

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

Criminal Appeal S-971-SB of 2004

Date of Decision: July 15, 2016

Mohinder Singh	Versus	Appellant
State of Punjab		 Respondent

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

Present : Mr. R.K.Trikha, Advocate
for the appellant.

Mr. Vikram Bishnoi, Asstt. Advocate General, Punjab.

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

The appellant was tried for committing an offence punishable under Section 308 IPC on the allegations that on 29.10.2002 at about 8 a.m., he gave three dang blows to Ram Dass, husband of complainant-Nirmala Devi, hitting him on the right side of his head, above right eye and below the nose. Vide impugned judgment and order dated 22.4.2004, learned Sessions Judge, Hoshiarpur convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of

fine, to further undergo rigorous imprisonment for one month. The period of detention already undergone by him during the investigation or trial, if any, was ordered to be set off against the period of sentence of imprisonment imposed upon him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted by this Court on 6.5.2004 and his sentence of imprisonment was ordered to remain suspended during the pendency of the appeal.

Learned counsel for the appellant submits that he does not challenge the impugned judgment of conviction passed by the trial Court whereby the appellant stood convicted under Section 308 IPC. He, however, submits that there was no previous enmity between the parties and the occurrence had taken place on account of appellant letting loose his oxen which damaged the clay pots of complainant Nirmala Devi and her husband Ram Dass. It is also submitted that the appellant is facing the agony of criminal prosecution for the last about fourteen years. At the time of the occurrence, the appellant was forty years of age. At present he is in his mid fifties. It is also submitted that though the prosecution claimed that the appellant had given three blows with the dang yet from the medical evidence, it is apparent that only one dang blow was caused by the appellant, which resulted in injury No. 1 and the other two injuries, i.e. injuries Nos. 2 and 3 were the result of injury No. 1. It

is further submitted that the appellant is the only bread winner of his family. He has three daughters of marriageable age. His eldest daughter, aged twenty three years, is pursuing M. Pharmacy whereas younger daughters, aged twenty one years and eighteen years, are in the final year of their graduation. It is further submitted that he is not a previous convict. Out of the sentence imposed upon him, he has already undergone a period of more than three months. He is out on bail for the last more than twelve years. Prayer has, accordingly, been made for setting-aside his remaining sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that the occurrence had developed on account of the appellant tying his oxen close to the clay pots of the complainant party. Further, the appellant caused as many as three injuries on the person of Ram Dass, husband of the complainant. Besides, he also gave pushes to the complainant. Prayer has, accordingly, been made for upholding the sentence of imprisonment of the appellant.

As per the custody certificate dated 28.9.2015 already brought on record by the learned State counsel, the appellant has already undergone an actual period of three months and three days. Further, neither he is involved in any other case nor he stands convicted in any other case apart from the present case.

After hearing learned counsel for the parties and

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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 his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the fine imposed upon him by the trial Court can be suitably enhanced so that the same may be paid to injured Ram Dass, as compensation.

Resultantly, the conviction of the appellant under Section 308 IPC is upheld. His substantive sentence of imprisonment is reduced to the period already undergone by him. The fine amount is, however, enhanced by Rs.25,000/-. The enhanced amount of fine be deposited by the appellant before the Chief Judicial Magistrate, Hoshiarpur, within a period of three months from today, failing which, he shall be required to undergo rigorous imprisonment for six months.

But for the modification in the quantum of sentence of imprisonment and fine, as indicated above, the appeal fails and is, therefore, dismissed.

July 15, 2016
amit rana

(T.P.S. MANN)
JUDGE