

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

Criminal Appeal S-2428-SB of 2004

Date of Decision : November 9, 2016

Naushad KhanAppellant

Versus

State of Haryana Respondent

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

Present : Mr. S.K.Yadav, Advocate
for the appellant.

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

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

The appellant was tried for committing offences punishable under Sections 332, 353 and 307 IPC. Vide judgment and order dated 1.12.2004, learned Additional Sessions Judge, Rohtak, acquitted him of the charge under Section 307 IPC. However, he was convicted under Section 353 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of three months. He was also convicted under Section 332 IPC and sentenced to undergo rigorous imprisonment for a period of fifteen months and to pay a fine of Rs.1,500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of four months. Both the sentences were ordered to run concurrently.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 9.12.2004 and the records were also requisitioned.

The case of the prosecution has been detailed by the lower trial Court in para 1 of the judgment, which reads as under:-

“Prosecution case, is that on 10.8.2003, ASI Om Parkash PW8 with Constable Anup Singh reached Jindran turning from Nigana side, on patrolling when a ward boy of CHC Kalanaur met him along with Head Constable Om Parkash PW1, Constable Karambir PW2 and Constable Kaptan (given up as unnecessary) and handed him over 'ruqa' Ex.P7 with copies of MLRs Ex.P5 and Ex.P6 for the injuries upon the persons of Head Constable Om Parkash and Constable Karambir, respectively. Head Constable Om Parkash got his statement Ex.P1 recorded, which is to the effect that on that day he along with Constable Ramdhari No.774 (given up as unnecessary), EHC Ramphal PW3 and Constable Kaptan (given up as unnecessary) was present at S.J.K. College Chowk, Kalanaur turning, with police jeep No. HR12A/6220, with its driver constable Karambir PW2 on 'nakabandi' and were checking the vehicles. At about 9.15 p.m., Green Maruti Car No. DL-1CC/6130 was seen coming from the side of Rohtak being

driven rashly and negligently. He gave a signal to it to stop but driver of the car without caring for the signal, hit the car directly to him and Constable Karambir with intention to kill and fled away towards Kalanaur side. Constable Kaptan brought him and injured Karambir to CHC Kalanaur where they were medically examined by the doctor and were given first aid. They were then referred to Civil Hospital, Rohtak, by the doctor for further medical treatment. Meanwhile, when they were going to the police station to lodge report, they met them there; hence this report”.

Learned counsel for the appellant has submitted that the appellant does not intend to challenge his conviction for the offences under Sections 353 and 332 IPC. He has, however, submitted that the appellant is facing the agony of criminal prosecution for the last thirteen years. All the injuries received by Head Constable Om Parkash and Constable Karambir were found to be the result of blunt weapon and simple in nature. It is also submitted that the appellant is not a previous convict. He belongs to a respectful family and serving the society by taking up various social causes. He had deposited the fine imposed upon him by the learned trial Court. Out of the sentence of fifteen months imposed upon him, he has already undergone a period of fifteen days. Prayer has, accordingly, been made for reducing his substantive sentences of imprisonment to the one

already undergone by him.

Learned State counsel has vehemently opposed the prayer by submitting that though the appellant was given a signal to stop the vehicle, in which, he was seen coming from the side of Rohtak while driving his vehicle rashly and negligently, he did not care for the signal and hit the car directly at Head Constable Om Parkash and Constable Karambir before fleeing towards Kalanaur side. Learned State counsel has, however, produced the custody certificate, wherein, it is mentioned that the appellant has undergone total sentence of eleven days. He is also not shown to be involved in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellant behind the bars, once again, for undergoing the remaining substantive sentences of imprisonment. Ends of justice shall be suitably met, if his substantive sentences of imprisonment are reduced to the one already undergone by him.

Resultantly, the conviction of the appellant for the offences under Sections 353 and 332 IPC is upheld. His substantive sentences of imprisonment on both the counts shall stand reduced to the one already undergone by him. The fine of Rs.1,000/- imposed for the offence under Section 353 IPC alongwith its default clause is maintained. However, the fine of Rs.1,500/- imposed upon the appellant for the offence under Section 332 IPC is enhanced to

Rs.40,000/-. The enhanced amount of fine shall be deposited by the appellant in the Court of the Chief Judicial Magistrate, Rohtak, within three months from today, failing which, he shall be required to undergo rigorous imprisonment for a period of nine months. The entire enhanced amount of fine, if deposited by the appellant, be disbursed equally in favour of the two injured, i.e. Head Constable Om Parkash and Constable Karambir by way of compensation.

The appeal is, accordingly, disposed of.

November 9, 2016	(T.P.S. MANN)
amit rana	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No