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(2025) 12 DEL CK 1877

In the Delhi High Court

Case No : Criminal Appeal No. 649 Of 2017

Imtiyaz — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 23-12-2025

Acts Referred:
Code of Criminal Procedure, 1973 — Section 428
Indian Penal Code, 1860 — Section 308

Citation : (2025) 12 DEL CK 1877

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Krishan Kumar, Shivam, Anubhav, Pradeep Gahalot

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present appeal seeks to assail the judgment of conviction dated 29.01.2016 as well as the order on sentence dated 03.02.2016.

Vide the aforesaid, the appellant was held guilty for the offence under Section 308 IPC and sentenced to undergo RI for 4 years along with payment of fine of Rs.25,000/-, in default whereof he would undergo SI for 3 months. The benefit of Section 428 Cr.P.C was also granted to the appellant.

The sentence of the appellant was suspended during pendency of the present appeal vide order dated 13.11.2017.

2. The judgment of conviction was rendered in trial held in the context of FIR No. 542/2013 registered under Section 308 IPC at P.S. Vasant Kunj North.

3. As per the facts noted by the Trial Court, the police report was filed alleging that on 14.12.2013 at about 12:30 PM, the appellant had a quarrel with one Sajid at the fish market in Kishan Garh. It was alleged that the appellant had caused injuries to Sajid with a danda. The appellant was caught at the spot by

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one Jahir-ul-Islam, who witnessed the incident first-hand. On charge under Section 308 IPC being framed against the appellant, he pleaded not guilty and claimed trial.

4. Learned counsel for the appellant contended that as the complainant of the case was not offered for cross-examination, his testimony could not be read, and thus the prosecution had failed to prove his case. In the alternative, he prayed that the appellant's case be considered for release on the period of custody already undergone by him. In this regard, he placed reliance upon the decision in Sonadhar Vs. State of Chhattisgarh 2021 SCC OnLine SC 3683.

5. The prosecution had examined 10 witnesses in total, with the primary ones being the victim himself and Jahir-ul-Islam, who were examined as PW-1 and PW-8 respectively.

6. The injured appeared as PW-1, and in his deposition stated that appellant was his brother in-law (sala). In the month of December 2013 at about 12 or 12:30 P.M., the appellant picked a quarrel with him in Kishan Garh, Delhi.

Though he had initially left, but around 1.00 PM, when the witness was standing in front of the shop of Jahir-ul-Islam (PW-8), the appellant came back and hit him with a danda, on account of which he suffered injuries and was removed to the hospital. On that day, the victim's cross-examination was deferred. However, the injured could not re-called for cross-examination as he statedly expired during the pendency of the trial.

7. The prosecution had also examined the independent witness Jahir-ul-Islam as PW-8, who stated that on the day of incident a quarrel had taken place between the appellant and the victim. The appellant was having danda in his hand and had assaulted the victim on his head. While the appellant attempted to flee, he was apprehended by the witnesses with the help of other persons. The police arrived and arrested the appellant. The danda used in the incident was also recovered and taken into possession.

8. The medical examination of the injuries suffered by the victim were exhibited through Dr. Kshitija, Emergency Medical Officer, Fortis Hospital, Vasant Kunj; as well as by Dr. Prashant Sinha, who opined the injuries to be grievous and blunt in nature.

9. The I.O and police officials stated about the incident in question and the surrounding investigation carried out by them.

10. This Court, on an appreciation of the testimony of the independent witness/Jahir-ul-Islam as well as the MLC of the injured, concurs with the finding of guilt rendered by the Trial Court. Having gone through the record, the appellant's contention that the case of the prosecution fails as the complainant could not be cross-examined cannot be accepted, especially in light of the fact that the incident was witnessed by an independent witness who not only saw the quarrel in question unfold firsthand, but also played a crucial role in

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apprehending the appellant at the spot. The appellant failed to disprove the presence of the witness at the spot or elicit anything during the witness' cross-examination that would discredit his testimony. The appellant's conviction under Section 308 IPC is accordingly upheld and the matter now turns to the question of sentence.

11. Coming now to the aspect of sentencing, the record reveals that at the time of passing of the order on sentence, the Trial Court noted the appellant's age to be 22 years, which shows that he was barely 19 years old at the time of the incident. It was further noted that he was married and his father having expired, he also had the responsibility of looking after his mother. As per the appellant's nominal roll, the appellant has undergone more than half of his sentence besides earning remission. His jail conduct is reported to be satisfactory. Considering that the offence pertains to the year 2013, that the appellant has faced the rigours of a protracted trial for the last 12 years, that he is stated to be responsible for maintaining his mother and wife, and looking at the factum of his age, this Court is of the considered view that, in light of Sonadhar (supra), the ends of justice would be met if the appellant's sentence is reduced to the period already undergone by him.

12. On the last date of hearing, though NBWs were issued against the appellant, considering that the appeal itself has now been decided, the NBWs stand recalled.

13. The bail bonds furnished by the appellant stand cancelled and his surety is discharged.

14. A copy of this judgment be communicated to the Trial Court, the concerned Jail Superintendent, as well as the SHO, P.S. Vasant Kunj North.

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