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

CRA-S-1622-SB-2005
Date of Decision : May 24, 2017

Raj Singh Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE [Dr.] SHEKHER DHAWAN

Present Mr. Y.P.Malik, Advocate,
for the appellant.

Ms. Kirti Singh, DAG, Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 17.8.2005 and order of sentence dated 19.08.2005 passed by learned Additional Sessions Judge, Sonapat, whereby the appellant was convicted and sentenced as under:-

Under Section	Sentence	In default
U/S 307 IPC	to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of ₹20,000/ -.	to further undergo Rigorous Imprisonment for a period of 6 months.
U/s 323 IPC	to undergo Rigorous Imprisonment for a period of One year and to pay a fine of ₹500/ -.	to further undergo Rigorous Imprisonment for a period of one month.

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Under Section	Sentence	In default
U/S 25 of Arms Act.	to undergo Rigorous Imprisonment for a period of One year and to pay a fine of ₹1,000/-.	to further undergo Rigorous Imprisonment for a period of two months.

2. Facts relevant for the purpose of decision of the appeal; that on 17.01.2002, a medical ruqa was received from Civil Hospital, Gohana, regarding admission of injured Suraj Bhan and the police party reached Civil Hospital, Gohana and came to know that the injured had already been referred to PGIMS, Rohtak. Thereafter, ASI Sardara Singh recorded statement (Ex.PA) of injured Suraj Bhan at PGIMS, Rohtak. As per the complainant, Raj Singh, appellant-accused was resident of the same locality (village Lath). The plot of Suraj Bhan and Raj Singh are adjacent and the same were divided with the intervention of the villagers. On the date of occurrence, i.e. 17.01.2002, there was a dispute regarding construction of the wall. On the same date, at about 5.15 p.m., Suraj Bhan was present in his house and appellant Raj Singh, armed with a country-made pistol, was standing in the street. Raj Singh started abusing and threatening the complainant to teach a lesson for demolishing the wall and fired upon the complainant with pistol and caused injury on his face and chest. Wife and daughter of Suraj Bhan reached the roof of their house and Raj Singh again fired three shots with his pistol which hit his daughter Sunil; Priyanka daughter of Sunil and his wife Roshni. Meanwhile, Sumitra, wife of the appellant and Khajura mother of Raj Singh also came on the roof and they hurled bricks towards the complainant party including their daughters.

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Complainant party raised alarm which attracted Krishan and his son Anup Singh, who intervened and saved the complainant party. Later on, Suraj Bhan and other injured were shifted to PGIMS, Rohtak where his statement [Ex.PA] was recorded by the police. Police started investigation and recovered country-made pistol. After completion of investigation proceedings, challan was presented in the Court for trial.

3. 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 evidence and the defence evidence on record, learned trial Judge held the appellant guilty and convicted and sentenced him as detailed in the opening paragraphs of this judgment.

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

5. At the time of arguments, learned counsel for the appellant contended that the prosecution story is totally false. Even recovery of country-made pistol has been planted upon the appellant because at the time of alleged recovery of pistol no independent witness has been examined and the same fact has been admitted by ASI Sardara Singh (PW8) in his cross-examination.

6. Learned counsel for the appellant further contended that the alleged offence under Section 307 IPC is not made out against the appellant. The appellant was not having any intention or knowledge to cause injury to

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the complainant party. In support of his contention learned counsel for the appellant has relied upon Division Bench judgment of this Court in **State of Haryana vs. Prem Singh, 2007(2) R.C.R. (Criminal) 537** and **Nand Singh vs. State of Punjab, 2007(1) R.C.R. (Criminal) 801**. In fact, PW-7 Anup Singh was having a pistol and he was trying to fire at the appellant and in order to save himself, Raj Singh snatched the pistol and during scuffle, a fire was shot which caused simple injury to the complainant party. There is no recovery of empty cartridge which again falsifies the prosecution case.

7. Learned counsel for the appellant also contended that the learned trial Judge has completely ignored the fact that it was a case of delayed reporting of the matter to the police and the inordinate and unexplained delay had given ample time and opportunity to the complainant to falsely implicate the appellant.

8. Contention was also raised by learned counsel for the appellant that nothing substantial had come against the wife and mother of the appellant during investigation and as such, they were simply put in column No.II of the final police report and later on, they were summoned to face trial. Thereafter, they were acquitted by the learned trial Judge. That fact falsifies the prosecution case and establishes tainted investigation on the part of the police. Learned trial Judge has completely ignored the defence version put forwarded by the appellant. The present appeal be accepted and the judgment of conviction and order of sentence be set aside.

9. Learned State counsel contended that the present case is based

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upon the statement of injured Suraj Bhan, who himself had detailed the facts immediately after the occurrence while he was admitted in PGIMS, Rohtak. His version is duly supported and corroborated by testimony of other injured witnesses namely, PW2 Sunil, PW3 Roshni and PW9 Priyanka daughter of Sunil. Nothing had come on the file to falsify their statements, on the basis of cross-examination by learned defence counsel. Ocular testimony is well supported and corroborated by medical evidence. There is no inordinate or unexplained delay, rather, medical ruqa was promptly sent from Civil Hospital, Gohana and thereafter, police reached Gohana first and then reached PGIMS, Rohtak. Learned trial Judge has considered all these facts into consideration while recording the judgment of conviction and order of sentence and the present appeal is absolutely without any merit and the same be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that there is no dispute about the identity of the accused-appellant because, both the parties i.e., complainant party and the appellant-accused party are related to each other and neighbours also. The occurrence has been detailed by Suraj Bhan, injured, who appeared as PW-1 and gave the minute details of the occurrence. As per PW-1, accused-appellant Raj Singh had given fire-arm injury with country-made pistol on his face and chest which the intention to kill him. Immediately, thereafter, he was taken to Civil Hospital, Gohana and then to PGIMS, Rohtak, where he was treated. His statement is duly supported and corroborated by the statement of PW-6, Dr.

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S.S. Gupta, who had observed the following injuries on his person:-

1. Multiple abrasions of 01.x0.1 cm with presence of collar of abrasion around all the wounds which were present all over face, nose. There was history of nasal bleeding with swelling over left cheek.
2. Multiple abrasions of 0.25 x 0.25 cm. over front of chest wall and upper abdomen, collar of abrasion was present around.
3. An abrasion of 0.25 x 0.25 cm over left arm.”

11. Dr. S.S.Gupta had also examined other injured of this case, namely, Sunil [PW-2] daughter of Suraj Bhan; Roshni [PW-3], wife of Suraj Bhan; and Priyanka [PW-9], daughter of Sunil and observed the following injuries:-

Sunil daughter of Suraj Bhan

1. Multiple abrasions over right forearm with presence of collar or abrasion.
2. An abrasion of 3 x 0.1 cm over right thigh.

Roshni wife of Suraj Bhan

1. Abrasion of 0.25 x 0.25 over right side of scalp.
2. Abrasion of 0.1 x 0.1 cm over right eye region.
3. Abrasion of 0.25 x 0.25 cm over neck with presence of diffuse swelling.
4. Abrasion of 0.1 x 0.1 cm over right knee.

Priyanka daughter of Sunil

1. An abrasion of 0.1 x 0.1 cm over forehead.
2. Abrasion of 0.1 x 0.1 cm over left eye.
3. Abrasion of 0.1 x 0.1 cm over left shoulder.
4. Multiple abrasions over chest wall.
5. Abrasion of 0.1 x 0.1 cm over left thigh.

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12. Injury Nos. 1 and 2 of Suraj Bhan were kept under observation. The nature of injuries itself and seat of injury on wife and use of weapon for commission of offence clearly establish that fire-arm injury was caused with intent to kill Suraj Bhan. The ocular testimony of PW-1 is duly supported and corroborated by the testimony of PW-2, Sunil, PW-3 Roshni and PW-9 Priyanka. Apart from that, the recovery of country-made pistol stands established as per statement of PW-8, ASI Sardara Singh.

13. Against the above discussed prosecution evidence, the defence version is just a plea of denial as per statement of accused-appellant recorded under Section 313 Cr.P.C. DW-1, Sohan Lal had proved site-plan Ex. DA and DW-2, Jagbir Singh made statement that no such dispute regarding plot had taken place. To the contrary, there is positive evidence available on the file that there was dispute regarding plot and construction of wall raised thereon and at that time alleged occurrence had taken place. Learned trial Judge has already considered all the aspects while recording judgment of conviction and order of sentence.

14. As regard to the nature of offence committed by appellant, Raj Singh under Section 307 IPC, the same stands established on the basis of statement of PW-1, Suraj Bhan which is supported and corroborated by medical evidence and the injury having been caused with fire-arm of a country-made pistol and the seat of injury being face and chest. Such a view was taken by this Court in **State of Punjab Vs. Harkirat Singh, 2002(4) R.C.R. (Criminal) 588**. On these facts, the present case is certainly

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distinguishable from the facts of judgments in **Prem Singh and Nand Singh's cases [supra]** relied upon by learned counsel for the appellant.

15. The plea taken by learned counsel for the appellant that there was delay in reporting the matter to the police is contrary to the record because immediately on receipt of medical *ruqa*, the police party reached Civil Hospital, Gohana first and then PGIMS, Rohtak, where statement [Ex. PA] of Suraj Bhan was recorded and investigation process was set into motion. Otherwise also, in case there is little delay in reporting the matter, that does not make out a case to throw away the prosecution case when the same stands established on facts. Delay in reporting the matter to the police just put the Courts to caution to scrutinize the evidence available on the file with greater care and caution. However, in the present case, the prosecution case is based upon the statement of injured Suraj Bhan and remaining injured, namely, Sunil, Roshni and Priyanka who were medico-legally examined by PW-6, Dr. S.S.Gupta. There is no dispute about the identity of the accused-appellant and there was no motive for the complainant and other eye-witnesses to falsely implicate the accused-appellant while allowing the real culprits of this case to go scot-free. To the contrary, learned trial Judge has rightly held the appellant-accused guilty and convicted and sentence him for commission of offence punishable under Sections 307 and 323 IPC and Section 25 of the Arms Act and the present appeal against judgment of conviction dated 17.8.2005 and order of sentence dated 19.08.2005 is without any merit and stands dismissed.

16. The appellant was released on bail by this Court during the

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pendency of the appeal. His bail/surety bonds are cancelled. He be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

May 24, 2017
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(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes