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

% *Date of decision: September 11, 2023*

+ **CRL.REV.P. 19/2009 & CRL.M.A. 3420/2023**

KUMAR GAURAV & ANR.

..... Petitioners

Through: Mr. Shamim A. Khan and Mr. Ashok Kumar, Advocates with P-2 in person.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for State with SI Yogesh, P.S. Sultan Puri.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present criminal revision petition is filed under section 397 Cr.P.C. to impugn the judgment dated 28.11.2008 passed by the court of Sh. Sanjeev Aggarwal, ASJ, Rohini Courts, Delhi (hereinafter referred to as the “appellate court”) in criminal appeal no. 02/2008 arising out of FIR bearing no.1106/1997 registered under sections 326/341/34 IPC at P.S. Sultan Puri.

2. The petitioners were put to trial arising out of FIR bearing no.1106/1997 registered under sections 326/341/34 IPC at P.S. Sultan Puri



on allegation that on 15.12.1997 at about 3:30 PM, the petitioner in the gali opposite to H. No. A-55, Shyam Colony, Budh Vihar, Phase-II, Delhi in furtherance of their common intention, restrained one Ram Swaroop and voluntarily caused grievous injuries to him using a sharp object. After compliance of section 207 Cr.P.C., the charges were framed against the petitioners for the offences punishable under sections 326/341/34 IPC.

3. The prosecution in support of its case, examined eight witnesses including complainant/injured Ram Swaroop as PW-2 besides other public witnesses Sanjay as PW-3 and Maya Devi as PW-8. The prosecution also examined concerned doctors i.e. Dr. Rati Makar as PW-1 and Dr. Maninder Kumar Chhabra as PW-5 who opined the injuries received by the PW-2 Ram Swaroop as 'dangerous' through MLC exhibited as PW-1/A. The prosecution also examined police officials who participated and remained connected with the Investigating Officer. The PW-2 Ram Swaroop supported the case of the prosecution and deposed that on 15.12.1997 at about 3:30 PM, he was wrongfully restrained by the petitioners. He further deposed that the petitioner no. 2 Ashok Kumar caught hold of him and the petitioner no. 1 Kumar Gaurav inflicted injuries using a sharp edged object like a knife on his back. The PW-2 was taken to DDU Hospital. The PW-3



Sanjay and PW-8 Maya Devi also supported the case of the prosecution.

4. The court of Sh. Surinder S. Rathi, MM, Rohini Courts, Delhi (hereinafter referred to as the “**trial court**”) vide judgment dated 28.06.2007 convicted the petitioners for the offences punishable under sections 326/341/34 IPC. Thereafter, vide order on sentence dated 22.08.2007 passed by the court of Dr. Shahabuddin, MM, Rohini Courts, Delhi, the petitioners were sentenced to undergo simple imprisonment for a period of three years along with fine of Rs.5,000/- each and in default of payment of fine, to undergo simple imprisonment for two months for the offence punishable under section 326 IPC. The petitioners were further convicted to simple imprisonment for one month for the offence punishable under section 341 IPC. It was ordered that both the sentences shall run concurrently. The fine is stated to be paid by both the petitioners.

5. The petitioners being aggrieved, filed the appeal bearing CA no.02/2008, which was decided vide judgment dated 28.11.2008 by the appellate court. The Appellate Court upheld the conviction of the petitioners under sections 326/341/34 IPC and reduced the sentence for the offence punishable under section 326 IPC from 03 years to 02 years and the



remaining sentences were maintained by the appellate court.

6. The petitioners being aggrieved, filed the present petition. The perusal of judgment dated 28.06.2007 passed by the trial court and judgment dated 28.11.2008 passed by the appellate court reflects that the courts below had rightly appreciated the testimony of the PW-2, who was the injured as well as the complainant and other eye-witnesses. The courts below have rightly relied upon their testimonies to convict the petitioners. There is no reason to interfere in the judgments on conviction granted by the courts below i.e. the trial court as well as the appellate court.

7. The counsel for the petitioners stated that the alleged incident happened in the year 1997 and both the petitioners have faced trial for a considerable period. The antecedents of the petitioners are also clear and they have not been involved in any other criminal case. The petitioner no. 2 Ashok Kumar has become a senior citizen now. The petitioner no. 1, who is the son of the petitioner no. 2, is a Computer Teacher in Aligarh and is married now and has a family. In these circumstances, the counsel for the petitioners prayed that the sentences of the petitioners be reduced to imprisonment for the period already undergone.

8. The Additional Public Prosecutor for the State/respondent stated that



the injuries inflicted by the petitioners to Ram Swaroop were opined to be 'dangerous' in nature and no leniency can be shown to them under the given facts and circumstances of the case.

9. The petitioner no. 1 Kumar Gaurav was stated to be aged about 17 years at the time of incident and now he is aged about 42 years. The petitioner no. 1 is employed as a Computer Teacher in Aligarh and he is already married. The petitioner no. 1 has to maintain his family and there is no one to look after the entire family. The petitioner no. 2 is stated to be a senior citizen now and he is aged about 69 years. The petitioner no. 2 has to look after his family comprising of his wife, who is aged about 67 years. The petitioner no. 2 and his wife are suffering from various ailments and there is no one in the family to look after them. The antecedents of the petitioner no. 2 are clear. He has never been involved in any other case.

10. As per the nominal roll pertaining to the petitioner no. 1, he remained in judicial custody for 04 months and 02 days and also earned remission of one month. The petitioner no. 2 remained in judicial custody for about 04 months and he also earned remission of one month. After considering the socio-economic position and family responsibilities of the petitioners, their sentence is reduced to the period already undergone for the offence



punishable under section 326 IPC. The petitioners are directed to pay the cost of Rs.20,000/- (Rupees Twenty Thousand Only) each to be deposited in *Aapda Rahat Kosh* set up by the Government of Himachal Pradesh bearing Account no.42088576875, IFSC Code- SBIN0050204 maintained in State Bank of India, Chhota Shimla Branch within 15 days from today and receipt thereof be produced within one week thereafter before the concerned trial court.

11. The present petition stands disposed of along with pending applications.

12. Copy of this order be sent to the concerned trial court for information.

(DR. SUDHIR KUMAR JAIN)
JUDGE

SEPTEMBER 11, 2023

N/AM