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

CRA-S- 613-SB-2003
Date of Decision : August 8th , 2016

Balwant Singh Appellant

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. C.M.Munjal, Advocate,
for the appellant.

Mr. Yogesh Kumar Gupta, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 06.03.2003, passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur whereby the appellant-Balwant Singh was convicted and sentenced as under:-

Under Section	Sentence	In default
324 IPC	to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of ₹1000/-	to further undergo R.I. for a period of 2 months.

2. Relevant facts for the purpose of decision of the appeal; that Rachhpal Singh (father of the complainant - Balbir Singh) died about one year prior to the date of occurrence. Balwant Singh, present appellant is

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uncle (*Phufar*) of the complainant. The complainant was having suspicion that Balwant Singh has illicit relation with his mother Sumitra Devi. He as well as sons of Balwant Singh used to ask them not to continue with such relation, but to no effect. On 10.08.1997 Balbir Singh (complainant) and Surinder Singh were going on a Moped. At about 11 AM, when they came near village Falian Wala, they saw Balwant Singh and Sumitra Devi coming on a scooter from opposite side which was being driven by Balwant Singh. They did not stop the scooter despite signal having been given by the complainant. Thereafter the complainant and Surinder Singh chased them and succeeded in intercepting them. Complainant and Surinder Singh asked them as to where they had gone, but Balwant Singh and Sumitra Devi failed to satisfy the complainant and Surinder Singh. Meanwhile, Sher Singh son of Hakam Singh also reached there. Appellant Balwant Singh and Sumitra Devi started hurling filthy abuses on the complainant in the presence of Sher Singh. Balwant Singh fired shot upon the complainant from his pistol with an intention to kill him which hit the complainant on his left upper arm. Complainant raised hue and cry. Balwant Singh and Sumitra Devi fled away from the spot. Complainant Balbir Singh was admitted to Civil Hospital, Jalalabad where no action was taken. Thereafter the complainant was got admitted at Medical College and Hospital, Faridkot. On 11.08.1997 the police party reached the hospital and made efforts to get the matter compromised and as such did not register any case. Later on, FIR was registered on 25.08.1997 under Sections 307/34 IPC, but still no action was taken as the appellant was the Sarpanch of the village and was belonging to

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the ruling party. Thereafter the complainant filed a complaint and process of law was initiated.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, held the appellant guilty and convicted him for commission of offence and sentenced him vide judgment and order dated 6.3.2003 as mentioned in para No.1 above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

6. Learned counsel for the appellant submitted that the prosecution case is not believable. There is an inordinate delay in reporting the matter to the police as the alleged occurrence had taken place on 10.8.1997 and the matter was reported to the police for the first time on 25.08.1997. Thereafter a private complaint was filed on 10.3.1998. More so, the complainant version is not believable that the appellant fired from pistol from a close range and the medical evidence available on file does not establish this fact. That way, ocular testimony and medical evidence are contradictory to each other and the Court below has not considered this aspect while recording the judgment of conviction. The present appeal deserves to be accepted and the appellant be acquitted of the charge.

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7. Learned State counsel took the plea that the delay has been duly explained in this case. The medical evidence duly support and corroborate the ocular version. The defence evidence is merely plea of denial and the Court below has rightly discarded the defence and the present appeal is without any merit and the same be dismissed.

8. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that alleged occurrence had taken place on 10.8.1997 and the police was not taking any action. In such a matter, even the FIR was not recorded till 25.08.1997 and thereafter as the police did not take any action, the complainant was left with no other option to file the present the present complaint and in that process, some delay has occurred which was beyond the control of the complainant. More so, law on the point is settled that delay in such cases is not fatal for the prosecution, rather the same simply puts the Court to the caution to scrutinize the evidence minutely.

9. In the case in hand, identity of the accused is not disputed because of the relationship between the assailant and the witness. The medical evidence by way of statement of PW-1, Dr. K.K. Aggarwal duly support and corroborate the testimony of complainant/victim – Balbir Singh, who was examined as PW-3. His version is duly supported by eye-witness Sher Singh, who had appeared as PW-4. All of them have well stood by the test of cross-examination. The defence version was rightly discarded by the Court below as the same is just plea of denial. The present appeal against judgment of conviction is without any merit and the same

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stands dismissed.

10. As regards to appeal against order of sentence, it is not disputed that the appellant is not a previous convict. He has been convicted for the offence punishable under Section 324 IPC. The dispute is primarily amongst the family members. The appellant is stated to be more than 65 years of age. No purpose shall be served by detaining the appellant in custody and the ends of justice would met suitably if the benefit of Probation of Offenders' Act is given to the appellant. As such, the order of sentence passed against the appellant is set-aside and the appellant is ordered to be released on probation of good conduct under Section 4(1) of the Probation of Offenders Act for a period of one year to maintain peace and good behaviour and not to repeat such offence subject to his furnishing personal bond with one surety to the satisfaction of the trial Court. However, the appellant shall compensate the complainant/victim by paying ₹50,000/- and the trial Court shall issue notice to the complainant/victim so as to ensure the payment of compensation amount to him.

11. Appeal stands partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

August 8th, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes