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

+ **CRL.A. 551/2017 & CRL.M.A. 36130/2019**

ARVIND

..... Appellant

Through: Mr Dhan Mohan, Mr Tanu B. Mishra,
Mr Harkamal Jeet Kaur and Mr Ravi
Mishra, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with SI Madan Mohan, PS
Ranhola,

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.11.2019

1. The appellant has filed the present appeal impugning a judgment dated 07.04.2017, whereby the appellant was convicted of the offences punishable under Sections 307/34 of the IPC, in connection with FIR No. 759/2014 registered with Police Station Ranhola. The appellant also impugns the order on sentence dated 29.04.2017, whereby the appellant was sentenced to rigorous imprisonment for seven years and a fine of ₹25,000/- (in default of which, simple imprisonment for a period of four months).
2. The said FIR was registered in relation to an incident that had occurred on 03.10.2014, whereby the appellant had inflicted grievous injuries to victim (Amit) by stabbing him twice in his abdomen.
3. It is stated that a *jagran* was held around 01.10.2014 and certain

flower pots, which were kept in front of Amits's house, were broken. This led to a quarrel between Amit and some boys (2-3 in number) on 01.10.2014.

4. On 03.10.2014, at 8.00 p.m., Amit was standing outside his house. His mother (Smt Manju Badoria) and his uncle (Sh Vijay Kishore Badoria) were also standing at some distance from him. He stated that he was talking on his phone, when five to six persons had come to him. These persons included the appellant, one Gaurav and three other boys. The three other boys were below the age of 18 years (hereafter referred to as 'JCLs'). According to him, the boys had come to avenge the incident of 01.10.2014.

5. He stated that Arvind and Gaurav started beating him and when he tried to free himself from them, the three JCLs also started assaulting him. They dragged him to an open plot behind his house and forced him down towards earth. Amit stated that one of the JCLs took out a pointed object and gave the same to another JCL who then struck him on the rear of his left shoulder. He stated that he fell down and thereafter all five persons beat him up with kicks and fist blows.

6. He stated that as the accused persons tried to leave the spot, he tried to apprehend one of them and managed to catch hold of the appellant. At that stage, Gaurav stabbed him with a knife on the right side of the abdomen and the appellant managed to release himself from his clutches. The appellant then took out a knife and stabbed him on the left side of his abdomen. He stated that his uncle and his mother came towards him to rescue him. His uncle also succeeded in apprehending Gaurav but had to release him on being threatened with a knife. The appellant and Gaurav had threateningly

shown a knife to his mother, and also pushed her.

7. The Trial Court accepted the testimony of Amit and convicted the appellant for offences under Sections 307/34 of the IPC. Gaurav could not be arrested and the three JCLs were proceeded against separately.

8. Dr Ranjeet Singh Gandhi (PW 9) deposed that on local examination of the victim (Amit), two injuries were found. One was a stab injury on the right abdominal wall which was approximately 6" in depth. The second stab injury was on left abdominal wall and was 6-1/2" deep.

9. Thereafter, by an order dated 29.04.2017, the Trial Court sentenced the appellant to Rigorous Imprisonment for a term of seven years and also imposed a fine of ₹25,000/-. The Court further directed that in default of payment of fine, the appellant would also serve simple imprisonment for a period of four months.

10. Mr Dhan Mohan, learned counsel appearing for the appellant did not press the challenge to the appellant's conviction under Sections 307/34 of the IPC. He has restricted the present appeal to the quantum of sentence awarded to the appellant.

11. Mr Dhan Mohan, contended that the appellant was entitled to the benefit of Section 360 of the Cr.P.C. and, therefore, ought to have been released on probation. He submitted that at the material time, the appellant was just over 18 years old. He had no prior criminal antecedents or any involvement in any other crime. He submitted that therefore, the appellant was entitled to be left on probation in terms of Section 360 of the Cr.p.c.

12. This Court finds no merit in the aforesaid contention. An offence

under Section 307 of the IPC is punishable for imprisonment for life if the offender has caused any hurt by an act which would amount to murder if the said act has resulted in the death of the victim. In the present case, the appellant had inflicted a dangerous injury to Amit and such an offence was liable to be punished for imprisonment for life or any other term of imprisonment.

13. An offender below the age of 21 years of age can be released on probation of good conduct under Section 360 of the Cr.P.C., however, the benefit of the said provision is not available if he/she is convicted of an offence which is punishable by death or imprisonment for life.

14. Having stated the above, this Court is of the view that in view of the mitigating circumstances, it is apposite to take a lenient view, insofar as sentencing the appellant is concerned. The appellant was 18 years of age at the material time. Admittedly, he had no prior criminal involvements. It is also important to note that the said incident was related to a quarrel/a scuffle that had happened earlier between the appellant, his accomplice Gaurav and Amit (victim). The quarrel/scuffle was over some broken flower pots.

15. The Trial Court had noticed the mitigating factors. The Court had also noticed that the appellant has a younger brother who is about two to three years younger than him. The appellant was a student of Class 11th and he was also working for gain to assist his family. In addition, the Trial Court had also noted that the prosecution had also not prayed for awarding the maximum sentence.

16. Keeping in view the mitigating factors in mind, the Trial Court had not awarded the maximum sentence. However, this Court is of the view that

the sentence of seven years awarded to the appellant is also on the higher side considering the entire circumstances.

17. The learned counsel appearing for the appellant has also referred to various decisions where a much lower sentence has been awarded for a similar offence [See *Tukaram Gundu Naik v. State of Maharashtra: 1994 (1) SCC 465*, *Shanabhai Dulabhai Pamar v. State of Gujarat: AIR 1977 SC 1338*, *Nirmal Singh & Ors v. State of Haryana: 2004 (4) RCR (Cri) 423*].

18. In view of the above, this Court considers it apposite to reduce the sentence awarded to 5 years of rigorous imprisonment and fine of ₹25,000/-. The impugned order dated 29.04.2017 is modified to the aforesaid extent. In the event, the appellant fails to pay the fine, he shall undergo simple imprisonment for a further period of four months.

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

VIBHU BAKHRU, J

NOVEMBER 29, 2019

pkv