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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 1st October 2018

+ CRL.A. 475/2006 and Crl.M.A.4355/2017

RIYAZ @ RIYAZUDDIN

..... Appellant

Through: Mr.Sachin Aggarwal, Advocate
with Ms. Varsha Choudhary,
Advocate along with appellant
in person.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for the State with SI Devendera
Rawat, PS Sadar Bazar.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into first information report (FIR) No.178/2004 of Police Station Sadar Bazar, the appellant herein was summoned and sent up for trial in Sessions Case No.113/2005, which was held in the court of Additional Sessions Judge, Delhi, he having been proceeded against on the charge for offence punishable under Sections 341/308/506 of Indian Penal Code, 1860 (IPC) allegedly committed in the course of the incident that had occurred at about 11.00 p.m. on 12.04.2004, in the area described as Barnawali Masjid, Kasabpura within the

jurisdiction of the said Police Station, the first informant Mohd. Gulfam (PW-1) being the victim. On the basis of the evidence adduced, the trial court rendered its judgment on 24.05.2006 acquitting the appellant on charges under Sections 341/506 IPC, but holding him guilty and convicting him for offence punishable under Section 308 IPC. By order dated 26.05.2006, the trial Judge pronounced the punishment in the form of rigorous imprisonment for two years with fine of Rs.1,000/- for the offence under Section 308 IPC.

2. The acquittal of the appellant on the charge for offences under Sections 341/506 IPC was not challenged by the State by any appeal or petition for leave to appeal. The same, thus, has attained finality. The conviction and the order on sentence qua the offence under Section 308 IPC has been assailed by the appeal at hand which has remained pending all these years.

3. The FIR of the case was initially registered for offences under Sections 341, 323, 506 IPC. On the basis of the then assessment of the evidence, charge under Section 308 IPC, however, was also framed. In the considered opinion of this court, charge under Section 308 IPC cannot be held to be proved. Though the evidence would show that the appellant was wielding a cutting instrument (*chhuri*) at the time of assault on the person of victim, such weapon was never used. The only injury inflicted was by the blunt edge, it having been found as per the medico legal certificate (Ex. PW5/A) as proved by Dr. Pawan Rawal (PW-5) to be simple in nature. There is no evidence

of any excessive force having been used and therefore, it cannot be said that the intention was to cause such bodily injury as was likely to cause death. In these circumstances, the conviction for the offence under Section 308 IPC cannot be upheld. The guilt of the appellant only for the offences under Section 323 IPC has been brought home. The conclusion is modified accordingly.

4. On 19.02.2017, the appellant submitted Crl. Misc. Application No.4355/2017 submitting that the offence under Section 308 IPC has also been settled amicably by a compromise entered into with the victim Mohd. Gulfam (PW-1). The Compromise Deed/Settlement Deed dated 18.02.2017 was submitted with the said application. Under directions of the learned predecessor bench by order dated 07.03.2018, the SHO of Police Station Sadar Bazar has made necessary verification and submitted report dated 25.04.2018. The victim Mohd. Gulfam, on being examined, has confirmed that he has amicably resolved the dispute with the appellant having settled the matter.

5. The offence under Section 323 IPC may be compounded by the person to whom hurt is caused in terms of Section 320 Cr.P.C. In the facts and circumstances of the case where both the parties were residents of the same area, they having agreed to bury the past and move ahead in life, the compromise deed submitted is accepted. The offence under Section 323 IPC for which the conviction has been modified stands compounded. In the result, the proceedings come to an end with the appellant having been acquitted on compounding of the offence.

6. The impugned judgment and order on sentence of the trial court stand vacated.

7. The appeal and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 01, 2018

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