

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1 **Criminal Appeal S-1241-SB of 2010**
Date of Decision: August 07, 2015

Kulbir @ Tansen

.....Appellant

Versus

State of Haryana

..... Respondent

2

CRR 2193 of 2010

Om Parkash

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present: Mr. Varun Kumar, Advocate
for the Appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

Mr. A.S.Khara, Advocate
for the complainant.

T.P.S.MANN, J. (Oral)

The appellant was tried for the offences punishable
under Sections 307 and 452 IPC and Section 25 of the Arms Act.

Vide judgment and order dated 27/29.03.2010, the Additional

Sessions Judge (Fast Track Court), Hisar, believed the prosecution case and convicted the appellant for the afore-mentioned offences. The appellant was sentenced under Section 307 IPC to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. He was further sentenced under Section 452 IPC to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of ten days. He was also sentenced under Section 25 of the Arms Act to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one week. All the substantive sentences of imprisonment were ordered to run concurrently.

Aggrieved of his conviction and sentence, the appellant has filed Criminal Appeal S-1241-SB of 2010. Complainant-Om Parkash, who had received injuries in the occurrence, has also filed CRR 2193 of 2010, wherein he has prayed for enhancing the sentence of imprisonment imposed upon the appellant. As the appeal as well as the revision arise out of the same judgment of conviction and sentence, they are being

disposed of by a common order.

The case of the prosecution, in nutshell, is that the appellant and one Sunil son of Naresh, while confined in Central Jail, Hisar, had misbehaved with complainant Om Parkash, who used to work as a Medical Officer. The complainant sent a complaint to the higher authorities due to which the appellant and Sunil were lodged in separate cells. Lateron, the Sessions Judge, Hisar, transferred the appellant to Central Jail, Rohtak while Sunil to Narnaul jail. On 25.04.2007 at about 2:00 p.m., the complainant had returned home and after having meals, was taking rest. At about 3:00 p.m., the door bell rang on which Krishna Kumari, wife of the complainant, went to answer the same. The complainant followed her. They saw the appellant standing near the gate who stated that he wanted to talk with the complainant. Simultaneously, the appellant took out a country made pistol and with an intent to kill the complainant, fired at him which hit the complainant on the right side of his chest. Thereafter, the appellant ran away from the spot. Subsequently, statement of complainant-Om Parkash was recorded by ASI Rajender Prashad in General Hospital, Hisar, on the basis of which FIR No. 274 Dated 25.04.2007 under Sections 307 and 452 IPC and Section 25 of the Arms Act was registered at Police Station City, Hisar.

During the investigation of the case, the appellant was arrested and the pistol used by him in the commission of the crime was recovered. Statements of the witnesses were recorded. Upon completion of investigation, final report under Section 173 (2) Cr.P.C. was submitted against the appellant in the Court of learned Illaqa Magistrate, which was thereafter committed to the Court of Sessions, where the appellant was charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Om Parkash Mehta (complainant), PW2 Krishna Kumari, PW3 ASI Rajender Prashad, PW4 Dr. M.L.Kamra, PW5 SI Kulbhushan, PW6 Dalbir Singh, PW7 Inspector Prahlad Singh, PW8 SI Roop Chand, PW9 ASI Vijay Kumar, PW10 Dr. B.S. Khatri and PW11 EHC Sohan Singh whereas Inspector Partap Singh, EASI Mahender Singh, HC Jai Ram, HC Hari Kishan, Baljit Singh and Dr. R.S. Dalal were given up as unnecessary by the Public Prosecutor and after tendering the FSL reports, the prosecution closed its evidence.

When examined under Section 313 Cr.P.C., the appellant denied the allegations levelled against him and pleaded false implication. In his defence, he examined DW1 Dalbir Singh Clerk, Central Jail, Hisar.

As mentioned above, the trial Court after finding the prosecution case to be trustworthy, held the appellant guilty and sentenced him, accordingly.

Having heard learned counsel for the parties, this Court finds that the ocular account of the incident has been brought on record by complainant-Om Parkash while appearing as PW1. He testified that it was the appellant, who had come to his house at about 3:00 p.m. on 25.04.2007 and had opened a fire at him. The shot so fired, hit him on the right side of his chest. The testimony of the complainant stands duly corroborated by that of his wife Krishna Kumari, who was examined by the prosecution as PW2. The medical evidence has been brought on record through the testimonies of PW4 Dr. M.L.Kamra and PW10 Dr. B.S. Khatri whereas the investigation part of the case stands proved through the testimonies of PW3 ASI Rajender Prashad, PW5 SI Kulbhushan, PW6 Dalbir Singh, PW7 Inspector Prahlad Singh, PW8 SI Roop Chand, PW9 ASI Vijay Kumar and PW11 EHC Sohan Singh. As per the report of the Forensic Science Laboratory, the empty cartridge got recovered by the appellant was found to have been fired through country made pistol which was also got recovered by the appellant pursuant to the disclosure statement made by him.

In view of the above, no fault can be found with the

conviction of the appellant for the various offences.

As regards the quantum of sentence, this Court finds from the custody certificate dated 28.07.2015 already brought on record, that the appellant had undergone an actual period of six years and seven days. The appellant has been facing the agony of criminal prosecution for the last more than eight years. During his examination under Section 235 Cr.P.C., before the trial Court, he had pleaded that he was required to look-after his aged parents and six siblings.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the substantive sentence of imprisonment of seven years imposed upon the appellant for the offence under Section 307 IPC can be reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Sections 307 and 452 IPC and Section 25 of the Arms Act is maintained. The substantive sentence of imprisonment of seven years under Section 307 IPC is reduced to the period already undergone by the appellant. The substantive sentences of imprisonment imposed upon the appellant for the offences under Section 452 IPC and Section 25 of Arms Act are maintained. However, all the substantive sentences of imprisonment shall run

concurrently. The sentences of fine along with their default clauses on all the counts are maintained. The entire amount of fine, if recovered from the appellant, be paid to complainant-Om Parkash as compensation.

The appeal filed by the appellant/convict and the revision filed by complainant-Om Parkash are, accordingly, disposed of.

August 07, 2015
amit rana

(T.P.S.MANN)
JUDGE