



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

% Date of Decision: 25.07.2025

+ **CRL.A. 89/2020**

STATE Appellant
Through: Mr. Pradeep Gahalot, APP for State

Versus

RAKESH & ANR Respondents
Through: Ms. Aishwarya Rao and Ms. Mansi
Rao, Advocates with Insp. Rajiv
Kumar and ASI Mukesh Kumar.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CRL. MA 1394/2020 (delay of 90 days in filing the appeal)

1. By way of the present application, the applicant/appellant seeks condonation of delay of 90 days in filing of the present appeal.
2. For the reasons mentioned in the application, it is allowed and the delay of 90 days in filing the appeal is condoned.
3. The application stands disposed of accordingly.

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1. The appellant/State has preferred the present appeal under Section 377 of the Cr.P.C., thereby seeking setting aside of order on sentence dated 01.10.2019 passed by the learned ASJ-04, Central District, Tis Hazari Courts, Delhi, in respect of Case No. 2218/2019, arising out of FIR No. 146/2018 registered under Sections 394/34 IPC at PS Hazrat Nizamuddin Railway Station, Delhi as well as seeking enhancement of sentence.



2. Pertinently, the Magisterial trial ended in conviction of the respondents under Sections 394/34 IPC vide decision dated 08.07.2019 and vide order on sentence dated 12.07.2019. Respondent no.1/*Rakesh* was sentenced to undergo RI for a period of 30 months under Sections 394/34 IPC and he was further directed to pay a fine of Rs.100/- (which was paid). Respondent no.2/*Ajay Kumar* was directed to undergo RI for 18 months under Section 394/34 IPC and was ordered to pay fine of Rs.100/- (which was also paid). The benefit of Section 428 Cr.PC was also granted to the convicts.

3. The respondents thereafter preferred an appeal before the Sessions Court, which vide order dated 01.10.2019, maintained the judgment of conviction, but modified the sentence to the period already undergone by the respondents, along with a further fine of Rs.5,000/- each.

4. Pertinently, respondent no.1/*Rakesh* has since expired and the factum of his death stands verified. The appeal against him stands abated. Thus, the present appeal survives only against respondent no.2/*Ajay Kumar*.

5. Learned APP for the appellant/State has called into question the order of the Sessions Court, which modified the respondents' sentence to the period already undergone by them, terming it as "inadequate," and has prayed for the enhancement of sentence.

6. This prayer is opposed by Ms. Aishwarya Rao, learned counsel appearing for the respondents, submitting that it was the deceased respondent no.1/*Rakesh* who had caused injuries to the complainant on his head. The injuries were further not proved as the MLC of the injured person was never placed on record. It is submitted that the role assigned to the present respondent was lesser and in fact, the injuries on the person of the



complainant were not attributed to the present respondent.

7. The sole issue that this Court is seized of is whether, in the facts and circumstances of the present case, the sentence imposed by the Sessions Court on respondent no. 2/*Ajay Kumar* is inadequate and requires interference.

8. A perusal of the order passed by the learned Sessions Court reveals that it took note of the fact that the present respondent was 22 years of age at the time and had studied up to 8th class. It was noted that the respondent belonged to a poor strata of society and was the only bread winner for his family. He was unmarried and was looking after his widowed mother, unmarried sister, and a younger brother. He had no criminal antecedents. More pertinently, the respondent was in judicial custody since 20.11.2018. Though under Section 34 IPC, all the accused persons who, by doing any act in furtherance of the common intention, participated in or assisted another accused in causing injuries are also liable for punishment. However, considering the nature of the injuries and the aforesaid facts, the learned Sessions Court considered it fit to modify the sentence of the respondent to the period already undergone by him.

9. Indisputably, the respondent/*Ajay* had undergone about 11 months of sentence on the date of passing of the impugned order. The incident took place on 15.11.2018. The respondent has faced the trial and further proceedings for the last 7 years.

10. During the course of the hearing, learned APP, upon instructions from the I.O., stated that the respondent since being released, had not been involved in any other criminal cases.

11. Considering the totality of the facts and circumstances, this Court



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finds no ground to interfere with the impugned order and the same is upheld.
The appeal is accordingly dismissed.

12. A copy of this order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

JULY 25, 2025/nb