

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

**CRA-S-1957-SB of 2003 (O&M)
DATE OF DECISION :- November 27, 2015**

Narender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Sajjan Singh, Advocate for the appellant.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana.

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

M.JEYAPPAUL, J.

1. Accused Narender has challenged the judgment passed by the trial Court vide which he convicted under Section 307 of the Indian Penal Code and sentenced to undergo 10 years rigorous' imprisonment and to pay a fine of ₹1,000/- and in default of payment of fine to undergo a further period of six months rigorous imprisonment. He was also convicted under Section 25 of the Arms Act and sentenced to undergo nine months rigorous imprisonment and to pay a fine of ₹500/- and in default of payment of fine to undergo rigorous imprisonment for a further period of three months.

2. CRM No. 13019 of 2015 has been filed praying for an order to run the sentence imposed on accused Narender in the present case concurrently with the sentence already imposed in F.I.R. No. 266 dated 29.6.1997 under Sections 323, 307 and 34 of the Indian Penal Code at Police Station Gohana.

3. PW5 complainant Abhimanyu has deposed that he was a practicing Advocate at Gohana Courts. On 24.2.2001 at about 3.00 P.M. when he was proceeding to his house by a scooter, after completing his Court work accused met him near a culvert of drain and gave a signal to stop his scooter. The moment PW5 stopped his scooter, accused opened fire from a country made pistol upon him which touched his temporal region and passed away. After he fell down from the scooter, he tried to escape. The accused again fired upon him which touched his head and passed away near by his temporal region. PW5 fell down again and tried to escape. For the 3rd time also the accused fired upon him and the bullet hit him on his wrist of his left hand.

4. PW7 Jagpal and PW8 Inder Gian deposed that at about 3.00 P.M. on the day of occurrence, they saw PW5 Abhimanyu running towards the road, while accused Narender was chasing him. Accused fired a shot on Abhimanyu from his country made pistol which touched his head. Thereafter, when PW5 who fell down made an attempt to get up and escape, the accused again delivered a shot which hit the left wrist of PW5. The accused ran away after seeing them.

5. PW5 has come out with a motive for the occurrence. He

has stated that a partition suit filed by the accused was pending in the Court. PW5 had appeared for the opposite party in that partition suit filed by the accused. While leaving the Court, the accused threatened him that he would kill him as and when he got a chance.

6. PW1 Dr. Ishwar Singh Punia medico legally examined PW5 on 24.2.2001 at about 3.45 P.M. He found a lacerated wound with burnt margins on the left forearm. There was a metallic piece in the wound and the same was recovered by the doctor. There was also a lacerated wound on the right frontal area and left parieto temporal region. He also noted down multiple abrasions with burnt margins variable in shape and size. In his opinion all the injuries have been caused by a fire arm.

7. The learned counsel appearing for the appellant submitted that the prosecution has come out with a politically motivated charge. It is his further submission that the sentence may be reduced and may be ordered to run concurrently with the sentence imposed in the earlier case, considering the family circumstances of the appellant.

8. Per contra, learned State counsel vehemently submitted that the prosecution has established beyond reasonable doubt through the testimony of PW5, PW7 and PW8 that the accused committed the offences under Section 307 IPC and Section 25 of the Arms Act. Inasmuch as the accused had committed the offence when he was on bail in a similar type of criminal case, the question of ordering concurrent running of sentence does not arise, he submitted.

9. PW5 Abhimanyu was an Advocate by profession. The prosecution has established that PW5, in fact, defended an opposite

party in a partition suit filed by the accused. The motive part of the case has been well established by the prosecution.

10. PW5 Abhimanyu was an injured witness. As per the evidence of PW1 Dr. Ishwar Singh Punia, he has sustained lacerated wound in the left forearm, the right frontal area and left parieto temporal region and multiple abrasions on the face. As per the evidence of PW1 all the injuries sustained by PW5 had been caused by a fire arm.

11. The evidence of an injured witness has to be placed on higher pedestal. The injuries found on the person of PW5 could not have been self suffered. There was no reason for PW5, an Advocate by profession, to falsely implicate the accused, if at all somebody else was the perpetrator of the crime. Under such circumstances, there was no reason to reject the evidence of PW5 who has sustained injuries on vital parts of his body.

12. PW7 and PW8 were independent witnesses to the occurrence. They have witnessed the 2nd and 3rd shots delivered by the accused on PW5 who fell down and made an attempt to flee from the onslaught of the accused. Their testimony also completely corroborates the testimony of PW5. The medical evidence also lends support to the case of the prosecution.

13. PW5 has categorically stated that the accused threatened PW5 to do away with his life when he left the Court. Accused had aimed at the vital parts of the body, namely, right frontal area and left parieto temporal region. Had the bullet fired by the accused hit the target aimed, it would have culminated in murder. Further, if the

witnesses, PW7 and PW8, had not come to the rescue of PW5, the latter would have been killed. The motive harboured by the accused, the seat of injuries and the weapon used by the accused would go to establish that the accused had attacked with his country made pistol with an intention to cause the death of PW5. Accused had not possessed any license for the country made pistol.

14. In the above facts and circumstances, I find that the prosecution has established beyond reasonable doubt that the accused committed the offence punishable under Section 307 IPC and Section 25 of the Arms Act.

15. Coming to the prayer for ordering concurrent running of sentence, it has been projected by the accused that he was blessed with two children. That cannot be a ground for ordering the concurrent running of sentence. It is found that the accused had committed the offence when he was on bail in a similar nature of case. In the earlier case also, he had used country made pistol and made an attempt to cause the death of the victim therein. Further an Advocate who had chosen to discharge his professional duty, had been targeted by the accused. Under such circumstances, I do not find any ground for ordering concurrent running of sentence imposed in both the above criminal cases. But considering the family circumstances of the accused and the sentence of 7 years imprisonment already imposed on the accused, I am inclined to reduce the sentence of 10 years imposed for the offence under Section 307 of the Indian Penal Code in the instant case to 7 years rigorous imprisonment.

16. In view of the above, the conviction of the accused under Section 307 IPC and Section 25 of the Arms Act stands confirmed but he is sentenced to undergo 7 years rigorous imprisonment instead of 10 years rigorous imprisonment for the offence under Section 307 IPC. The fine amount and the default sentence imposed by the trial Court for the offences under Section 307 IPC and the sentence imposed for the offence under Section 25 of the Arms Act are maintained. The sentences imposed for the offences under Section 307 IPC and Section 25 of the Arms Act in the instant case shall run concurrently.

17. With the above modification in the quantum of sentence, the Criminal appeal and the Petition in CRM No. 13019 of 2015 praying for concurrent running of sentence stand dismissed. The bail bond executed by the accused shall stand cancelled. It is informed that the accused is undergoing sentence in connection with FIR No. 266 dated 29.6.1997 of P.S. Gohana. On completion of the sentence imposed in the case in FIR No. 266 dated 29.6.1997 of P.S. Gohana, he shall undergo the remaining part of the sentence imposed in this case.

**(M. JEYAPPAUL)
JUDGE**

November 27, 2015

p.singh