

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

**Criminal Appeal S-2246-SB of 2003
Date of Decision: February 19, 2016.**

Joginder		Appellant
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Ashwani Bakshi, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

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

The appellant was tried for committing the offences punishable under Sections 452 and 307 IPC. Vide judgment and order dated 20/21.10.2003, learned Additional Sessions Judge, Hisar, convicted him for the offence under Section 452 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. He was also convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine a Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for three months. Both the sentences were ordered to run concurrently. The period, for

which, the appellant had remained in custody during the investigation and trial of the case was ordered to be set off against the period of substantive sentence awarded to him.

The case of the prosecution, as narrated by the trial Court in para No. 2 of its impugned judgment of conviction and sentence, is reproduced hereinbelow:-

“That on 29.3.2001 the complainant was sleeping along with Kuldeep on the roof of the house of Kuldeep on separate cots situated in village Umra. The stairs of the house is without door and it opens outside in the gali. At about 3/4 a.m. when the complainant was sleeping on his cot, he was inflicted injuries with a sharp edged weapon on his left ear. The complainant woke up and shouted for help. Kuldeep who was sleeping on the nearby cot also woke up. There was electrical light at that time and both the complainant and Kuldeep saw the accused running away with the weapon after inflicting injuries on the person of complainant Krishan Kumar. The accused had fled away in the gali from the stair case. The complainant was bleeding profusely. The complainant was taken to P.G.I. Rohtak for treatment.

The I.O. had prepared the rough site plan of the place of incident. The scaled site plan was also got prepared by the I.O. and the opinion of the doctor was also taken. There being evidence the accused initially arrested on 28.4.2001 for the

offence punishable under Sections 324/452 IPC and he produced gandasi which was taken into possession vide recovery memo but he was released on bail. But later on after taking opinion of the doctor, the offence punishable under Section 307 IPC was added. Accordingly, the accused was re-arrested on 28.5.2001 under the offence punishable under Section 307 IPC. After completion of investigation, the challan was ultimately filed.”

At the trial of the case, the prosecution examined complainant Krishan Kumar as PW4 whereas PW5 Kuldeep, who was shown to be present at the time of the occurrence supported the testimony of the complainant.

The trial Court, after going through the evidence brought on record and hearing learned counsel for the parties, convicted and sentenced the appellant, as mentioned above.

Learned counsel for the appellant has not challenged the impugned judgment of conviction and sentence. However, it is submitted that the appellant is facing the agony of criminal prosecution for the last about fifteen years. At the time of the incident, he was aged about twenty one years and a student of 10+2. It is also submitted that there was no serious enmity between the parties. The appellant was said to have quarreled

with complainant Krishan Kumar about two days before the date of the incident while they were in the school. In the said incident, the complainant had given him fists and slaps blows. It is also submitted that the appellant is attributed causing of only a solitary blow to complainant Krishan Kumar. He is now on bail since 3.8.2005. There is no material on the record from which it could be indicated that the appellant has misused the concession of bail in any manner. It is also submitted that the appellant has already undergone an actual sentence of about two years besides earning remissions of six months. Prayer has, accordingly, been made for setting aside the remaining sentence of imprisonment of the appellant.

Learned State counsel has vehemently opposed the prayer by submitting that at the time of the occurrence, the appellant was armed with a Gandasi which he had wielded in causing an injury on the head of complainant Krishan Kumar. The said injury when radiologically examined was found to be grievous as it involved fracture of occipital bone. PW7 Dr. P.D.Garg had opined the injury to be dangerous but for timely medical aid. He has, however, produced the custody certificate, as per which, the appellant has already undergone an actual sentence of one year, ten months and twenty four days besides earning remission of five months and twenty four days. In all, he has undergone an

actual sentence of two years, four months and eighteen days.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose will be served by sending the appellant behind the bars, once again, to undergo the remaining sentence of imprisonment imposed upon him. Ends of justice would be amply met if the remaining sentence of imprisonment of the appellant is set-aside. At the same time, the fine imposed upon the appellant for the offences under Section 307 IPC can be suitably enhanced to be paid to the complainant, as compensation.

Resultantly, the conviction of the appellant for the offences under Sections 452 and 307 IPC is upheld. His substantive sentences of imprisonment on both the counts are reduced to the one already undergone by him. The sentence of fine along with its default clause for the offence under Section 452 IPC is maintained. However, the sentence of fine of Rs.2,000/- imposed upon the appellant for the offence under Section 307 IPC is enhanced to Rs.30,000/- and in default of the same, the appellant shall undergo rigorous imprisonment for one year. The entire amount of fine be deposited by the appellant with the trial Court within three months from today. The entire amount of fine, if deposited by the appellant, be paid to complainant

Krishan Kumar, as compensation.

The appeal is, accordingly, disposed of.

February 19, 2016
amit rana

(T.P.S. MANN)
JUDGE