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

Date of Decision: 02.03.2023

+ CRL.A. 234/2009

MAHENDER KUMAR Appellant

Through: Mr. Piyush Mehra, Advocate
with appellant.

versus

STATE Respondent

Through: Mr. Naresh Kumar Chahar,
APP for State with SI Amit
Tyagi, P.S. Nabi Karim.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by appellant against the judgment dated 07.02.2009 and order of sentence dated 09.02.2009 passed by learned Additional Sessions Judge (Central)-04, Delhi in Sessions Case No. 23/2008 in case FIR bearing no. 274/2005, registered at Police Station Nabi Karim, Delhi for offences punishable under Section 308 of the Indian Penal Code, 1860 ('IPC').

2. The present appeal was admitted *vide* order dated 30.03.2009 and the sentence of appellant was suspended *vide* order dated 30.03.2009 by this Court.
3. The learned Trial Court, *vide* judgment dated 07.02.2009 convicted the appellant for offences punishable under Section 308 of IPC and sentenced to undergo rigorous imprisonment for three years and also sentence the convict to pay a fine of Rs.15,000/- and in default of payment to undergo simple imprisonment for the period of 06 months.
4. At the outset, learned counsel for 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 18 years old, the sentence of the appellant be reduced to the period already undergone by him. The learned counsel for appellant does not challenge the conviction. However, he states that the appellant had faced trauma of trial of criminal trials for the last 18 years.
5. This Court has heard the parties and perused the material on record.
6. The brief facts of the present case is that on 17.09.2005 at about 10:00 PM, near Amar Puri, Nabi Karim Road, Delhi, complainant along with his brother Ghanshyam were returning home from work. Near Amarpuri, Nabi Karim, Delhi, a fight was going on between present appellant, Rajender and Rajkumar @ Raju. The present appellant had a brick in his hand and thereafter he had hit the brick on

the head of Ghanshyam. After that, Ghanshyam was sent to Sanjeevan Hospital, Ram Nagar, Delhi.

7. The nominal roll of the appellant has been received. As per the nominal roll, the appellant has remained in judicial custody for about 26 days. The offence pertains to the year 2005. The appellant has faced the trial for almost 17-18 years. The investigating officer states that the appellant is not involved in any other criminal case. It is also stated that after he was convicted and sentenced in the present case, has contributed positively to the society.

8. At present, Mahender Kumar is aged about 41 years and is earning by honest means and he is not involved in any criminal case after this case which is before this court. It is also stated that the appellant belongs to the poorest strata of society and mother and father is not working and has two school going children and no complaint has been received as per police for the last 12 years and is raising his children by honest means.

9. Learned Trial Court was pleased to sentence the appellant under Section 308 of IPC.

10. Considering the overall 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, when the appellant has been faced trial for almost 17-18 years, and are today, earning for himself and looking after his family and also considering that he belongs to very poor strata of society only a further fine of Rs. 5000/- is imposed which will be deposited with legal aid, Tis Hazari Courts, Delhi.

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

MARCH 2, 2023/zp

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