

**Vikas @ Johny Vs. State**

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**Court :** Delhi

**Decided On :** Apr-03-2014

**Judge :** S. P. Garg

**Appellant :** Vikas @ Johny

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : April 02, 2014 DECIDED ON : April 03 , 2014 + CRL.A. 659/2012 VIKAS @ JOHNY Through : ..... Appellant Ms.Raj Kumari, Advocate. versus STATE Through : ..... Respondent Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant-Vikas @ Johny has preferred the present appeal against a judgment dated 24.09.2011 of learned Additional Sessions Judge in Sessions Case No.08/10 arising out of FIR No.67/10 registered at Police Station Vasant Kunj by which he was convicted under Section 307/34 IPC. By an order dated 27.09.2011, he was sentenced to undergo RI for five years with fine `5,000/-.

2. The prosecution case, as set up in the charge-sheet, was that on 27.02.2010 in between 08.30 p.m. to 10.00 p.m., on the way from DLF mall to Kushum Pahari within the jurisdiction of Police Station, Vasant Kunj, the appellant and his associate Vijay @ Gorkha in furtherance of common intention inflicted injuries by a

sharp weapon to Pramood in an attempt to murder him. Daily Dairy (DD) No.9A was recorded at 8.28 p.m. in Police Station Vasant Kunj about the incident and investigation was assigned to ASI Rai Singh who with ASI Rakesh Kumar went to the spot. On receipt of DD No.11A, they went to AIIMS and collected the MLC of injured Pramood. Statements of witnesses conversant with the facts were recorded. Both Vikas @ Johny and Vijay @ Gorkha were apprehended. After completion of investigation a charge-sheet was submitted against both of them; they were duly charged; and brought to trial. The prosecution examined 13 witnesses to establish their guilt. In 313 statements, they denied their involvement in the crime. The trial resulted in their conviction as aforesaid.

3. During the hearing of the appeal, appellants counsel, on instructions stated at the Bar that the appellant has opted not to challenge the findings of the trial court recorded under Section 307 IPC and accepts it voluntarily. She, however, prayed to modify the sentence order as the appellant has clean antecedents and is not involved in any other criminal case. He has remained in custody for about 34 months. The appellant volunteered to pay `25,000/- as compensation to the victim. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances.

4. Since the appellant-Vikas @ Johny has opted not to challenge the findings on conviction under Section 307/34 IPC in the presence of overwhelming evidence of the victim coupled with medical evidence, conviction recorded by the trial court under Section 307 IPC is affirmed. Appellants nominal roll dated 10.07.2012 reveals that custody period undergone by him was one year, five months and 29 days besides remission of three months and three days as on 10.07.2012. The custody period has since gone to more than three and a half year including remission. The overall jail conduct of the appellant is satisfactory. He is not involved in any other criminal case and is a first offender. Though the injuries have been opined to be dangerous in nature, the evidence reveals that from the spot the victim went to his house and was taken to the hospital on the next morning. During this period, he did not get any medical treatment or lodge the report with the police. It further reveals that initial confrontation had taken place with co-convict Vijay @ Gorkha and the appellant had arrived at the spot subsequently.

The victim and the appellant were known to each other prior to the incident and they lived in the same locality. Crl.A.No.659/2012 The quarrel took place over a trivial issue. The Page 3 of 4 appellant had not anticipated the arrival of the victim at the spot. Considering these mitigating circumstances, the sentence order is modified and the period already undergone in custody by the appellant is taken as substantive sentence. He shall, however, pay compensation of `40,000/- to the complainant; deposit it within five days before the Trial Court; and it will be released to the complainant after due notice. He shall also deposit the unpaid fine (if any) by that date.

5. The appeal stands disposed of in the above terms. Copy of this order be sent to the concerned Jail Superintendent for information. Trial court record be sent back along with a copy of this order. (S.P.GARG) JUDGE April 03, 2014 sa

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