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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11.07.2024

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CRL.A. 424/2009

SHABBIR

.....Appellant

Through: Mr. Sumeet Verma (*Amicus Curiae*), Ms. Charu Verma & Mr. Mahinder Pratap Singh, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP for the State.
Inspector Chote Lal (ATO),
P.S.: Sarai Rohilla.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J. (ORAL)**

1. The present criminal appeal under Section 374(2) read with Section 482 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*') has been filed on behalf of the appellant, impugning the judgment and order on sentence dated 28.03.2007 and 29.03.2007 respectively, passed by learned Additional Sessions Judge, Delhi, in case arising out of FIR bearing no. 410/2005, registered at Police Station Sarai Rohilla, Delhi, for offences punishable under Sections 304/323/34 of the Indian Penal Code, 1860 ('*IPC*').



2. The appellant in this case, was sentenced to undergo rigorous imprisonment for a period of 07 years, along with payment of fine of Rs. 2,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of 02 months.
3. The present appeal was admitted in the year 2009 and *vide* order dated 24.07.2009, the appellant's application under Section 389 of Cr.P.C. was allowed, and the sentence of the appellant was suspended.
4. The present appeal was taken up for hearing in the year 2023.
5. Brief facts of the case are that, on 12.10.2005, on receipt of copy of DD No. 33A, SI Subhash Chand along with Ct. Brij Mohan had reached the spot at Daya Basti, near Machhli Market, wherein it was revealed that the injured had already been taken to Hindu Rao Hospital and no eye witness was found available at the spot. Thereafter, when the concerned I.O. had reached the spot, the statement of the injured was recorded, which was placed on record and exhibited as Ex. PW-4/A. The injured in this case, who had unfortunately passed away, had given a statement that on 12.10.2005, at about 10 PM, he along with his friends, was coming after seeing *Dussehra* Fare from JJ Colony, Wazirpur. When he had reached near Daya Basti, Macchli Market, Old Rohtak Road, a two-wheeler scooter driven by co-accused Ruddal and the present appellant, who was a pillion rider, both known to him earlier, had hit him. When the injured was looking towards them, the accused persons had started threatening and beating him. When one Rajesh Kumar had tried to save him, he was also stabbed with a knife by the co-accused Ruddal.



The present appellant was apprehended, who had also sustained injuries.

6. After conclusion of trial, the present accused was convicted for commission of offence under Sections 304(II)/34 of IPC and Sections 323/34 of IPC.

7. This Court has heard arguments addressed on behalf of the appellant and the State.

8. The appellant herein does not press for setting aside the judgment of conviction, however, it is stated by learned counsel for the appellant that the present incident is about 20 years old, as the FIR in this case was registered in the year 2005. It is also stated that the appellant herein, who had been awarded a total sentence of 07 years of rigorous imprisonment, has already undergone more than 5^{1/2} years of imprisonment. It is stated that he was released from jail in the year 2010. Thereafter, as per the available record, he has never been involved in any other criminal case, and has proved to be a useful member of the society and has a family of four people, comprising his mother, his wife and two daughters aged 05 years and 03 years. It is further stated that the elder daughter of the appellant is studying in school and the appellant herein is working as a mason (*rajmistri*), in his village.

9. Considering the overall facts and circumstances of the case, and the fact that the appellant was a pillion rider when the incident in question had taken place, and since it has been prayed that sentence be altered and lenient view be taken, this Court considers that the instant FIR was registered in the year 2005, when the appellant herein



was also arrested in this case, and he was released from jail in the year 2010. Further, no other criminal case has been registered or is pending against the appellant. Thus, this Court is of the opinion that the appellant has been reformed, which is the ultimate purpose of criminal justice system, when a person is sentenced. Therefore, in these circumstances, this Court deems it appropriate to modify the sentence of the appellant to the period of sentence that has already been undergone by him.

10. The Court, however, has been informed that the appellant has not paid the fine.

11. In view of the foregoing discussion, the conviction of the appellant is upheld. However, his sentence stands modified to the period already undergone by him, subject to payment of fine of Rs. 2,000/- (Rupees Two Thousand Only), as imposed by the learned Trial Court, within a period of one month.

12. The appeal is accordingly disposed of.

13. Bail Bond is cancelled. Surety stands discharged.

14. This Court also appreciates the assistance of learned Amicus Curiae, in the present case.

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 11, 2024

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