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

+ CRL.A. 726/2003

MOHAN SINGH

..... Appellant

Through: Mr.Sumeet Verma and Ms.Preeti
Jakhar, Advs.

versus

STATE

..... Respondent

Through: Ravi Nayak, APP for State along with
SI Kamal Kumar P.S. OIA, ND.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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19.05.2018

This appeal has been filed challenging the Judgment dated 17.04.2003 passed by the Additional Sessions Judge, New Delhi in case FIR No.178/1998 (Sessions Case No.36/1998) convicting the Appellant for the offence under Section 326 read with Section 34 of the Indian Penal Code (IPC) and Order on sentence dated 24.04.2003 awarding the sentence of Rigorous Imprisonment for three years and fine of Rs.10,000/-, in default further Rigorous Imprisonment for six months on the Appellant.

The case of the prosecution is that on 13.03.1998, which was the day of the festival of Holi, a quarrel took place at A-18, Okhla Industrial Area, Phase-I, New Delhi. On investigation, it was found that the Appellant along with Ram Bahadur, Krishan Bahadur (accused no.1), Mukesh Singh (accused no.3) and Murari Thapa (accused no.4) had attacked the injured Naresh Kumar Paswan and Gangesh Paswan who were at the

abovementioned address.

It is the case of the prosecution that the Appellant was carrying a cricket bat at the time of the incident while others were carrying Khukhari, Iron Rod and baton(danda). PW-1 Ganesh Paswan had lost his finger and PW-2 Sarwan lost his eye at the hand of the assailants.

The injured persons that is Ganesh Paswan, Sarwan and Naresh Paswan appeared as PW-1, PW-2 and PW-5 respectively. PW-1, PW-2 and PW-5 have consistently stated about the presence of the appellant and his participation in the crime. However, the Appellant, as noted above was armed only with a cricket bat. The injuries suffered by the injured do not appear to have been caused by the same. Of all the accused, only the appellant faced trial. The others were declared Proclaimed Offenders. The Trial Court found that the intention of the accused was not to murder but to cause injury. There was also some quarrel that had taken place before the incident. Therefore, taking the totality of circumstances and evidence into account, conviction of the appellant under Section 326 read with Section 34 IPC cannot be sustained. The prosecution has however, been able to make out a case under Section 323 against the appellant. The appellant is, therefore, convicted under Section 323 IPC.

The Appellant had undergone imprisonment of five months and nine days as on 20.09.2003 and had earned remission of one month five days. His sentence has been suspended vide order dated 07.11.2003. The incident is of March 1998. The Appeal itself has been pending for the last 15 years and the Appellant has been on bail during this period.

Having considered the totality of the circumstances, the sentence of the Appellant is reduced to the period already undergone by him.

The appeal stands partially allowed in the above terms.

The Trial Court Record be sent back.

NAVIN CHAWLA, J

MAY 19, 2018/Arya