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

Date of Decision: 28.02.2023

+ CRL.A. 800/2009

MOHD.SHAMMIM

..... Appellant

Through: Mr. Harih Krishan, Advocate

versus

STATE N.C.T.OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by appellant against the judgment dated 09.09.2009 and order of sentence dated 29.09.2009 passed by learned Additional Sessions Judge-IV, Outer District, Rohini, Delhi in Sessions Case No. 23/2008 arising out of FIR bearing no. 353/2003, registered at Police Station Sultan Puri, Delhi for offences punishable under Sections 308/341/323/34 of the Indian Penal Code, 1860 ('IPC').

2. The present appeal was admitted *vide* order dated 23.10.2009 and the sentence of appellant was suspended *vide* order dated 23.10.2009 by this Court.

3. Brief facts of the present case are that on 04.04.2003 the complainant i.e. Mohd. Mustkeen @ Bhura while coming to his house met the accused persons Azeem and his wife Nafeesa. The complainant asked accused Azeem as to why his wife had slapped his daughter albeit, the quarrel had taken place between their respective daughters and advised that she should have scolded both of them. The accused rather got agitated and along with his wife had caught hold of the complainant, in the meantime, their three sons namely Sikander @ Labbu, Shamim and Wasim (co-accused persons) also came there who were armed with dandas (Sticks) and bricks. After that, all the accused persons had beaten the complainant, who sustained injuries on the head. On hearing noises, wife of the complainant as well as few others gathered around the complainant and thereafter, the complainant was shifted to the hospital. After preliminary investigation, an FIR was registered against all the five accused persons.

4. The learned Trial Court, *vide* judgment dated 09.09.2009 convicted the appellant for offences punishable under Sections 308/341/323/34 of IPC and sentenced to undergo rigorous imprisonment for three years and also sentenced the convict to pay a fine of Rs.2,000/- and in default of payment to undergo simple imprisonment for the period of 15 days.

5. At the outset, learned counsel for appellants, 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 20 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 12 years.

6. Learned APP for 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 in question had taken place on 04.04.2003 and appellant was convicted by the learned Trial Court on 09.09.2009, whereby he was sentenced to undergo rigorous imprisonment for three years and also sentenced the convict to pay a fine of Rs.2,000/- and in default of payment to undergo simple imprisonment for the period of 15 days. It is stated by learned counsel for the appellant that fine imposed upon the appellant has already been deposited by him.

9. At present, the applicant herein is aged about 26 years and is earning by honest means. It is also stated that the appellant belongs to poor strata of society, at present his mother and father are not working. The present applicant has two school going children and no complaint has been received by the police for the last 12 years and nor is he involved in any other criminal case and is raising his children by honest means.

10. The nominal roll of the appellant has been received. As per the nominal roll, the appellant has remained in judicial custody for about 03 days. The offence pertains to the year 2003. The appellant has faced trial for almost 19-20 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.

11. Considering the overall facts and circumstances of the case, this Court is of the opinion that no useful purpose will be served by the appellant to undergo the remaining portion of sentence at this belated stage, when the appellant has been faced trial for almost 19-20 years, and is 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. 2000/- will be imposed, which will be deposited with legal aid, North West, Delhi, Rohini Court within 15 days.

12. 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.

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

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

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH10, 2023/zp

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