



2024:DHC:7345



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

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Reserved on: 03.09.2024***Pronounced on: 23.09.2024***+ **CRL.A. 516/2009****DILSHER NEPALI & ANR.****.....Appellants**Through: **Mr. Priyank Kharkwal & Mr.
Vijay Datt Gahtori, Advocates.****versus****STATE****.....Respondent**Through: **Mr. Naresh Kumar Chahar,
APP for the State.****CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present appeal under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the appellants, assailing the judgment and order on sentence dated 15.05.2009 and 18.05.2009 respectively, passed by the learned Additional Sessions Judge-02, West District, Tis Hazari Courts, Delhi ('learned Trial Court'), in SC No. 70/06/02, arising out of FIR No. 344/2002, P.S. Kirti Nagar, Delhi under Sections 307/34 of Indian Penal Code, 1860 (IPC) and Sections 25/54/59 of Arms Act.

2. Briefly stated, the case of the prosecution is that on 22.07.2002, at about 07:45 PM, Mr. Rajan @ Bhure, the complainant



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and author of the FIR, were present near a park, close to his jhuggi in Nehru Camp, Kirti Nagar, Delhi. While he was talking to Babloo i.e. son of Mubarak Ali, the accused Hira and Nepali had arrived and initiated an altercation, followed by beating Babloo. When the complainant had attempted to rescue Babloo from the clutches of Hira Lal and Nepali, Babloo's cousin i.e. Mohd. Aslam, an autorickshaw driver, had arrived at the scene, and they had managed to rescue Babloo from the accused. Babloo had then run towards Lakkar Mandi (Wooden Market). The accused, Hira Lal and Nepali, who had held a grudge against Babloo, had become further agitated after he was rescued. They had vowed to teach him a lesson. Nepali had taken out a *desi katta* (country-made pistol) from his pants and had fired at both Mohd. Aslam and Rajan. As a result, Rajan had sustained injuries on his head, while Mohd. Aslam had suffered injuries on his right hand. Immediately after the shooting, both Nepali and Hira Lal had fled towards Naraina. Rajan had proceeded towards the police station, while Mohd. Aslam had gone elsewhere. Upon reaching the police station, Rajan had been taken to the hospital. Mohd. Aslam had also later arrived at the hospital. Based on the statement of Rajan, FIR No. 344/2002, under Sections 307/34 of IPC and Sections 25/54/59 of Arms Act, had been registered at P.S. Kirti Nagar against the accused persons, including the appellants herein.

3. Thereafter, the learned Trial Court had framed charges against the accused persons for the offences punishable under Sections 307/34 of IPC. However, after conclusion of trial, the learned Trial



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Court *vide* judgment dated 15.05.2009 had convicted the accused persons under Sections 323/34 of IPC and *vide* order dated 18.05.2009, it had sentenced the present appellants to undergo rigorous imprisonment for a period of nine months and pay fine of Rs.1,000/- each, and in default of payment of fine, to further undergo imprisonment for a period of two months each.

4. Aggrieved by the aforesaid impugned orders, the present appeal has been preferred on behalf of two convicts namely Dilsher Nepali and Hiralal @ Hira. This appeal was admitted and the sentence of the appellant was suspended by this Court *vide* order dated 17.07.2009.

5. Learned counsel appearing on behalf of the appellant submits, on instructions, that the appellant is not pressing the present appeal on its merits. It is further submitted that the appellant rather prays for leniency since the incident in question had taken place about 22 years back. It is stated that considering the sentence already undergone by the appellant, his sentence of imprisonment may be reduced to the period already undergone.

6. Learned APP for the State submits that he has no objection if the sentence of the appellant is reduced to the period already undergone by him, and the conviction is upheld.

7. This Court has heard arguments addressed on behalf of both the parties and has gone through the material placed on record.

8. This Court notes that the present case emanates from an FIR registered in the year 2002, pertaining to an incident dated 21.10.2002. Thus, the offence in question had taken place about 22



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years ago. Further, it is also a matter of record that the present appeal is pending before this Court for the last 15 years i.e. since 2009. The appellants namely Dilsher Nepali and Hiralal @ Hira were aged about 22 years and 23 years respectively at the time of the incident. The material available on record also shows that the appellants were convicted for the first time for an offence in the present case.

9. Thus, considering the overall facts and circumstances of the case, and after going through the nominal roll of the appellant, which mentions that the appellants have already served sentence of rigorous imprisonment for more than three months out of the sentence of nine months awarded to them in the year 2009 and their conduct in the jail during the said period had been satisfactory, and the fact that the conviction is not being challenged, this Court is of the opinion that ends of justice would be met in case the sentence of imprisonment of the appellants is reduced to the period already undergone by them in relation to the present case.

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

11. Bail bonds stand cancelled and the sureties stand discharged.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 23, 2024/A