

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

+ **Crl. A. No. 416/2005**

**Date of Order: 4<sup>th</sup> February, 2010**

# NALBIR ..... Appellant  
! Through: Mr. V.Madhukar and  
Mr. Jayendra Sevada and Mr.Paritosh  
Anil, Advs.

versus

\$ THE STATE (GOVT. OF NCT) OF DELHI ..... Respondent  
^ Through: Mr. Jaideep Malik, APP.

\* **CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

: **V.K. JAIN, J. (Oral)**

1. This is an appeal against the Judgment dated 26<sup>th</sup> February, 2005 and Order of Sentence dated 28<sup>th</sup> February, 2005, whereby the appellant was convicted under Section 307 of IPC and was sentenced to undergo RI for 10 years and to pay fine of Rs.2,000/- or to undergo SI for four months in default.

2. On 13<sup>th</sup> April, 2000, SI Ramesh Chand of Police Station Kanjhawla, went to Village Jonti, on receipt of copy of DD No.

44-B. He came to know that injured had been taken to Jaipur Golden Hospital. When he reached the hospital, the injured was found unfit for statement. His grandfather Ziley Singh was, however, present in the hospital and lodged a complaint Ex. PW-1/A. The complainant alleged that on that day, he was going to meet one Prakash. His grandson, Sarwan Kumar was going ahead of him, at a distance of about 10-15 yards. When they reached near the house of Sher Singh at about 6.00 pm, appellant Nalbir, who was a resident of the village and with whom they had previous enmity on the issue of land and a civil litigation was also pending in Civil Court, fired a shot on his grandson from the back. The bullet hit the spinal cord of his grandson. On account of his advanced age, the complainant could not apprehend the appellant, despite effort made by him.

3. During trial, the prosecution examined as many as 21 witnesses. One witness was examined in defence.

4. The complainant came in the witness box as PW-1 and stated that on 13<sup>th</sup> April, 2000, at about 6.00 pm when he was going to Prakash, owner of harvesting machine, his grandson Shrawan Kumar was going ahead of him and was being followed by the appellant Nalbir. He further stated that accused Balbir

and Joginder, (who have been acquitted), were also with the appellant Nalbir and at the extortion Joginder, the appellant Nalbir fired a bulled shot at the back of Shrawan Kumar. Balbir then said "MAR GAYA SALA" and then all the three run away. He further stated that a civil dispute was going between him and the appellant. The complainant tried to apprehend the appellant, but could not succeed. He then took the appellant to Jaipur Golden Hospital, where police recorded his statement.

5. The injured came in the witness box as PW-2 and stated that on 13th April, 2000, he was going to the shop of cable operator. When he reached near the house of Sher Singh, he heard Joginder saying "MAAR GOLI". He was then hit with a bullet on his back and fell down. When he looked back, he saw a pistol in the hand of the appellant Nalbir.

6. PW-4 Dr. Jyoti Shankar examined the appellant vide Ex.PW-4/A and found one penetrating wound. PW-8 ASI Kale Ram has stated that on 14<sup>th</sup> April, 2000, the appellant Nalbir was apprehended while coming from the side of village Samalakha and on his search, one country-made pistol Ex.P-1 was recovered from his possession alongwith two live cartridges.

7. PW-9 Head Constable Jagdilsh Chander has stated that on 1<sup>st</sup> May, 2000, one empty cartridge was recovered from under

the accidental car of the appellant Nalbir and was seized vide memo Ex.PW-9/A. PW-19 SI Ramesh Chand has corroborated the deposition of PW-9 about recovery of a cartridge from under the car of the appellant.

8. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him. DW-1 Bheema has stated that on 12<sup>th</sup> April, 2000, Nalbir had come to his house at 4.00 pm and has stayed there till 14<sup>th</sup> April, 2000.

9. The learned counsel for the appellant states that considering the evidence that has been produced by the prosecution against the appellant, which has been believed by the Trial Court, he does not dispute the conviction of the appellant under Section 307 of IPC and only seeks reduction of the sentence awarded to him, considering the fact that he has already spent more than six years in jail.

10. A perusal of the Nominal Roll of the appellant dated 5<sup>th</sup> September, 2005 would show that as on 1<sup>st</sup> September, 2005, he had already spent one year 10 months and 4 days in jail. The appellant having not been granted regular bail by this Court during pendency of this appeal, he has thereafter continued to be in judicial custody, except for a period of two weeks for which he was granted interim bail vide order dated 31<sup>st</sup> May, 2005, to

attend the marriage of his daughter. Taking into consideration all the facts and circumstances of the case, the appellant is sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.2,000/- or to undergo SI for 2 months in default.

A copy of this order be sent to the appellant through Jail Superintendent.

Trial Court Record be sent back, alongwith a copy of the judgment.

**V.K. JAIN  
(JUDGE)**

**FEBRUARY 04, 2010**  
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