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

% *Date of decision: September 26, 2022*

+ **CRL.A. 263/2022 & CRL.M.(BAIL) 712/2022**

KARAN @ BHAGTO HALDAR Appellant
Through: Mr. Sudarshan Ranjan and
Mr. Ramesh Rawat, Advocate with
the appellant in person.
versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Hitesh Vali, APP for the State
with Ms. Akanksha Sharma,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN
J U D G M E N T (oral)

1. The present appeal is filed under section 374 Cr.P.C read with section 482 Cr.P.C to set aside the impugned judgment dated 01.12.2021 and order on sentence dated 04.05.2022 passed by the Court of Shri Suresh Kumar Gupta, the Principal District and Sessions Judge, District North West, Rohini Courts, Delhi in sessions case bearing no. 62/2019 arising out of FIR bearing no. 395/2018 registered under section 307 IPC at P.S. Kanjhawala.
2. The necessary facts required to be mentioned for the disposal of the present appeal are that ASI Ramesh after receipt of DDA bearing No. 47A on 11.10.2018 along with constable Punit reached at house bearing No. A-537, J.J. Colony, Sawada, Delhi, where he came to know that the injured Rajesh has already been taken to SGM Hospital, Mongol Puri. Thereafter, the beat officials and SHO along with staff also reached at the spot. The

blood was also found to be scattered on the stairs of house bearing No. K-489, J.J. Colony, Sawada, Delhi as well as in the gali (street). ASI Ramesh met with Kesho, wife of Sabir who produced the appellant along with one blood stained knife. ASI Ramesh left the appellant along with case property in the custody of head constable Sudhir and Constable Rakesh who were directed to take care of the spot. ASI Ramesh along with constable Punit went to the hospital and obtained the MLC of the injured. ASI Ramesh also recorded the statement of injured Rajesh wherein, he stated that he is working with Arun at Moteen Sweets, Hissar, Haryana and on 08.10.2018 he came to Delhi from Hissar. On 10.10.2018 at about 8:00PM he went to the house of appellant bearing No. A-494 J.J. Colony, Sawada, New Delhi where both of them consumed liquor. The appellant thereafter, started to abuse the paternal aunt (bua) of the injured. The injured stopped the appellant from abusing his paternal aunt (bua) and thereafter, came out in gali(street). The appellant followed him and stabbed him in the left thigh and stomach. The injured managed to save himself from the appellant and informed the police about the incident and on the basis of the statement of the injured the FIR bearing no. 395/2018 was got registered. After investigation, the chargesheet was filed under Section 307 IPC. The case was stated to be committed to the Court of Session vide order dated 04.01.2019 passed for court of the concerned Metropolitan Magistrate. The charge for the offence punishable under Section 307 IPC was framed against the appellant vide order dated 12.03.2019 to which the appellant pleaded not guilty and claimed trial. The prosecution examined 07 witnesses. The appellant admitted the copy of FIR entry in the registers no. 19 and 21, MLC in respect of the injured as well as the nature of injuries as

mentioned in

MLC as Ex- P6 to P9 vide statement dated 12.07.2019. The appellant was examined under Section 313 Cr.P.C wherein he denied the incriminating evidence against him and pleaded innocence. The appellant preferred not to lead defence evidence.

3. The prosecution proved the statement of PW1 Rajesh Kumar as Ex- PW1/A who also identified the weapon of offence i.e. knife as Ex- P1 and blood stained clothes as Ex- P2 to P4. PW6 ASI Ramesh conducted investigation and PW5 Constable Punit participated in the investigation. The Appellant after considering the material on record was convicted for the offence punishable under section 307 IPC vide impugned judgment dated 01.12.2021 and order of sentence dated 04.05.2022.

4. The appellant being aggrieved filed the present appeal and challenged the impugned judgement on the ground that it is bad in law and facts of the case . The signatures of PW2 were not obtained on the seizure memo. The concerned doctor had not given the opinion whether the weapon of offence i.e., knife Ex-P1 could cause injuries stated to be received by the injured. No offence punishable under Section 307 IPC is made out. The appellant has admitted the documents Ex-P6 to P9 without proper guidance regarding. The impugned judgement is based on conjecture and surmises. The alleged incident happened in the spur of the moment without any pre-meditation and deliberation. It is prayed that the present appeal be allowed and the judgement dated 01.12.2021 and order of sentence dated 05.05.2021 be set aside.

5. The counsel for the appellant also argued primarily, on the grounds as mentioned in the present appeal. He also stated that no proper opportunity

was given to the appellant to cross-examine PW1 Rajesh Kumar which caused denial to the right of fair trial to the appellant. He also argued that the testimony of PW1 Rajesh Kumar cannot be relied upon and the appellant is entitled for the acquittal.

6. The Additional Public Prosecutor appearing on behalf of the respondent no. 1/State justified the impugned judgement and order on sentence by arguing that it was passed on the basis of material proved on record and there is no infirmity in the impugned judgement and order on sentence.

7. The perusal of record reflects that PW1 Rajesh and PW2 Kesho supported the case of the prosecution. PW1 deposed that on 08.10.2018 he came to his house from Hissar and on 10.10.2018 at about 8:00PM he was called by the appellant to his house bearing No. K 494 J.J. Colony, Sawada, Delhi, where they consumed liquor. The appellant slapped him which resulted into a scuffle between them. The appellant also started to abuse his paternal aunt (bua), despite his objection. The injured came out in the gali (street) where the appellant apprehended him and also inflicted stab injuries by using the knife, Ex-P1. The injuries were inflicted in the abdomen, left thigh and left waist. PW1 also proved in his statement as Ex-PW1/A and also identified the knife i.e., the weapon the offence as Ex- P1. PW2 Kesho also supported the case of the prosecution and deposed that on 10.10.2018 at about 10:00 PM to 10:30 PM she came out in the gali (street) after hearing some noise and saw that the appellant was inflicting knife injuries on Rajesh PW1. The appellant had given 3 knife blows on the thigh, stomach and underneath the arm and on the body of PW1 Rajesh in order to kill him. PW2 snatched the knife from the appellant and called the PCR and

thereafter, PW1 Rajesh was moved to the hospital. PW2 also proved seizure memo of the knife as Ex- P2/A and also identified the knife as Ex-P1. PW1 and PW2 also identified the appellant during their respective deposition.

8. PW3 Head Constable, Vinod took the photographs of the site. PW4 ASI Satbir being the in-charge of the mobile crime team, inspected the spot and submitted the crime scene report as Ex-P4/A. PW5 participated in the investigation along with PW6 ASI Ramesh Singh and proved the necessary documents prepared during the course of investigation. PW7 Manish Gupta also proved the forensic reports.

9. PW1 and PW2 supported the case of the prosecution and there is no material contradiction in their respective testimonies. The respective testimonies of PW1 and PW2 proved that on 10.10.2018 the appellant inflicted the injuries on thigh, abdomen and just below the arm by using the knife Ex- P1. The nature of injuries as per the MLC was opined to be grievous. The perusal of impugned judgement reflects that the Trial court has passed the impugned judgement on the basis material available on record and after relying on the testimonies of PW1 and PW2. There is no infirmity and illegality in the judgement dated 01.12.2012 which does not call for any interference.

10. The appellant vide order on sentence dated 04.05.2022 was sentenced to RI for a period of 3 years for offence punishable under Section 307 IPC along with a fine of Rs.10,000/- in default to undergo SI for two months. The benefit of Section 428 Cr.P.C was also granted to the appellant. The appellant has already deposited the fine as informed by the counsel for the appellant.

11. The counsel appearing on behalf of the appellant stated that as per the

nominal roll he has already spent 2 years 1 month and 8 days in the jail during the trial of the case. The appellant is a poor person and has to maintain his entire family and there is none in his family to look after his family. The alleged incident happened in the spur of the moment and without any pre-mediation. The counsel appearing on behalf of the appellant further stated that the appellant be given one more opportunity to reform himself and to be the part of the society. The antecedents of the appellant are clear and he is not involved in any other criminal activities. The injured i.e. PW1 Rajesh Kumar has already been awarded suitable compensation to be paid to Delhi State Legal Services Authority, North West as per rules. In these circumstances, the counsel appearing on behalf of the appellant prayed that he be sentenced for the period already undergone.

12. The appellant is appearing to be a poor person and belongs to a lower stratum of the society. The antecedents of the appellant are clear and he is not involved in any other criminal activities. He has already remained in judicial custody for period of more than 2 years. The appellant has to look after his family comprising of brother and sister. After considering all facts and in the interest of justice, RI of 3 years awarded to the appellant for the offences punishable under Section 307 IPC is reduced to RI of a period of 2 years and 3 months. The appellant is directed to surrender before the concerned Trial Court to undergo remaining period of imprisonment on or before 07.10.2022 at 02:00PM for further directions.

13. The present appeal alongwith pending applications, if any, stands disposed of.

14. The copy of this order be sent to the concerned Trial Court for information.

15. The concerned jail authorities are directed to grant the further remission as per law if the appellant is entitled for remission.

(SUDHIR KUMAR JAIN)
JUDGE

SEPTEMBER 26, 2022/sk/m

