

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

Crl. Appeal S-1473-SB of 2004
Date of Decision: October 06, 2017

Sanjay

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Ashok Kaushik, Advocate
for the appellant.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

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

Convict-Sanjay has filed the instant appeal for challenging the judgment and order dated 14/16.07.2004 passed by learned Additional Sessions Judge, Faridabad whereby he stood convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for five 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 452 IPC read with Section 34 IPC and sentenced to undergo imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. Besides, he was convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of

Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for one month. All the substantive sentences were ordered to run concurrently. The period spent by him in judicial custody during the investigation and trial was ordered to be set off against the term of imprisonment imposed upon him.

The appeal filed by the appellant was admitted on 29.07.2004. Subsequently, vide order dated 14.10.2004, a Co-ordinate Bench of this Court suspended his sentence of imprisonment and ordered his release on bail.

According to the prosecution, on 18.1.2002 at about 6:00/6:15 a.m. complainant-Vipin Mishra and his younger brother Rajesh Mishra were going to the residence of one Pappu in Dabua Colony, Faridabad in order to take their money. When they reached near the shop of Harcharan, Rajesh Mishra went inside the said shop to buy a cigarette whereas the complainant kept on standing outside the shop. In the meantime, Sanjay and Pawan alias Chavani accused came there. After entering the shop, Sanjay-accused fired upon Rajesh Mishra with a countrymade pistol hitting him on his left arm. The complainant tried to intervene but Pawan alias Chavani caught hold of him. In order to save himself, Rajesh Mishra entered the bedroom of the house of Harcharan Singh through the internal staircase. This was followed by Sanjay-accused firing another shot upon him. Both Sanjay and Pawan alias Chavani -accused escaped from the spot. The complainant noticed that his brother Rajesh Mishra had received a

fire arm injury on the left side of his chest. According to the complainant, Sanjay-accused was a person of bad character who had also threatened him prior to the incident in the month of December that he would kill them in case they came in the house which had been purchased by them in his neighbourhood.

Injured Rajesh Mishra was medico-legally examined by Dr. Rakesh Singh who found the following injuries on his person:

1. A wound 1.5 x ½" left upper chest 2.5" below left sterno clavicular junction with inverted margins bleeding profusely jateeing present.
2. A wound .5 x .5cm left forearm proximal dorsal aspect with inverted margins, tattooing and bleeding present.
3. A wound .5x .5 cm left forearm proximal ventral aspect with everted margins bleeding present.
4. Bruise left lower chest lateral aspect.

According to Dr. Rakesh Singh, injury Nos.1, 2 and 3 were caused by a gun shot while injury No.4 was caused by a blunt weapon. Dr. Neerja Ajmani, who had radiologically examined the injured, had found an oval radio opaque at the level of D10 and 11 on the right side alongwith the lateral rib cage. She had also conducted ultrasound of the injured and found two irregular echogenic abrasions. Dr. Prabal Rai had also operated upon the injured due to the fire arm injury over left side of his chest, which was sustained by him about 15 months prior to the admission and

found the following injuries:

1. Hemoperitoneum of about 500 ml.
2. Diaphragmatic tear at two places.
3. Liver injury right lobe.
4. Foreign body (9 bullet lodged on lateral chest).

Learned counsel for the appellant has not challenged the impugned judgment of conviction passed by the trial Court. However, he has submitted that the appellant is facing the agony of criminal prosecution for the last about sixteen years. He was 28 years of age at the time of the occurrence and sole bread winner of his family. Out of the sentence of five years imposed upon him, he has already undergone a period of about two years and nine months. He is on bail for the last about 13 years and there is no allegation that he has ever misused the concession of bail in any manner. Prayer has, accordingly, been made for taking lenient view in the matter of his sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that it was the appellant who had fired upon the injured, namely, Rajesh Mishra and one of the injuries attributed to him was on the left side of his chest.

As per the custody certificate already brought on record by the learned State counsel, the appellant has undergone an actual period of two years, eight months and nineteen days out of the total sentence of five years imposed upon him. Though he was shown to be involved in two other criminal cases yet both of those

cases were for offence under Section 324 IPC, etc. Learned counsel for the appellant has intimated the Court that the appellant stands acquitted in both of those criminal cases.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that the no useful purpose would be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice would be suitably met if his substantive sentence of imprisonment is reduced to one already undergone by him. At the same time, the amount of fine imposed upon him for the offence under Section 307 IPC can be suitably enhanced so as to compensate the injured, namely, Rajesh Mishra.

Resultantly, the conviction of the appellant under Section 307, Section 452 read with Section 34 of IPC and Section 25 of the Arms Act is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.500/- imposed upon him for the offence under Section 452 read with Section 34 IPC and similar fine amount of Rs.500/- for the offence under Section 25 of the Arms Act alongwith their default clauses are maintained. The fine of Rs.1,000/- imposed upon him for the offence under Section 307 IPC is, however, enhanced to Rs.30,000/-. The entire amount of fine be deposited by the appellant in the Court of learned Chief Judicial Magistrate, Faridabad within a period of three months from today failing which he shall be required to undergo rigorous

imprisonment for six months. The entire amount of fine, when recovered/deposited, shall be disbursed in favour of injured Rajesh Mishra, as compensation.

The appeal is, accordingly, disposed of.

October 06, 2017
pvd

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No