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

Date of Decision: 26.07.2023

+ CRL.A. 315/2011

DALIP @ TULI & ANR

.... Appellants

Through: Mr. Rajender Yadav, Advocate
for Appellant no. 2

versus

STATE

..... Respondent

Through: Mr. Arjun Pant, APP for State
with ASI Ashok and Insp.
Varun Dalal, PS Jahangirpuri

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The instant appeal under Section 374 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the appellants against judgment dated 28.02.2011 and order on sentence dated 01.03.2011 passed by learned Additional Sessions Judge-03, Rohini Courts, Delhi in Sessions Case No. 01/2010 arising out of case FIR bearing no. 424/2008 registered at Police Station Jahangir Puri, Delhi under Sections 308/34 of the Indian Penal Code, 1860 ('IPC').

2. The facts of the present case are that on 20.08.2008 at about 7:15 pm, when the complainant had gone to the market, the accused



persons i.e. the appellants had come and had demanded Rs.1,000/- from the complainant. When the complainant had refused to fulfill their demand, the appellants had hurled abuses at him and upon objection being raised by the complainant to the same, the appellant no. 1 had caught the collar of his shirt and appellant no. 2 had given a blow on his head with an iron rod/saria due to which he had started bleeding and had fallen on the ground. Accordingly, the present FIR was registered and both the accused were arrested. After completion of investigation, chargesheet was filed and charges were framed against the accused person.

3. After conclusion of trial, the learned Trial Court had convicted both the accused persons/appellants for offence punishable under Section 308/34 of IPC and had sentenced them to undergo rigorous imprisonment for a period of three years along with payment of fine of Rs.4,000/- each, out of which Rs.5,000/- was to be paid as compensation to the complainant, and in default of payment of same, to undergo further rigorous imprisonment for a period of six months.

4. During the pendency of the present appeal, appellant no. 1 had passed away and the proceedings against him stood abated *vide* order dated 18.04.2023.

5. At the outset, learned counsel for appellant no. 2, upon instructions, submits that the appellant does not propose to challenge 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 the FIR in this case pertains to the year 2008 and thus, the



sentence of the appellant be reduced to the period already undergone by him.

6. Learned APP for state has argued to the contrary. The Investigating Officer who is present before this Court states that unfortunately, the complainant in this case has also passed away.

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

8. In the present case, the incident in question had taken place on 20.08.2008, and the appellants were convicted by the learned Trial Court under Section 308/34 of IPC. As per records, the fine which was imposed upon the appellants had already been deposited by them, as also recorded by this Court in order dated 11.03.2011 *vide* which the sentence of the appellants was suspended. There is no previous involvement of appellant no. 2 and his conduct was reported to be satisfactory while he was in jail. It is also admitted that he had not misused the liberty of bail granted to him either during the period of trial or during the pendency of the present appeal.

9. As per nominal roll on record, the appellant no. 2 had remained in judicial custody for about 8 days. The offence pertains to the year 2008, and the appellants have faced the trial for almost 15 years, during the pendency of which, appellant no. 1 and even the complainant have unfortunately passed away. As informed to this Court, appellant no. 2 is married and has a minor child to look after. Considering the aforesaid facts and circumstances of the case, this Court is of the opinion that no useful purpose will be served by



requiring the appellant to undergo the remaining portion of sentence at this belated stage.

10. 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 him. However, this Court deems it appropriate to enhance the amount of compensation awarded to the complainant by the learned Trial Court by Rs.25,000/-, which will be paid to the wife of the complainant/victim by appellant no. 2 within 15 days, before the learned Trial Court.

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

12. Subject to the aforesaid direction, bail bond stands cancelled and the surety stands discharged.

13. A copy of this order be sent to the learned Trial Court for necessary information.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 26, 2023

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