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

+ CRL.A. 74/2018, CrI. M.A. No. 1289/2018 & CrI. M.B. no. 131/2018

RAKESH @ KALI (IN J.C) Appellant
Through Mr. Abhimanyu and Mr. Ankit
Panwar, Advs.

versus

STATE OF NCT OF DELHI Respondent
Through Mr. M.S. Oberoi, APP with SI
Karamvir, P.S. Narela

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **19.03.2018**

1. Appellant has been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for four years with fine of ₹4,000/-; in default of payment of fine to undergo simple imprisonment for two months. Benefit of Section 428 Cr.P.C. was also given to the appellant.
2. Aggrieved by the conviction as also the sentence handed down to him, appellant has preferred this appeal. As per the prosecution, injured Santosh Kumar had gone to Mohan Dass Mandir at Narela, Delhi along with his grandson Kartikay for worshipping the Deity. Appellant came there and caught hold of Santosh Kumar and gave *ustra* (razor) blows on his face and hand, resulting in grievous injuries to Santosh Kumar, who was removed to

Dr. Mukesh Orthopaedic and Trauma Centre at Narela by his nephew Rajnish. Injuries of Santosh Kumar were opined as grievous caused by sharp object. Initially, FIR was registered under Section 326 IPC; however, after the investigation, charge-sheet was filed under Section 307 IPC. Injured Santosh Kumar was examined as PW4, Kartikay was examined as PW3 and Rajnish was examined as PW9. Dr. Mukesh Aggarwal was examined as PW2, who proved MLC Ex. PW2/A. All other witnesses are the police officials, who had participated in the investigation at one or the other stage. Investigating Officer SI P.L. Meena was examined as PW13. Trial court has found testimonies of PW2, PW3, PW4 and PW9 to be trustworthy and reliable and had concluded that appellant had caused injuries to PW4 Santosh Kumar on his vital part of the body, resulting in grievous injuries to him. It was further held that from the circumstances in which injuries were caused coupled with the nature of injuries, intention and knowledge on the part of appellant could be deduced that had he caused death of injured by his such act, he would have been guilty of committing murder. Trial court concluded that ingredients of Section 307 IPC were attracted and fulfilled.

3. During the course of hearing, learned counsel for the appellant has

given up challenge to the conviction of appellant under Section 307 IPC on merits, inasmuch as an application being CrI. M.A. no. 1290/2018 has been filed for reduction of sentence on the ground that compromise has taken place between the appellant and victim PW4 Santosh Kumar. It is submitted that appellant is nephew of PW4 Santosh Kumar. With the interventions of elders in the family, appellant and PW4 Santosh Kumar have settled their disputes amicably. Affidavit of PW4 Santosh Kumar has also been placed on record. It is submitted that appellant's wife has deserted him. She has left behind two minor children. Appellant's mother is also suffering from old age ailments, inasmuch as has lost vision of one eye. PW4 Santosh Kumar is present in Court. He also confirms this fact and admits having settled the matter with appellant. He says that whole family of appellant is suffering immensely in absence of appellant, who is the sole bread-earner in his family comprising of his old mother and two minor children.

4. Appellant has already completed sentence of about two years, out of the sentence of four years awarded to him by the trial court. Appellant and victim PW4 Santosh Kumar are related to each other. Appellant is nephew of PW4. In *Jetha Ram vs. State of Rajasthan* (2006) 9 SCC 255, *Murugesan vs. Ganapathy Velar* (2001) 10 SCC 504, *Ishwarlal vs. State of M.P.* (2008)

15 SCC 671 and Narinder Singh & Ors. vs. State of Punjab & Anr. (2014) 6 SCC 466, Supreme Court reduced the sentence imposed on the appellant as an accused by taking into account the factum of compromise between the parties. In the instant case, parties are closely related to each other. Appellant is nephew of injured PW4 Santosh Kumar. Appellant's wife has deserted him. She has left behind two minor children. Mother of appellant is not able to see properly. Appellant has already remained in jail for about two years.

5. Keeping in mind the above noted facts and circumstances of the case, sentence of appellant is reduced to the period already undergone by him. Appellant be released from jail, if not required in any other case.

6. Appeal is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous. Dasti.

A.K. PATHAK, J.

MARCH 19, 2018
r.bararia