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

+ **Date of Decision: 06.05.2019**

% **CRL.A.98/2010**

RAJ KUMAR @ RAJUAppellant

Through: Mr. Abhishek Sabharwal,
Advocate.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Tarang Srivastava, APP for
State.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

A.K. CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant assails the judgment dated 12.12.2009 and the order on sentence dated 06.01.2010 passed by the ld. ASJ on the trial of the offence under Section 307 IPC.

2. Concisely, the undisputed facts are that the appellant was married to PW-1 Ms. Sheetal in the year 2005 and on account of matrimonial discord, PW-1 started living separately, with her mother PW-2 Ms. Nisha. As the prosecution's case goes, on 12.09.2006 at about 11.30 a.m., when PW-1 and

PW-2 were going for work and reached Pusa Gate Red Light, the appellant assaulted them with a razor. Multiple clean wound injuries by PW-1 and few clean wound injuries by PW-2 were sustained by them. On the same day, the appellant was apprehended and the weapon of offence i.e. ustra Ex.P1, is also said to have been recovered. Appellant was tried for the offence under Section 307 IPC. Vide the impugned judgment, the ld. ASJ convicted the appellant for the offence under Section 324 IPC and vide the impugned order on sentence, the appellant was sentenced to three years rigorous imprisonment with fine of Rs.5,000/-, in default, three months simple imprisonment. Aggrieved thereof, the appellant has preferred the instant appeal.

3. During the course of hearing, ld. Counsel for the appellant, on instructions, submits that the appellant does not press the challenge to the judgment of conviction, but, for the order on sentence. In his submissions, the incident is the outcome of a matrimonial discord and temperamental issues at the young age of the appellant. In his submissions, the appellant does not have any criminal antecedents and that the incident is the offshoot of human error, and, temperamental misdemeanor, attributable to him at his prime age. During the course of hearing, it also comes to be pointed out that the extent of injuries, though multiple, the ld. ASJ itself took note of the fact that the intent of the appellant in the assault was not such to cause any serious injury inasmuch as no vital part of the body was chosen. It is thus contended on behalf of the appellant that it was a fit case where the

appellant should have been given the indulgence of release on probation itself and that the sentence awarded was very excessive, keeping in view the nature of offence of the injuries inflicted and the background of the occurrence of the incident. It also comes to be submitted on behalf of the appellant that but for the subject matter, no other proceeding of any kind is initiated by the appellant's wife or the mother-in-law till now, and, that, this circumstance also indicates that though the subject incident took place, the injured were not having any other persisting issue with him.

4. Mr. Srivastava, Id. Addl. Public Prosecutor for the State on his part however submits that the sentence is wholly justified in view of the fact that the appellant had used a dangerous weapon and attacked several times not only his wife Ms. Sheetal PW-1 but his mother-in-law Ms. Nisha PW-2 also, and, that, though the injuries have been opined to be simple, the repeated assaults with a dangerous weapon show that his intention was to inflict serious injuries, and, therefore, the appellant does not deserve any leniency. In support of such submissions, Mr. Srivastava adverts to MLC Ex. PW12/A of Ms. Sheetal-PW1 and points out that the very first injury mentioned in the MLC speaks of 10x2 cm. clean linear wound upper cervical region extending from chin 5 cm. below ear lobule and deep muscles were exposed. In his submissions, the five clean linear wounds suffered by Ms. Sheetal-PW1 and her mother Ms. Nisha-PW10 who sustained three clean linear wounds reflects serious intention of the appellant to cause substantial harm

to both of them. In his submissions therefore, the appellant did not deserve any leniency.

5. Undoubtedly, the multiple injuries, which are clean linear wounds, sustained by both the mother and the daughter-PW10 and PW1 respectively, do attract attention. During the course of hearing, it occurred to the Court that any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain or unable to follow his ordinary pursuits would fall within the definition of grievous hurt as defined in Section 320 IPC. On this, Id. APP was queried as to whether the prosecution had proved any discharge summary, in the event, any of the injured were hospitalized. Nothing however emerges from the record for any of the injured having been hospitalized for any point of time. During the perusal of the record, the Court stumbles upon the bail order dated 18.10.2006 passed by the Id. Addl. Sessions Judge, which records that both the injured were discharged from the hospital on the same day and that the accused-the appellant has been in J.C. for more than one month at that point of time. Though, according to the Id. Counsel for the appellant, on instructions, the appellant has been in J.C. for 45 days. Not only the absence of any hospitalization of the injured, Doctor PW-7, who examined both the injured and prepared their MLCs has opined the nature of the injuries to be simple and during cross, has then also deposed that the injuries mentioned on MLC Ex.PW7/A were skin deep injuries only. In the face of such substantive deposition of the Doctor, the contention raised by the Id. APP to the contrary

adverting to the injury which is 10x2 cm clean linear wound, loses any weight, as is sought to be contended. The substantive evidence proved on record leads to unresistable conclusion that the injuries sustained, though multiple, were simple. The incident undisputedly was an outcome of a matrimonial discord and happened at a public place in broad daylight, which only reflects misdemeanor attributable to the agitated mind of a young boy, on account of differences with his own wife and nothing more. For that he has been in jail for more than a month and then has faced the agony of not only the trial, but, till now, while the incident is of the year 2006 i.e. almost 13 years have gone by.

6. Keeping in view the totality of the facts and circumstances, while upholding and maintaining the conviction of the appellant under Section 324 IPC, the impugned order on sentence is modified to the period undergone by the appellant.

Appeal stands disposed off accordingly.

A.K. CHAWLA, J.

MAY 06, 2019

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