

(2013) 07 DEL CK 0608

Delhi High Court

Case No: Criminal Appeal 1476 of 2011

Raj Kumar @ Raju

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** July 12, 2013**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 307

**Hon'ble Judges:** S.P. Garg, J**Bench:** Single Bench**Advocate:** Saahila Lamba, for the Appellant; M.N. Dudeja, APP, for the Respondent**Final Decision:** Disposed Off

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### Judgement

S.P. Garg, J.

The appellant-Raj Kumar @ Raju challenges the judgment dated 14.09.2010 of learned Additional Sessions Judge in Sessions Case No. 91/2009 arising out of FIR No. 448/2006 registered at Police Station Khajuri Khas by which he was convicted u/s 307 IPC. By an order dated 17.09.2010, he was sentenced to undergo Rigorous Imprisonment for five years with fine Rs. 5,000/-. Allegations against the appellant were that on 18.10.2006 at about 12.15 A.M., he and his associate Asif Khan (since acquitted) went at Brahma Nand's House on motorcycle. It was driven by Asif Khan and the appellant was a pillion rider. The appellant fired shot pointing at Brahma Nand with an attempt to commit murder. DD No. 30-A was recorded. Injured was taken to hospital. The Investigating Officer lodged First Information Report after recording his statement. The Investigating Officer recorded statements of witnesses conversant with facts. Both Raj Kumar and Asif Khan were arrested during investigation. On completion of investigation, a charge-sheet was submitted. Both of them were charged and brought to Trial. The prosecution examined 11 witnesses to establish the offence. In his 313 statement, the appellant pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant guilty of

committing offence u/s 307 IPC Asif Khan was acquitted of all the charges. It is significant to note that the State did not challenge his acquittal.

2. During the course of arguments, Counsel, on instructions from the appellant, stated at Bar that the appellant has opted not to challenge the finds of the Trial Court recording conviction u/s 307 IPC. He, however, prayed to take lenient view as the appellant is in custody for the last about four years. He is not a previous convict and is not involved in any other criminal case. He has three minor children besides his unmarried sister and aged mother to take care of them. Since the appellant-Raj Kumar has not opted to challenge the conviction u/s 307 IPC, the findings of the Trial Court of conviction u/s 307 IPC are affirmed.

3. The appellant was sentenced to undergo RI for five years with fine of Rs. 5,000/- u/s 307 IPC. Nominal roll dated 05.07.2013 reveals that he has already undergone three years and fourteen days incarceration as on 05.07.2013. He has also earned remission for 10 months and 14 days. The unexpired portion is about one year and one month. His jail conduct is satisfactory. He is not a previous convict and is not involved in any other criminal case. It is unclear if the complainant suffered "dangerous" or "simple injury" on the body. The impugned judgment records that nature of injuries were dangerous as deposed by PW-10 who appeared on behalf of the Dr. Nishan Saxena, who had examined the complainant. However, PW-12, who was deputed to depose on behalf of Dr. Mukesh Jha, stated that the nature of injuries was "simple". Asif Khan was acquitted of all the charges. The appellant did not attempt to fire again at the complainant to ensure his death. The injuries were on the complainant's shoulder. Taking into consideration these mitigating circumstances, order on sentence is modified and the substantive sentence of the appellant is reduced to four years and six months with fine of Rs. 1,000/- and failing to pay the fine to further undergo SI for 15 days. Other terms and conditions of the sentence are left undisturbed. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith. Copy of the order be sent to the Superintendent Jail.