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

+ CRL.A. 867/2017

SHYAM

..... Appellant

Represented by: Mr. Jagat Rana and Mr. Nirmal
Goenka, Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

30.11.2017

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1. The present appeal has been filed by the appellant challenging his conviction for offence punishable under Section 325 IPC. Vide judgment dated 27th July, 2017 the appellant was sentenced to undergo rigorous imprisonment for a period of 3½ years with a fine of ₹30,000/- and in default of payment of fine to further undergo simple imprisonment for a period of three months. A sum of ₹25,000/- out of the fine amount was to be given as compensation to the injured Raj Kumar in case fine was paid.

2. Learned counsel for the appellant states the appellant is not in a position to pay the final compensation. Considering that the allegation is only of inflicting injury by a danda blow, even if conviction of the appellant is upheld, the sentence of three and a half years is excessive and the appellant be released on the period undergone.

3. FIR No. 661/2014 under Section 308 IPC was registered at PS Prasad Nagar on the complaint of Raj Kumar who stated that on 21st November, 2014 at about 11.30 PM while he was returning from the work he was attacked by the appellant with a danda. He knew the appellant as he was a painter. Raj Kumar sustained injuries on his left arm, head and left ear. He was removed to the hospital in an ambulance and his statement was got recorded.
4. Raj Kumar in Court deposed in sync with his statement on the basis of which FIR was registered. In his cross-examination nothing material has been elicited.
5. As per the MLC Ex. PW-5/A the injuries found on the body of Raj Kumar were swelling and bruises on his lip region, tenderness and swelling over the temporal region and periorbital echymosis. On X-ray, Dr. Manoj (PW-7) opined that the injuries were grievous in nature due to fractures in right eighth rib, fifth metacarpal of right hand and mandible.
6. In his statement recorded under Section 313 Cr.P.C. the case of the appellant was that he was falsely implicated. No defence evidence was led by the appellant.
7. From the statement of Raj Kumar genesis of the occurrence is not clear. It appears that while returning from work there was a quarrel between the appellant and Raj Kumar on some issue. Prosecution case is silent on this aspect.
8. Considering the evidence of Raj Kumar duly corroborated by medical evidence, I find no error in the judgment dated 27th July, 2017 convicting the appellant for offence punishable under Section 325 IPC. However, considering the fact that a danda was used to inflict the injuries, the

appellant having already undergone few days more than three years, this Court deems it fit to release the appellant on the sentence already undergone.

9. Appeal is disposed of.

10. Copy of this order be communicated to the appellant through Superintendent, Tihar Jail.

11. Trial Court record be sent back forthwith.

Crl.M.B. No. 1626/2017 (suspension of sentence)

Application is dismissed as infructuous.

MUKTA GUPTA, J.

NOVEMBER 30, 2017

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