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

+ **CRL.A. 1066/2019**

RAHUL

..... Appellant

Through Mr Pranay Abhishek, Advocate.

versus

STATE

..... Respondent

Through Ms Kusum Dhalla, APP for State.  
SI Govind Singh, P.S. Uttam Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**19.09.2019**

**CRL.M.A. 36180/2019**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

**CRL.A. 1066/2019 & CRL.M.(BAIL) 1644/2019**

3. The appellant has filed the above captioned appeal impugning a judgment dated 21.08.2019 and an order on sentence dated 23.08.2019, passed by the learned ASJ, Dwarka Courts, New Delhi. By the impugned judgment, the petitioner was convicted of an offence under Section 457 read with Section 511 read with Section 34 of the Indian Penal Code, 1860 (IPC). The appellant was also convicted of an offence under Section 308 read with Section 34 of the IPC. He was sentenced to serve a period of two years rigorous imprisonment for the offence under Sections 457/511/34 of the IPC. He was also imposed a fine of ₹5000/- and on failure to pay the same,

he was further directed to undergo two months simple imprisonment. In addition, the appellant was also awarded a sentence of three years rigorous imprisonment for the offence under Sections 308/34 of the IPC, and was also directed to pay a fine of ₹15,000/-. The learned counsel appearing for the appellant states that the fines have already been paid.

4. It is also stated that appellant has undergone physical custody of more than two years. The learned counsel appearing for the appellant submits that the the appellant is willing to accept the conviction, however, he prays that the sentence be reduced to the period already undergone.

5. Insofar as the conviction under Section 308 of the IPC is concerned, it is pointed out that the testimony of PW 1 was that he was hit on the head 20 or 22 times by the appellant. This was not accepted by the learned ASJ as the said allegation was not substantiated by the MLC, which indicated that only one blow had been made. Nonetheless, the learned ASJ did not reject the entire testimony of PW 1 but accepted that the appellant was guilty of delivering the blow.

6. Undeniably, there is doubt as to the nature and the manner in which the incident had occurred. In view of the above, this Court considers it apposite to accept the plea that the sentence be reduced to the period already served. Accordingly, the order dated 23.08.2019 is modified to reduce the sentence to the period already served/undergone. This is subject to the confirmation that the petitioner has already paid the fines, as stated by the learned counsel appearing for the appellant.

7. The appeal is disposed of in the aforesaid terms.

8. In view of the above, the application (CRL.M(BAIL) 1644/2019) also does not survive.
9. Order *dasti* under the signature of Court Master.

**VIBHU BAKHRU, J**

**SEPTEMBER 19, 2019**

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