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

+ **CRL.A. 652/2019**

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DATE OF DECISION: 17th December, 2019

STATE

....Appellant

Through: Ms.Aashaa Tiwari, APP for State
SI Rahul, PS Bhajanpura

versus

RAJA

....Respondent

Through: Mohd. Arif and Mr.Fakhruddin,
Advts

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J (Oral)

CRL.M.A. 10870/2019 (condonation of delay)

Present application has been filed under Section 482 Cr.P.C read with Section 5 of the Limitation Act for condonation of delay of 34 days in filing the appeal.

Keeping in view the averments in the application, the same is allowed and delay of 34 days in filing the appeal is condoned.

Accordingly, present application stands disposed of.

CRL.A. 652/2019

1. The present appeal is instituted on behalf of the State - appellant under Section 377(3) of the Code of Criminal Procedure, 1973, (hereinafter referred to as "Cr.P.C.") against the impugned judgment dated 05.02.2019 passed by the Court of learned District & Sessions

Judge, Karkardooma Courts, Delhi, in Sessions Case No. 239/17 in FIR No.499/16, registered at Police Station Bhajanpura under Sections 307/34 of the Indian Penal Code,1860 (hereinafter referred to as “IPC”) whereby the respondent was convicted for the offence punishable under Section 308 IPC and was sentenced for the period already undergone by him, i.e., 2 months with a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for a period of six months.

2. Brief facts of the case are as under:-

- i. *On 09.07.2016 at about 9.30 pm at main gate Bhagat Singh Park, Yamuna Vihar, Delhi, accused Raja along with his associate Nawab (Juvenile) in furtherance of their common intention had caused three injuries on the person of one Naveen with a Daav (coconut cutting instrument).*
- ii. *Accused Nawab was apprehended at spot, who disclosed the name of accused Raja. The accused caused three injuries on the person of Naveen. Injuries were opined as simple in nature.*
- iii. *On 10.07.2016 accused Nawab along with complainant Naveen led the police comprising of PW6 Ct. Nitin and PW14 SI Shailender to Gali No. 7, Brij Puri, Delhi from where on pointing out of accused Nawab and complainant Naveen, accused Raja was arrested.*

3. Charge was framed against the accused on 08.09.2017 for the offence punishable under Sections 307/34 IPC.

4. To bring home the guilt of the accused, the prosecution examined 14 witnesses in all. Statement of the accused was recorded under Section

313 of Cr.P.C by the trial court wherein he pleaded not guilty and claimed trial and chose not to lead any evidence in his defense.

5. After hearing the counsel for both the sides and on appreciation of entire evidence available on record, the trial Court convicted the accused for the offence punishable under Section 308 IPC.
6. Ms. Aashaa Tiwari, Learned APP for the State states that the respondent had caused multiple injuries to the victim using a *Daav*, i.e. a coconut cutting instrument which is a 'sharp edged weapon' falling under the category of 'dangerous weapon' and consequently, the offence punishable under section 307 IPC is made out. She prays that the respondent be convicted under Section 307 IPC and the aforesaid sentence awarded by the trial court be enhanced as it is wholly inadequate.
7. She further contended that as per the MLC of injured Naveen, the three injuries found on the person of the injured itself indicate that they have been caused on the vital parts of body, i.e. the head, the wrist and the shoulder with a motive and intention to kill and thus the case falls under section 307 IPC and not 308 IPC.
8. She further contended that there may be some minor and unaffected observations but there are no material contradictions in the testimonies of Injured Naveen (PW-1) and he also identified the accused and blood stained clothes which he was wearing at the time of the incident.

9. In support of her contention, she relied upon **Sagayam vs State of Karnataka (2000) 4 SCC 454**, wherein, it has been held as under:

“6. To justify conviction under this Section under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act fore boding death. It is sufficient in-law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First intention to commit it; second preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt falls, the crime is not complete but law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.”

10. The learned counsel for respondent, on the other hand, argued that the accused and the victim were unknown to each other and hence there could not be any motive for accused to cause injuries to the victim.
11. The learned counsel for respondent further contended that as per MLC, the injury caused to the victim has been assessed as “Simple” by doctor, therefore, the case of the prosecution would fall under section 323 IPC. The offence being covered or falling within the purview of Section 323 IPC, the convict is liable to be granted benefit of probation, if not acquitted.
12. Learned counsel for respondent further argued that the recovery of the weapon of offence, i.e. *Daav*, is highly doubtful as the prosecution has failed to throw any light as to how the *Daav* came to

be recovered. The recovery of the *Daav* has been shown from the park and that too in the absence of public witnesses.

13. We have heard the learned counsel for both the parties.
14. At this stage, we deem it appropriate to refer to the findings of the trial court. The trial Court while convicting the respondent under Section 308 IPC has held as under:-

“43. In the present case, it has been clearly established that the incident happened on the spur of the moments. Accused Raja had lost control over himself when he was resisted by PW 1 Naveen on the premise of mocking at him with mask of some animals. PW1 Naveen started to leave the place however at that time accused Raja had attacked him with chopper causing him three injuries. One on the head, second on at the wrist and third one at the shoulder region of the injured. Clearly, the injuries show that there is no intention of the accused Raja to commit murder of the complainant. All that had happened may have been because Raja had lost control over himself. Merely because of his crushed ego, he had inflicted those injuries. The accused should not have become too casual with unknown person. He was the person at fault in the said situation.

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45. It is a settled law that in order to bring a case within the ambit of section 308 IPC, it is of utmost importance that as to on which part of the body, accused had chosen to hit. Apart from this, it is also of importance as to how many blows were given and the nature of weapon used by the accused.

46. From the medical evidence, it is clearly discerned that though the nature of injuries were opined by the Doctor as

simple, yet, it is important to note that one of the injuries was on the head of the injured. Needless to say that head is one of the vital and most important part of the body and any injury to it may have proved fatal for the injured. When accused Raja has given the head injury, he must have desired knowledge that it may cause serious injury to the injured.....

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56. In view of the entire conspectus of facts and circumstances of the matter, the prosecution has been successfully able to prove its case beyond a reasonable doubt against accused Raja for the offence punishable under Section 308 of the Indian Penal Code.

57. Accused Raja is hereby convicted for the offence punishable under Section 308 of the Indian Penal Code.”

15. The impugned order notes that the respondent-accused is a young boy who has his entire life ahead of him and has no previous criminal record or conviction. The ill action of the accused not only leaves an indelible scar on the victim's family but to some extent, he also puts his own family into a lot of trouble and peril. The social standing and impact on societal fabric of the accused as a whole is also worth pondering over.
16. Having perused the findings of the trial court, it is imperative to refer to the relevant provisions of IPC, i.e., Sections 307 and 308 IPC, which read as under:

*A. **307. Attempt To Murder-** Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and,*

if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by Life Convicts: *When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.*

B. 308. Attempt to Commit Culpable Homicide- *Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

17. Perusal of the aforesaid provisions shows that an offence punishable under Section 307 IPC requires the same factors to be proved as are needed to prove an offence under Section 302 IPC, except that the act falls short of causing death. In order to attract penalty under Section 307 IPC, it is material to show that the accused person had intention to commit murder.
18. On the other hand, Section 308 IPC provides for punishment for an act done with such an intention, and under such circumstances that if death was caused by the said act, it would amount to culpable homicide not amounting to murder.
19. Consequently, the question for consideration before this Court is that if the death of the victim had been caused pursuant to the act of the respondent, would it amount to offence of murder punishable under Section 302 IPC or not.

20. Perusal of the paperbook reveals that the incident in the present case had taken place after the respondent had tried to scare the victim-Naveen (PW-1) using an animal face mask which had lead to a verbal altercation between them and thereafter, the respondent attacked the victim using a *daav* (coconut cutting weapon).
21. In view of the facts of the case, even if death had been caused, the offence punishable under Section 302 IPC would not be made out as the act of the respondent would squarely fall in Exception No. 1 to Section 300 IPC which reads as under:-

Exception 1.—When culpable homicide is not murder.—
Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

22. The Supreme Court in *State of Andhra Pradesh vs Rayavarapu Punnayya and Another (1976) 4 SCC 382* has held that if the case comes within any of the exceptions enumerated in Section 300 IPC, the offence would be ‘culpable homicide not amounting to murder’.
23. It is also evident from the facts that accused Raja had caused three injuries on the person of injured Naveen on 09.07.2016 with a *Daav* (coconut cutting knife), however, the injury was opined as simple by the doctor (PW-12) which stands corroborated with MLC (*Ex.PW10/A*). The relevant portion of MLC (*Ex.PW10/A*) reads as under:-

“SURGERY NOTES

As per surgical record, nature of injury is simple.”

24. This Court in *State (Govt. of NCT of Delhi) vs. Sonu, Crl.A. 1256/2019* decided on *21st November, 2019* has held that Section 307 IPC prescribes no minimum sentence and the trial court can award the maximum sentence provided therein i.e. life imprisonment or any sentence upto ten years after taking into account all the aggravating and mitigating circumstances of the case.
25. Consequently, this court is in agreement with the finding of the Trial Court that the incident had taken place at the spur of the moment on account of the verbal altercation between the victim and respondent and the respondent did not have any motive to commit the murder. Also, it is an admitted fact that the respondent was not known to the victim prior to the incident.

26. Further, it has been held by this Court in ***State (Govt. of NCT of Delhi) vs. Sonu*** 2019 SCC OnLine Del 11259 that enhancement of a sentence by an Appellate Court is justified in cases only where the sentence is manifestly inadequate. The relevant portion of the judgment in ***State (Govt. of NCT of Delhi) vs. Sonu*** (supra) is reproduced herein below:-

“12. In India, appeals against inadequate sentences are possible to the superior Courts i.e. High Courts and ultimately to the Supreme Court under the powers given to them in the Criminal Procedure Code and the Constitution. The scope of challenge to the sentence awarded by the Trial Court in appeals is, however, limited as is made clear in the various pronouncements of the Apex Court. The question of sentence is normally a matter of judicial discretion of the trial court and the superior Court does not as a rule interfere with the exercise of such discretion. In a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment. Enhancement of a sentence by an appellate Court is justified in cases only where there is a „particular and cogent“ ground warranting interference.

*13. Consequently, interference is only called for when it is manifestly inadequate. The Supreme Court in **Ram Narain and Ors. Vs. State of U.P.** 1970 (3) SCC 493 has held as under:-*

“5.Merely because the appellate court feels that left to itself it would have preferred to impose the sentence of death is by itself and without more not a sufficient ground to justify enhancement. It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that enhancement of the sentence may be justified by the appellate Court.

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7. *It is true that this Court normally does not interfere with the discretion exercised by the High Court on the question of sentence even though the same has been enhanced but where the trial court has exercised its discretion on proper consideration of the material on record and its order cannot be described to be either contrary to recognised principle or otherwise having caused failure of justice and further when the State does not consider that the ends of justice require enhancement of the sentence but the High Court interferes at the instance of a private complainant this Court would be fully justified in considering for itself the propriety of the sentence as enhanced by the High Court.*”

(emphasis supplied)

ENHANCEMENT OF A SENTENCE BY AN APPELLATE COURT IS JUSTIFIED IN CASES ONLY WHERE THE SENTENCE IS MANIFESTLY INADEQUATE.

14. *In broad terms, the appellate Court will interfere when:-*

- a) *The sentence is not justified by law, in which case it will interfere not as a matter of discretion, but of law;*
- b) *Where sentence has been passed on a wrong factual basis;*
- c) *Where some matter has been improperly taken into account or there is some fresh matter to be taken into account; or*
- d) *Where the sentence was wrong in principle or manifestly excessive/inadequate.*

15. *The above-mentioned categories are not exhaustive and they may overlap.*”

27. In view of the aforesaid facts and mandate of law, this Court is of the view, that the trial court committed no error in convicting the respondent under Section 308 IPC as the respondent had acted whilst being deprived of the power of self-control on account of grave and sudden provocation.
28. Hence the impugned order was passed after consideration of all relevant factors and the sentence awarded is not manifestly inadequate. Accordingly, present appeal, being bereft of merit, is dismissed.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

DECEMBER 17, 2019
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