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

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Date of Decision: July 31, 2017

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CRL.A. 241/2002

RAJESH KUMAR

..... Appellant

Through: Mr.R.S.Mishra, Advocate with
appellant in person.

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State.

PRATIBHA RANI, J. (Oral)

1. The appellant Rajesh Kumar has preferred the present appeal under Section 374 (2) Cr.P.C. assailing the judgment dated 01st March, 2002 and order on sentence dated 02nd March, 2002 vide which he has been convicted for committing the offence punishable under Section 307 IPC and sentenced to undergo RI for three years with fine of ₹1000/- and in default of payment of fine, to undergo SI for three months.

2. In brief, the case of prosecution is that 17th March, 2001 at about 3.40 pm when the complainant/injured Manoj Rathi was standing on the roof of his house bearing No.RZ-B-1/25, New Roshan Pura, Delhi, he saw that his cousin (PW-10) was passing through the street and appellant was teasing her. He came down from the roof and objected to the behavior of the appellant. On this the appellant took out a knife from the backside pocket of his pant and tried to give a

knife blow on his chest and while trying to save himself, he received injuries on his head. Thereafter the appellant fled away from the spot and matter was reported to the police.

3. On the basis of above statement, FIR No.135/2001 under Section 307 IPC was registered at PS Nazafgarh. The appellant/accused was arrested and after completion of investigation, the chargesheet was filed.

4. On the basis of material placed on record by the prosecution, the appellant was charged for having committed the offence punishable under Section 307 IPC, to which he pleaded not guilty and claimed trial.

5. The learned Trial Court after concluding the trial, held the appellant guilty for committing the offence punishable under Section 307 IPC and sentenced him in the manner aforesaid.

6. Feeling aggrieved, the appellant has challenged his conviction and sentence by filing the present appeal.

7. Appellant is present in person alongwith the counsel.

8. Learned counsel for the appellant has submitted that the appellant was having an affair with PW-10 Sunita. The complainant is BC of the area and PW-10 was his cousin sister. On seeing them together it was the complainant who started fighting with him and with a view to save himself from the complainant who is a notorious criminal and B.C. of the area, he picked a vegetable cutting knife from the nearby vegetable shop and hit the complainant. The appellant has submitted that though he picked the vegetable cutting knife, he had no intention to cause death of the complainant and even the nature of

injury suffered by PW-3 Sh.Manoj is simple in nature.

9. Learned counsel for the appellant, on instructions, has submitted that in view of the nature of the injuries suffered i.e. only one injury and that too simple in nature, the conviction of the appellant should have been under Section 324 IPC. It has also been submitted that the motive for the assault given by the complainant/injured has not been established as PW-10 – cousin of the complainant/injured has not supported the case of prosecution at all. It has been further submitted that the alleged eye witness i.e. PW-2 Smt.Shanti Devi – mother of the injured/complainant reached the spot later on receiving information about the quarrel from two children and as per the injured/complainant PW-3 Manoj, the incident has taken place after he was taken to the corner of the gali, thus PW-2 had no occasion to witness the occurrence. It has been further submitted that though denied by PW-3 Sh.Manoj – the injured/complainant, PW-6 – SI Rajesh Kumar, the Investigating Officer has admitted that the injured/complainant Sh.Manoj is B.C. of the area.

10. Learned counsel for the appellant has submitted that the incident is not disputed as well as causing of injury to PW-3 Sh.Manoj is also not disputed by the appellant. His only challenge is that in view of the number and nature of the injury i.e. one simple injury on fronto parietal region, the appellant should have been convicted under Section 324 IPC.

11. I have considered the submissions made on behalf of the appellant and carefully gone through the record.

12. In the case Fireman Ghulam Mustaga vs. State of Uttaranchal

AIR 2015, SC 3101, the Supreme Court has observed as under:-

'8. To justify a conviction under Section 307, IPC the Court has to see whether the act was done with the intention to commit murder and it would depend upon the facts and circumstances of the case. Although the nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given and motive, etc.'

13. In the case in hand, as per PW-3 Sh.Manoj – the injured/complainant the quarrel took place because the appellant was teasing his (complainant's) cousin (PW-10), however, this fact has not been supported by PW-10. It has been proved though the statement of PW-6 SI Rajesh Kumar – the Investigating Officer that injured/complainant was B.C. of the area. The version of the appellant is that he was having friendly relations with PW-10 which was objected to by the injured/complainant on which there was a scuffle and with a view to save himself, one simple injury was caused to PW-3 – the injured/complainant.

14. Thus, there is no evidence that appellant had acted with an intention to cause death of PW-3 Sh.Manoj, hence the appellant is not liable to be convicted under Section 307 IPC but at the same time, for having voluntarily causing simple injury to the injured/complainant, the appellant is liable to be convicted for committing the offence punishable under Section 324 IPC.

15. Taking into consideration the entire facts and circumstances of

the case and that the injuries suffered by the injured/complainant i.e. one simple injury on fronto parietal region, the conviction of the appellant under Section 307 IPC is altered to Section 324 IPC and he is sentenced to the period already undergone by him in this case. However, the sentence of fine of Rs.1,000/- imposed by the learned Trial Court is enhanced to ₹10,000/- and in default of payment of fine, appellant shall undergo SI for one month.

16. It is informed that fine of ₹1000/- imposed by the learned Trial Court vide impugned order on sentence has already been deposited.

17. The appellant is directed to deposit the balance fine amount with the Registrar General of this Court by 2nd August, 2017 and place on record the proof of depositing the fine amount within two days thereafter. However, if the appellant fails to deposit the balance fine amount by 2nd August, 2017, he shall surrender before the concerned Jail Superintendent for undergoing the sentence awarded in default of payment of fine.

18. The appeal is allowed in above terms.

19. TCR be sent back alongwith copy of this order.

20. Copy of this order be sent to the concerned Jail Superintendent for information and compliance.

21. Copy of the order be also given dasti to learned counsel for the appellant under the signature of Court Master.

PRATIBHA RANI
(JUDGE)

JULY 31, 2017

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