aforesaid person has been apprehended. HC Madan Mohan, who has been examined as PW-5 had also testified to the effect that PW-1 was injured over her left hand and left ear. Since, the injury suffered by PW-1 were stated to be lacerated, the Trial Court rightly did not record conviction under Section 307 of IPC. More so, when Dr. Adiba had clearly stated that such injury suffered by PW-1 could not have been self inflicted.

18. This court therefore, finds no fault with the judgment of

conviction of the appellant under Section 324 of the IPC.

19. However, taking into account the circumstances in which the occurrence took place, viz, differences between the husband and the wife and the wife not staying with the appellant but with her parents as well as the fact that the appellant was present in the house, in company of the injured only, when there was nobody else and the appellant did not make any attempts to inflict further damage on PW-1, this court is of the view that interest of justice would be sub-served in modifying the sentence imposed upon the appellant to a period of custody which the appellant has already undergone.

20. This court has been informed that the appellant has remained in jail for about one year and nine months.

21. The appeal is, therefore, is dismissed. However, the sentence imposed upon the appellant is modified as stated above.

22. The appellant has been produced from custody on production warrant. The appellant shall be sent back to jail. Thereafter, he shall be released from jail, if not wanted in any other case.

23. A copy of this order be sent to the Superintendent of the concerned jail for compliance.

ASHUTOSH KUMAR, J

NOVEMBER 16, 2017 /NC