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

Date of Decision: 02.02.2023

+ CRL.A. 30/2009

MUSTAFA

..... Appellant

Through: Mr. M.A. Hussain, Mr. M.
Tarique Khan and Mr. Ajay
Kumar Singh, Advocates

versus

STATE OF DELHI & ORS.

..... Respondents

Through: Mr. Manoj Pant, APP for the
State with Inspector Manjusha,
P.S. R.K. Puram, Delhi

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present appeal under Section 374(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by appellant against the judgment dated 08.10.2008 and order on sentence dated 13.12.2008 passed by learned Additional Sessions Judge, New Delhi in case FIR bearing no. 323/2006, registered at Police Station R.K. Puram, New Delhi for offences punishable under Section 393/398/34 of the Indian Penal Code, 1860.

2. The present appeal was admitted on 15.01.2009 and the sentence of appellant was suspended *vide* order dated 22.11.2011 by this Court.

3. Briefly stated, the case of prosecution, before the learned Trial Court was that on the intervening night of 17/18.05.2006, complainant Anil Singh after dropping passenger at Dhaula Kaun was returning home in his vehicle (TSR) bearing No. DL-1RJ-037, when at around 11:45 PM, four boys signaled him to stop his vehicle. Upon boarding the vehicle, the accused persons asked the driver/complainant to go to Sector-8, R.K. Puram. Eventually, one of the accused Mustafa came on front seat and asked the complainant to stop the vehicle, while the other three accused sitting on the rear seat caught hold of him. Thereafter, accused Mustafa took out a knife and asked the complainant to part away with all his money and belongings. Threatened by the same, the complainant raised alarm, pushed accused persons and started running, and accused persons also started running in different directions. In the meanwhile, PCR reached the spot and took the complainant to the Police Station. Upon his complaint, present FIR bearing no. 323/2006 was registered against the appellant and other co-accused for the offences punishable under Sections 398/34 of IPC.

4. The learned Trial Court, *vide* judgment dated 08.10.2008, convicted the appellant under Sections 393/398/34 of IPC and sentenced him to undergo rigorous imprisonment for a period of seven years for offence punishable under Section 398 of IPC; to undergo rigorous imprisonment for a period of three years for offence

punishable under Section 393 read with Section 34 of IPC and fine of Rs.1,000/-, and in default of payment of fine, to undergo simple imprisonment for four months.

5. At the outset, learned counsel for the appellant, upon instructions, submits that the appellant does not propose to assail the impugned judgment on merits and would like to confine the submissions in this appeal, to the point of sentence alone. It is stated that since the incident in the present case is 16 years old, the sentence of the appellant be reduced to the period already undergone by him.

6. Learned APP for the State has argued to the contrary.

7. This Court has heard the parties and perused the material on record.

8. In the present case, the incident had taken place on 17.05.2006 and the appellant was convicted by learned Trial Court on 08.10.2008. The fine imposed upon the appellant had already been deposited by him. As per the Nominal Roll, the appellant had remained in Judicial Custody for about 03 years 08 months and 19 days, with a remission of around 01 year, and his conduct was reported to be satisfactory. It is also not the case that the appellant had misused the liberty of bail granted to him either during the period of trial or during the pendency of the present appeal.

9. The appellant is present before this Court in person. It is stated that the appellant was 19 years of age at the time of commission of offence and as of today, he has two children aged about 2 years and 4 years. It is stated that appellant is not involved in any other criminal case.

10. Considering the overall facts and circumstances of the case, this Court is of the opinion that no useful purpose will be served in requiring the appellant to undergo the remaining portion of sentence at this belated stage, when the appellant has been facing trial for almost 17 years, and is today, looking after his family.

11. Thus, in view of the aforementioned circumstances, this Court, though not interfering with the conviction of the appellant, reduces the sentence of imprisonment to the period already undergone by the appellant.

12. Accordingly, the present appeal stands disposed of in above terms.

13. Bail bond stands cancelled and the surety stands discharged.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/ns