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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 663/2018 & CrI.M. (B) 995/2018

PANKAJ @ SANDEEP @ BACHCHA

..... Appellant

Through: Mr. K. Parameshwar, Advocate
with Mr. M.V. Mukunda,
Advocate.

versus

STATE

..... Respondent

Through: Mr. K.S. Ahuja, APP for State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

ORDER

27.08.2018

Dr. S. Muralidhar, J.:

1. The present appeal is directed against the judgment dated 24th February 2018 passed by the Additional Sessions Judge, Pilot Court, North District, Rohini, Delhi in SC No.483/2017 arising out of FIR No.382/2016 registered at PS Jahangir Puri whereby the Appellant was convicted for the offence punishable under Section 302 read with Section 34 IPC, Section 307 read with Section 34 IPC, Section 341 read with Section 34 IPC, Section 323 read with Section 34 IPC and Section 455 read with Section 34 IPC but was acquitted for the offence under Section 324 read with Section 34 IPC. The appeal is also directed against the order dated 26th February 2018 whereby the Appellant is sentenced as under:

- (i) Imprisonment for life with fine of Rs.5,000/- for the offence under Section 302 read with Section 34 IPC, and in default of payment of fine, to further Simple Imprisonment ('SI') for one year.
- (ii) Rigorous imprisonment ('RI') for 14 years with fine of Rs.5,000/- for the offence under Section 307 read with Section 34 IPC, and in default of payment of fine, to further SI for one year.
- (iii) RI for 7 years with fine of Rs.2,000/- for the offence under Section 455 read with Section 34 IPC, and in default of payment of fine, to further SI for six months.
- (iv) SI for 1 year for the offence under Section 323 read with Section 34 IPC.
- (v) SI for 1 month for the offence under Section 341 read with Section 34 IPC.

2. At the outset, it is required to be noticed that the Appellant was sent up for trial along with five other co-accused, viz. Islam (A-1), Kishan (A-2), Suresh @ Pawan (A-3), Kali @ Sonu (A-4), and Saddaq Hussain (A-5), who were all separately convicted in an identical fashion by the trial court by its judgment dated 13th November 2017 in SC No.59365/2016 arising out of the same FIR No.382/2016 and were sentenced by an order dated 18th November 2017 in an identical fashion. Against the said order of conviction and sentence, those co-accused filed separate appeals which were all disposed of by a judgment dated 21st March 2018 in Crl.A. Nos.34/2018, 159/2018, 162/2018, 163/2018, and 61/2018, whereby they were acquitted of the offences punishable under Sections 302/34, 307/34, 341/34, 323/34, and 455/34 IPC while convicting them for the offence punishable under

Section 324/34 IPC for causing simple injuries with a sharp edged weapon to Jeet Kumar. The sentence for the said offence was confined to the period already undergone by them.

3. Learned counsel for the Appellant points out that the case of the present Appellant is no different except to the extent that he absconded and was apprehended later and was sent up for trial separately.

4. Learned APP drew the attention of the Court to the specific allegation *qua* the present Appellant as regards the assault on the deceased Vijay, i.e. “Suresh and Kishan also entered the *jhuggi* and assaulted him on his head and leg. In the meanwhile, Sandeep, Sonu, and Islam also climbed on the *jhuggi* from the other side and they also assaulted him with the knife”. The Court sees no difference in the allegations *qua* the present Appellant when compared with the allegations against the co-accused Sonu and Islam.

5. It has been pointed out that by this Court’s judgment dated 21st March 2018 in CrI.A.139/2018 and connected appeals, this Court saw it fit to acquit the co-accused of the present Appellant of all the offences for which they had been convicted by the trial Court. Further, this Court saw it fit to convict the co-accused of the present Appellant for the offence under Section 324 read with Section 34 IPC and confined their sentence to the periods of imprisonment already undergone.

6. Since the Court finds the basic allegation against the present Appellant to be not any different from the allegations against the co-accused and with the

evidence being common to all of them, it is not possible to take a view different from the view taken by the court *qua* the other accused.

7. It is then pointed out by the learned APP that the present appellant is a 'Bad Character' and evidence regarding his previous involvement in other criminal cases were already placed on record before the trial Court in a separate status report filed. The Court has perused that status report. What is stated there has been relevant for the purposes of sentencing of the Appellant for the substantive crimes of serious nature if he has been found guilty of those offences. The Court does not see it constituting evidence as regards the Appellant's involvement in the present case and for crimes with which he has been charged.

8. Since the allegations against the present Appellant are no different from those made against the co-accused, his conviction for the offence under Section 323 read with Section 34 IPC is converted to one under Section 324 read with Section 34 IPC. The Appellant is acquitted, like the co-accused have been, of the remaining offences with which he was charged. He is sentenced for the offence under Section 324 and Section 34 IPC to the period already undergone by him including the default sentence for non-payment of fine.

9. The impugned judgment dated 24th February 2018 and the order on sentence dated 26th February 2018 stand modified accordingly. The Appellant shall be released forthwith unless wanted in some other case. He will fulfill the requirements of Section 437A Cr PC to the satisfaction of the

trial Court at the earliest. The trial Court record be returned together with the certified copy of this judgment.

10. The appeal and pending application stand disposed of.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 27, 2018
"shailendra"