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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA NO. 321-SB OF 2004
DECIDED ON : 18.11.2017

Mukesh Kumar

...Appellant

versus

The State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. Sanjeev Manhas, legal aid counsel,
for the appellant.

Mr. Vikas Malik, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

This appeal is directed by the accused-appellant against the judgment of conviction and order of sentence dated 31.10.2003 passed by Additional Sessions Judge, Panipat, whereby he has been convicted under Section 307 of the Indian Penal Code (in short "the IPC") and was sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay fine of ₹1000/- and in default thereof, to further undergo simple imprisonment for a period of six months.

As per the prosecution case, ruqa had been received at the police station on 21.04.1998 and in pursuance thereto, Head Constable Mahender Singh along with Constable Mahabir Singh reached General Hospital, Panipat and moved an application to the doctor for recording the statement of injured. However, he

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was informed that injured had been referred to PGI, Rohtak and when he was on his way, at Gohana Turn G.T Road, Krishan Pal (complainant) met him and got his statement recorded, wherein he stated that he was residing at Krishanpura in Ward No.23 as a tenant and was working in Paliwal factory. Shiv Kumar was also residing with him. On 20.04.1998 at about 10.30 PM, when he and Shiv Kumar were having their meal, the accused entered their room and asked Shiv Kumar to come out of the room. Shiv Kumar went out and after some time, he heard Shiv Kumar crying and shouting "Maar dia Maar dia". The complainant came out in the street and saw that the accused was giving two scissor blows in the stomach of Shiv Kumar. The complainant intervened and the accused told Shiv Kumar that he would be taught a lesson for coming to his house. Thereafter, Shiv Kumar fell down and accused left the place along with the scissor and while leaving, the accused stated that he had been saved and he would teach him a lesson in future. The FIR was recorded on the basis of statement of the complainant. The accused was arrested and the weapon was recovered from him. After completion of investigation, challan against the accused was put up in the Court of Area Magistrate, who thereafter committed the case to the Court of Sessions.

On presentation of challan, copies of same were supplied to the accused under Section 207 Cr.P.C.

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Charge under Section 307 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

The prosecution had examined as many as ten witnesses namely Constable Jagbir Singh (PW-1), Constable Mahabir singh (PW-2), Gopi Chand (PW-3), Dr. Arun Sehgal (PW-4), SI Surender Singh (PW-5), ASI Bharat Bhushan (PW-6), Shiv Kumar (PW-7), Krishan Pal (PW-8), HC Mahender Singh (PW-9) and Dr. A.R.Bansal (PW-10) and closed its evidence.

The statement of accused was recorded under Section 313 Cr.P.C wherein he denied all the allegations against him. However, he did not lead any evidence in his defence.

The trial Court, after appraisal of the evidence, found the accused guilty for an offence punishable under Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for a period of seven years and to pay fine of ₹1000/- and in default thereof, to further undergo simple imprisonment for a period of six months.

Feeling dissatisfied with the above said judgment of conviction and order of sentence dated 31.10.2003, the accused/ appellant has preferred the instant appeal.

Learned counsel for the appellant has not challenged the conviction and has argued only on quantum of sentence.

Learned counsel for the appellant contends that the complainant had been admitted to hospital on 20.04.1998 and was discharged on 26.04.1998 and had fully recovered from his

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injuries. He further contends that the appellant has undergone total sentence of 03 years 07 months and 15 days including remissions and an actual sentence of 03 years 01 month and 04 days out of the substantive sentence of 07 years. He further contends that the sentence of the appellant was suspended by the order dated 30.09.2015.

Learned State counsel has filed custody certificate which indicates that appellant has undergone an actual sentence of 03 years 01 month and 04 days out of substantive sentence of 07 years.

Heard learned counsel for the parties.

No doubt learned counsel for the appellant has not challenged the conviction recorded by the trial Court but since this is the first appeal, I myself have gone through the case file and do not find any case for interference in the conviction recorded by the trial Court. Therefore, the conviction recorded by the trial Court stands affirmed.

Shiv Kumar-injured was medically examined at PGI, Rohtak by Dr. Arun Sehgal (PW-4) and following injury was found on his person :-

> *" An incised wound 1.4 x 0.5 cm was present on the right side of abdomen below the lower postural margin. It was 5.5 cms. Medal of umbilicus. Depth could not measured. Margins were clean out, lower end was blunt, clotted blood was present. X-ray and surgeon opinion was advised."*

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The incident is stated to have take place on 20.04.1998. Almost two decades have expired since then. The age of appellant, as recorded in the order of conviction by the trial Court, was 21 years. The appellant must be a young man barely 18-20 years of age at the time of occurrence. He has gone through long and protracted trial and faced criminal proceedings for nearly two decades. Although in the FIR it is stated that he had caused two blows with scissor but the medico-legal report of the injured shows that he received only one injury. The appellant has already undergone an actual sentence of 03 years 01 month and 04 days out of total sentence of 07 years. I am of the considered view that ends of justice would be met if the sentence of the appellant is modified and reduced to the sentence already undergone by him. However, sentence of fine is maintained.

With the aforesaid modification in the sentence, the appeal stands partly allowed.

(ANUPINDER SINGH GREWAL)
JUDGE

NOVEMBER 18, 2017
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO