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

Date of Decision: 08.02.2023

+ CRL.A. 382/2009

MADAN

..... Appellant

Through: Ms. Manika Tripathy
(DHCLSC), Mr. Roshan
Kumar, Mr. Manish Vashist,
Mr. Varun Bhatnagar and Mr.
Rishab, Advocates alongwith
appellant

versus

STATE

..... Respondent

Through: Mr. Satish Kumar, APP for the
State with SI Gaurav Yadav,
P.S. Nand Nagri, Delhi

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 15.04.2009 and order on sentence dated 17.04.2009 passed by learned District Judge-VII/North-East-cum-Additional Sessions Judge, Karkardooma Courts, Delhi in case FIR bearing no. 72/2007, registered at Police Station Nand Nagri, Delhi for offences punishable under Section 307 of the Indian Penal Code, 1860.

2. The present appeal was admitted on 20.05.2009 and the sentence of appellant was suspended *vide* order dated 07.07.2009 by this Court.

3. Briefly stated, the case of prosecution, before the learned Trial Court was that victim Raju was running a cycle repair Shop at a place near Firoz Generator walla, Shivani Dharam Kanta, Sewa Dham Road, Saboi, Delhi, and the appellant was also doing cycle repair job adjoining victim's place of work. On 27.01.2007 at about 9.30 AM, the appellant came to the shop of victim and asked him not to open his shop and upon victim's refusal, appellant picked a scissor and threatened to kill him. Thereafter, appellant stabbed the victim with scissors in his abdomen as a result of which he received injuries. The victim raised alarm and PCR was called at the spot, which took the complainant to Guru Teg Bahadur Hospital. Upon the statement of victim, present FIR was registered against the appellant for offence punishable under Section 307 of IPC.

4. The learned Trial Court, *vide* judgment dated 15.04.2009, convicted the appellant under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for a period of three years for offence punishable under Section 307 of IPC and to pay fine of Rs.1,000/-, and in default of payment of fine, to undergo rigorous imprisonment for three 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 27.01.2007 and the appellant was convicted by learned Trial Court on 15.04.2009. 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 04 months and 07 days, with a remission of 10 days, 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 appellant was 20 years of age at the time of commission of offence. It is further stated that appellant is working as a labourer and has three minor children who are currently studying in school. No previous involvement of the appellant has been brought to the knowledge of this Court.

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 16 years, and is today, working to make his ends meet and 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.

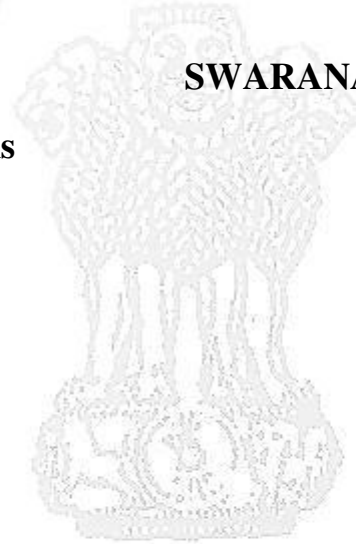
12. Accordingly, the present appeal stands disposed of in above terms.

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

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 8, 2023/ns



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