

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

Crl. Appeal S-157-SB of 2001

Date of Decision : July 29, 2016

Arjun Dev

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Akashdeep Singh, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

The appellant was tried for committing the offences punishable under Sections 302 and 307 IPC, Section 5 read with Section 9-B of the Explosives Act and Section 38 read with Section 92 of the Factories Act, 1948. His son Dinesh was also tried for committing the offences punishable under Sections 302/307/34 IPC. Vide judgment and order dated 19.1.2001, learned Additional Sessions Judge, Rohtak acquitted Dinesh accused of all the charges against him. The appellant was also acquitted under Section 5 read with Section 9-B of the Explosives Act and Section 38 read with Section 92 of the Factories Act. He was also acquitted under Sections 302 and 307 IPC. Instead, he was convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,00,000/- and in default thereof, to undergo further simple imprisonment for six months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which was admitted on 13.2.2001. Subsequently vide order dated 22.3.2001, this Court suspended his sentence of imprisonment upto the disposal of the appeal.

The case of the prosecution, in nutshell, is that on 24.5.1995 at around 12 noon, the workers who used to manufacture crackers in Krishna Fire Works, Gohana Road, Rohtak were working there. The appellant, who was owner of the factory was also present there. Dharam Raj, Fireman tested a siren cracker due to which factory caught fire. The labourers tried to rush out but were stopped at the gate by the appellant and his son Dinesh, who insisted upon them to extinguish the fire or else they would not be allowed to go out of the factory. Having been forced by the owners, all the workers started extinguishing the fire. Several workers were trapped in the fire. Gas cylinders started bursting. The appellant and his son Dinesh ran away after bolting the gate from outside. Many workers were burnt whereas several sustained burn injuries. Some persons, who had gathered on the road outside the factory rescued the workers, who were taken to Medical College and Hospital, Rohtak. In case the appellant and his son Dinesh and Dharam Raj had not compelled the workers to first extinguish the fire and also not bolted the gate from outside, all the workers could have safely

come out of the burning factory. There was neither any water nor sand nor any fire extinguisher in the factory despite the fact that there was a huge stock of gun powder and crackers. Subsequently, complainant-Mani Maran son of Rama Swami, resident of Sivakasi, District Kamran, Tamil Nadu, made statement before Inspector Sham Singh on the basis of which FIR No. 179 dated 24.5.1995 under Sections 302/34, 120-B, 342/34 and 307/34 IPC, Sections 4 and 5 of the Explosives Act and Section 92 of the Factories Act was registered against the appellant and his son Dinesh at Police Station City, Rohtak.

During the investigation of the case, Inspector Sham Singh took out twenty three charred bodies which were sent to Medical College and Hospital, Rohtak for post-mortem. The fire was brought under control with the help of fire brigade whereas drums of chemical powder, gun powder and manufactured crackers were removed from the factory and sent to safe place away from the locality. In the incident, eight persons had also suffered burn injuries. Two out of them later on expired. On 25.5.1995, the appellant as well as Dinesh were arrested.

After completion of the investigation and presentation of challan followed by commitment of the case, the appellant and his co-accused Dinesh were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

Learned counsel for the appellant has submitted that

he does not intend to challenge the impugned judgment passed by the trial Court whereby the appellant stood convicted under Section 304 Part II IPC. He has, however, submitted that the appellant has been facing the agony of criminal prosecution for the last more than twenty one years. At the time of the occurrence, he was sixty three years of age. At present, he is aged about eighty four years. He is suffering from various old age diseases including heart problem. Out of the sentence of three years imposed upon him, he has already undergone a sentence of more than two months. The fine of Rs. 2,00,00/- imposed upon him by the trial Court has already been deposited by him with the said Court. It is also submitted that the appellant has not misused the concession of bail during the pendency of the appeal. Therefore, his remaining sentence of imprisonment be set-aside.

Learned State counsel has vehemently opposed the prayer made by learned counsel for the appellant by submitting that the appellant was responsible for committing the offence under Section 304 Part II IPC as it was he who had knowingly not allowed the workers to come out from the premises which were on fire and bolting the premises from outside. As a result, twenty five persons lost their lives whereas six received burn injuries.

As per the custody certificate dated 7.1.2016 already brought on record by the learned State counsel, the appellant

who was aged sixty three years at the time of his admission into jail in the year 1995 had undergone total sentence of two months and five days.

Having heard learned counsel for the parties and keeping in view the fact that the appellant is about eighty four years of age and facing the agony of criminal prosecution since long besides suffering from various diseases, a case is made out to grant concession to the appellant in the matter of sentence of imprisonment and at the same time to enhance the amount of fine by Rs. 5,00,000/-.

Resultantly, the fine is enhanced by Rs. 5,00,000/- over and above the fine imposed upon him by the trial Court. In the event of the appellant depositing the enhanced amount of fine within four months from today, his sentence of imprisonment shall stand reduced to that already undergone by him. In case, he does not pay the enhanced amount of fine, he shall be required to undergo substantive sentence of imprisonment imposed upon him by the trial Court.

The appeal is, accordingly, disposed of.

July 29, 2016
ajay-1

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No