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

Date of Decision: 28.02.2023

+ CRL.A. 486/2009

PRAVEEN KUMAR & ORS.

..... Appellants

Through: Mr. R.P.S. Sirohi and Mr. S.P.
Sirohi, Advocates

versus

STATE

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for State.

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 the appellants against the judgment dated 23.05.2009 and order on sentence dated 28.08.2009 passed by learned Additional Sessions Judge-V, Outer District, Rohini, Delhi in Sessions Case No. 97/2008, arising out of FIR bearing no. 427/2006, registered at Police Station Mangolpuri, Delhi for offences punishable under Sections 452/308/34 of the Indian Penal Code, 1860 ('IPC').

2. The present appeal was admitted and sentence of appellants were suspended *vide* order dated 08.07.2009 by this Court.

3. Brief facts of the present case are that the complainant Jamaluddin on 24.06.2006, had stated before the police that on 23.06.2006, mother of the appellants Smt. Sneh Lata had come to his house and demanded money which had been given by Kiran Pal, father of the appellants to the complainant, and he had informed her that he would pay the money alongwith interest on the next day. It was alleged by the complainant that he had also given money to Vinod on the guarantee of Kiran Pal and had asked Smt. Sneh Lata to return the same. On the same day, while complainant was having dinner with his nephew and his wife, the appellants/accused persons abruptly entered their house and assaulted the complainant, his nephew as well as his wife, as a result of which, the complainant received injuries on the left side of lower abdomen, and his nephew had received injuries on the skull. Thereafter, the present FIR was registered against the appellants.

4. The learned Trial Court, *vide* judgment dated 23.05.2009 convicted the appellants for offence punishable under Section 308/34 of IPC and sentenced them to undergo rigorous imprisonment for two years and six months and a fine of Rs.15,000/- each, which was to be paid to the complainant by way of compensation, and also convicted all the appellants for offence punishable under Section 452/34 of IPC and sentenced them to undergo rigorous imprisonment for two years and six months and to pay a fine of Rs. 1,000/- each, to be given to the complainant by way of compensation.

5. At the outset, learned counsel for 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 this

appeal, 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, and no purpose would be served by sending the appellants to the jail at this point of time.

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

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

8. The second wife of the complainant is present before this Court along with her son Sh. Parvej Alam, who has been identified by the Investigating Officer (IO). It is stated that both PW-6 Smt. Rahison, who was the first wife of complainant and was victim in the present case, as well as the complainant have unfortunately passed away. It is now stated that the matter has been compromised between the parties, and even otherwise, the appellants are not challenging their conviction.

9. As per the nominal roll, the appellant nos. 1 and 3 have remained in judicial custody for 2 months 17 days and appellant no. 2 has remained in judicial custody for a period of 2 months 18 days. The incident in present case pertains to the year 2006, and the appellants have faced the trial for almost 16-17 years. The Investigating Officer states that the appellants are not involved in any other criminal case. It is also stated that after they were convicted and sentenced in the present case, all of them have contributed positively to the society. The conduct of the appellants during the period of judicial custody has been reported to be satisfactory, as per nominal roll.

10. It is stated that all the appellants are married. Appellants no. 2 and 3 are the sole earning members of their family and the appellants are earning by honest means. 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.

11. 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 appellants to undergo the remaining portion of sentence at this belated stage, when the appellants have faced trial for almost 17 years, and are today, earning for themselves and looking after their families.

12. 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.

13. Since the fine imposed upon the appellants by the learned Trial Court has already been deposited with the concerned Court which was directed to be paid to the complainant by way of compensation, it is directed that the entire amount so deposited be released to Smt. Aayesha i.e. second wife of complainant Jamaluddin on proper receipt and identification, by the learned Trial Court.

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

15. Bail bond stands cancelled and the surety stands discharged.
16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY28, 2023/zp

