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

+ CRL.A. 860/2023

ROHIT KUMAR

.....Appellant

Through: Mr. Nitin Saluja, Adv.

versus

STATE (GNCT) OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

10.10.2025

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1. The present appeal has been instituted under Section 374 Cr.P.C. against the judgment of conviction dated 28.11.2022 and order on sentence dated 05.07.2023, passed by the learned ASJ (FTC-01), South District, Saket Courts, New Delhi, in Sessions Case No. 6963/2016, arising out of FIR No. 174/2014 registered under Sections 307/34 IPC at P.S. Hauz Khas.

Vide the impugned order on sentence, the appellant herein was sentenced to undergo RI for a period of 5 years alongwith fine of Rs.5,000/-, for the offence punishable under Section 307/34 IPC, the fine amount being directed to be paid as compensation to the victim *Ram Kumar*. The appellant was further sentenced to undergo RI for a period of 3 years alongwith fine of Rs.1,000/-, for the offence punishable under Section 201/34 IPC, the fine amount again being directed to be paid as compensation to the victim. In default of payment of fine, the appellant was directed to undergo SI for a period of 6 months. Both sentences were directed to run concurrently and



the benefit of Section 428 Cr.P.C. was extended to the appellant.

2. The case of the prosecution in brief is that on 15.02.2014 at about 9.00 p.m., the injured *Ram Kumar*, upon returning from the shop of one *Satish*, was intercepted by the appellant/*Rohit Kumar* along with his brothers *Harish Kumar* and *Devender Kumar* and questioned about his conversation with *Satish* in relation to them. *Ram Kumar* replied that his conversation had not concerned them; however, the accused persons, stating that they would teach him a lesson, caught hold of him and inflicted knife blows on his backside, near the thighs and buttocks. *Devender Kumar* caught hold of the injured while the appellant and *Harish Kumar* inflicted knife blows. On hearing his cries, *Shiv Kumar* (PW-2) and *Om Prakash Saini* (PW-3) reached the spot and saw the accused persons standing near the injured, who then fled upon seeing them. The injured was removed to AIIMS Trauma Centre, where his MLC (Ex. PW-11/D) recorded muscle-deep lacerations and abrasions, and his injuries were opined to be simple in nature.

3. The appellant was charged under Sections 307/201/34 IPC, to which he pleaded not guilty. During trial, the injured *Ram Kumar* (PW-1) identified the appellant and his co-accused and gave a clear and cogent account of the incident. His testimony was corroborated on material particulars by the depositions of *Shiv Kumar* (PW-2) and *Om Prakash Saini* (PW-3), who reached the spot immediately after the altercation and confirmed that the appellant and *Harish Kumar* were armed with knives and waving them around in the air. The ocular evidence was further corroborated by the medical evidence on record, as the MLC reflected injuries consistent with the prosecution version. The defence witnesses examined being the relatives of the accused persons were found to be interested and unreliable



and the minor inconsistencies in the versions of the prosecution witnesses were held to be natural and not affecting the core of the prosecution case.

4. Upon a perusal of the record, this Court finds that the testimony of the injured witness *Ram Kumar* (PW-1) is credible and inspires confidence. It is well settled that an injured witness is a stamped witness and his testimony cannot be discarded lightly. As noted before, the prosecution version finds further corroboration in the testimonies of PW-2 and PW-3.

5. While it is apparent that the appellant and his co-accused persons came armed with knives and attacked the injured, the evidence shows that neither were the injuries inflicted on any vital organs, nor were they of such nature as to cause death in the ordinary course. The MLC of the injured also records the injuries to be simple in nature.

6. It is a settled proposition of law that to sustain a conviction under Section 307 IPC, the prosecution must establish that the act was committed with such intention or knowledge and under such circumstances that, if death had been caused, the act would amount to murder. The presence of intention or knowledge is *sine qua non*. The intention to commit the offence may be inferred from the nature and location of the injuries as well as the manner of attack. In the present case, the evidence on record does not establish that the appellant had the requisite intention to cause the death of the injured, though it is evident that he participated in the incident and inflicted knife blows upon the injured. Having regard to the nature and seat of injuries, and the surrounding circumstances, this Court is of the considered view that the conviction of the appellant under Section 307 IPC be modified to one under Section 308 IPC.

7. Insofar as the conviction under Section 201 IPC is concerned, the record shows that efforts were made to recover the weapon of offence at the



instance of the accused persons; however, the same could not be traced. It stands proved that the accused persons had attempted to conceal the weapons of offence in order to screen themselves from legal punishment. The finding of the Trial Court on this point, therefore, warrants no interference.

8. The matter now turns to the question of sentencing.

9. The appellant, duly identified by the I.O., is present in person. He submits that he is remorseful and, being fully aware of the consequences, does not wish to press the present appeal on merits. He accepts his guilt and prays that the sentence awarded to him be modified to the period already undergone.

10. The appellant's latest nominal roll dated 08.10.2025 is on record. It reflects that the appellant has undergone a little less than 3 years of incarceration, including remission, against his total sentence of 5 years RI. His conduct in jail during the last one year of incarceration has also been reported to be satisfactory.

11. The law regarding release of convicts who have undergone more than half of their sentence was laid down by the Supreme Court in Sonadhar Vs. State of Chhattisgarh¹, and the relevant portion of the same is extracted hereinunder:

“28. We thus issue the following directions:

- a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.*
- b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life*

¹ 2021 SCC OnLine SC 3683



- sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.*
- c) *We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.*
- d) *A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts."*

12. The appellant, presently 37 years of age, has been facing the ordeal of a protracted trial since 2014. It is submitted that he belongs to the poor strata of society and works as a delivery boy, earning a modest livelihood, with his wife dependent upon him.

13. Having regard to the fact that the incident pertains to the year 2014, considering that the conviction of the appellant has already been modified from Section 307 IPC to Section 308 IPC, and in view of the facts and law as discussed above, the appellant's prayer for modification of the sentence to the period already undergone is accepted. Accordingly, the substantive sentence awarded to the appellant is modified to the period already undergone by him.

The sentence of fine imposed upon the appellant is maintained. The appellant shall deposit the total amount of Rs.6,000/- before the Trial Court within four weeks. In default of payment of fine, the appellant shall undergo the default sentence as directed by the Trial Court.

14. The present appeal is partly allowed in the above terms.

15. Subject to deposit of fine, the personal bond furnished by the appellant stands cancelled and his surety is discharged.



16. A copy of this order be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI, J

OCTOBER 10, 2025/nb