

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

**Crl. Appeal No.S-2408-SB of 2016 (O&M)
Date of Decision: September 19, 2016**

Nikku @ Gholli

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rahul Rathore, Advocate
for the appellant.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction and order of sentence dated 07.06.2016 passed by learned Addl. Sessions Judge, Karnala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month under Section 279 IPC and further to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months under Section 304-A IPC.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Karnal, are as under:-

“2. The case of the prosecution was launched on the statement of complainant Tarun Sharma son of Madan Lal Sharma, who stated that he is an agriculturist. He further stated that on 18.5.2011 accused Nikku @ Gholli son of Rajender Singh, Caste Balmiki and one Vinod @ Phulla son of Dharam Pal @ Jugnu Caste Balmiki, resident of Ranwar and Rajesh @ Raja son of Om Parkash, Babli son of Om Parkash, Caste Balmiki, resident of Balmiki Basti Arjun Gate, Karnal had inflicted injuries to him with lathies and gandas at Devi Lal Chowk, Karnal. On which an FIR bearing No.383 dated 19.5.2011 under Sections 148,149,323,341,307 and 506 of IPC was registered in Police Station Civil Lines, Karnal against these persons. He further stated that the said occurrence was also witnessed by his uncle Narender Kumar son of Dhani Ram, Caste Brahman, resident of Village Ranwar. He further stated that all the above named persons used to ask his uncle for not giving the evidence against them. But on 11.2.2014, his uncle Narender Kumar had given evidence in the above mentioned FIR against the above named persons in the court. Due to which, the above said persons were having grudge against his uncle Narender Kumar. He further stated that the above said persons had also tried to inflict injuries to him and his uncle Narender Kumar. He further stated that on 20.9.2014, at about 8.05 PM, he along with his uncle Narender Kumar was going from Subzi Mandi to Village Ranwar on the motor cycle bearing registration No.HR-05S-1207 owned by his uncle Narender Kumar. The motor cycle was being driven by his uncle Narender Kumar and he was pillion rider. He further stated that the motor cycle was being driven by his uncle at a moderate speed and when they reached ahead of Gatta Factory near Averdhan River, then one vehicle TATA Safari bearing registration No.HR-05Y-9200 of Black color came from the side of Village Ranwar. The driver of the said vehicle hit his TATA Safari against the motor cycle with intent to kill them. After the accident, he fell down on the kaccha portion of the road due to which he received injuries on his hands and feet. He further stated that when he get up he saw that accused Nikku @ Gholli son of Rajender, one Vinod @ Pulla son of Dharam Pal @ Jugnu Caste Balmiki, resident of Ranwar who were having country made pistol in their hands and Rajesh @ Raja, Babli son of Om Parkash Caste Balmiki, resident of Arjun Gate Karnal, Raju Balmiki, Vicky son of Rajender, Vikas son of Dharam Pal @ Jugnu, residents of Ranwar alighted from the said TATA Safari. In the meanwhile, one Alto Car which was being driven by Sanjiv son of Puran, Balmiki also came there in which Dharampal @ Jugnu, resident of village Ranwar and two other boys were sitting. They were also having dandas and bindas in their hands and they also alighted from the said car. He further stated that thereafter accused Nikku had fired a gun shot on him, but he escaped himself narrowly. Then, accused Nikku had also fired a shot on

his uncle Narender Kumar who was lying on the ground. Then, Vinod @ Pulla had also fired a shot with his country made pistol upon him and his uncle Narender Kumar. He further stated that the remaining persons had also raised lalkara by saying that the complainant and his uncle Narender Kumar should not be escaped today. He further stated that on seeing them, he fled away from the spot towards the nearby fields. Then, he saw one Dawaraka Nath son of Piare Lal, resident of village Ranwar was standing near his uncle. Thereafter, the accused Nikku and other persons had plied the TATA Safari and dragged their motor cycle along with the said vehicle at a distance of about 100 meter towards Karnal side. He further stated that due to sparking from the motor cycle, both the vehicle i.e motor cycle and TATA Safari had caught fire. He further stated that the assailants fled away from the spot along with their Alto Car. He further stated that he along with Dawarka Nath reached near his uncle Narender Kumar and found that his uncle Narender Kumar had already died due to the injuries sustained by him in the present occurrence. He further stated that action may be taken against these persons, then ruqa was sent to the police station for registration of the case. FIR was registered. The investigation of this case was conducted by Insp/SHO Gurvinder Singh. He prepared rough site plan and recorded the statements of prosecution witnesses under section 161 Cr.P.C. The post mortem on the dead body was got conducted. Proceedings under section 174 Cr.P.C was conducted. After completion of investigation, challan under section 173 Cr.P.C. was prepared.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 302, 307, 427 IPC and Section 30 of the Arms Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.K.R.Gill, PW-2 Tarun Sharma, PW-3 Head Constable Sandeep, PW-4 Gurpal Singh, PW-5 EASI Rameshwar, PW-6 Dwarkanath, PW-7 SI Suresh Kumar, PW-8 EHC Veer Shakti Singh, PW-9 Inspector Shri Dutt, PW-10 HC Rajbir Singh, PW-11 Inspector Gurwinder Singh, PW-12 Dr.Kamal Beniwal, PW-

13 EHC Narender Singh and PW-14 Constable Daya Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent.

In defence, accused examined DW-1 Jitender.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that appellant is a poor person, first offender and only bread earner of the family. He further contended that the appellant is suffering from criminal proceedings since 2014. He further contended that accused-appellant has already undergone about 1 years 8 months and 04 days of actual sentence, as on 22.07.2016.

On the other hand, learned State counsel argued that appellant has been rightly convicted and sentenced by the trial Court. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first offender, poor person and only bread earner of the family and he is suffering from criminal proceedings since 2014 i.e. for the last about 2 years and further in view of the fact that

appellant has already undergone actual sentence of about 1 year 8 months

and 4 days out of the total sentence as on 23.07.2016, the date when the sentence of the appellant was suspended during the pendency of the appeal, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, sentence of fine and in default thereof, shall remain the same. Fine has already been paid, as argued.

Accordingly, present criminal appeal stands partly allowed.

Since appellant Nikku @ Gholli is on bail, his bail/surety bonds stand discharged.

September 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No