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

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Reserved on: 17.01.2023
Pronounced on: 02.02.2023

+ **CRL. A. 451/2009**

DINESH KUMAR

...Appellant

Through: Mr. Archit Upadhayay,
Advocate (DHCLSC) and Ms.
Charu Sharma, Advocates.

Versus

STATE (NCT OF DELHI)

...Respondent

Through: Mr. Naresh Kumar Chahar,
APP for State

+ **CRL. A. 452/2009**

YOGESH KUMAR

... Appellant

Through: Mr. Archit Upadhayay,
Advocate (DHCLSC) and Ms.
Charu Sharma, Advocates.

Versus

STATE (NCT OF DELHI)

...Respondent

Through: Mr. Naresh Kumar Chahar,
APP for State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present appeals under Section 374 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") have been filed by appellants against the

judgment dated 23.05.2009 and order on sentence dated 26.05.2009 passed by learned Additional Sessions Judge, Dwarka Courts, New Delhi in case FIR bearing no. 702/2005, registered at Police Station Dabri, New Delhi.

2. The above-captioned appeals were admitted and the sentences of appellants were suspended *vide* order dated 05.06.2009 by this Court.

3. Briefly stated, the case of prosecution, before the learned Trial Court, was that on 05.10.2005 at around 9:30 AM, when the complainant Bhagirath and his son Jaswant were passing by a store in Sagarpur to catch a bus for Paharganj, Delhi, two persons i.e. the appellants herein had come on a motorcycle, parked the same in front of the complainant, and had taken out an iron rod from the motorcycle and started hitting the complainant on his legs. As a result, the complainant had fallen down and when his son had made efforts to save the complainant, he too was hit on the head by the appellants with iron rod. It was further alleged that after hitting mercilessly, appellants had left the spot and complainant was brought to hospital by his son Jaswant. Initially, FIR bearing no. 702/2005 was registered against the appellants and other co-accused for the offences punishable under Sections 308/34 of IPC. Thereafter, after completion of investigation, charge sheet was filed and Sections 341/323/120B of IPC were added.

4. The learned Trial Court, *vide* judgment dated 23.05.2009, convicted the appellants under Sections 325/34 of IPC and sentenced them to undergo rigorous imprisonment for three years and fine of

Rs. 5,000/- each, and in default of payment of fine, to undergo simple imprisonment for three months.

5. At the outset, learned counsel for the appellants, upon instructions, submits that the appellants do not propose to assail the impugned judgment on merits and would like to confine the submissions in these appeals, to the point of sentence alone. It is stated that since the incident in the present case is 17 years old, the sentence of the appellants be reduced to the period already undergone by them.

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

7. In the present case, the incident had taken place on 05.10.2005 and the appellants were convicted by the learned Trial Court on 23.05.2009, whereby they were sentenced to rigorous imprisonment for a period of three (03) years along with fine. The fine imposed upon the appellants had already been deposited by them. As per the Nominal Roll, both the appellants had remained in Judicial Custody for about 1 month and 26 days, and their conduct was reported to be satisfactory. It is also not the case that the appellants had misused the liberty of bail granted to them either during the period of trial or during the pendency of the present appeal.

8. 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 appellants to undergo the remaining portion of sentence at this belated stage, when the appellants have been facing trial for

over 17 years, and are today, engaged in meaningful employments and looking after their respective families.

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

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

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

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/kss

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