

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

Criminal Appeal S-1641-SB of 2005

Date of Decision: May 31, 2017

Devender @ Dev Dutt

.....Appellant

Versus

State of Haryana

..... Respondent

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

Present : Mr. Sandeep Kotla, Advocate
for the appellant.

Mr. Kapil Aggarwal, Addl. A.G., Haryana.

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

The appellant was tried for committing offences punishable under Sections 307 and 427 IPC and Section 25 of the Arms Act. Vide judgment and order dated 1/5.9.2005, learned Additional Sessions Judge, Fast Track Court, Gurgaon, acquitted the appellant under Section 25 of the Arms Act. However, he was convicted under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further

undergo rigorous imprisonment for one year. He was also convicted under Section 427 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for one year. Sentences of imprisonment awarded to him were ordered to run concurrently. The period of detention, if any, already undergone by him was ordered to be set off according to law.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 20.9.2005. Subsequently, vide order dated 26.5.2006, a co-ordinate Bench of this Court suspended his sentence of imprisonment and ordered his release on bail on furnishing bonds to the satisfaction of the Chief Judicial Magistrate, Gurgaon.

As per the prosecution case, on 11.9.2004 at about 7.30 a.m., complainant Rajesh Yadav brought girl students in his Maruti van to Dronacharya Engineering College, Khetawas. He found 5/6 Maruti vans already parked there and some boys of Garoli, Bamdoli and Gurgaon were present there, who told him that only their vehicles were authorized to bring the girl students to the Engineering College. At about 2.45 p.m., the complainant parked the van on the Khetawas chowk as the girl students were to be

carried by him in his van at 3.00 p.m., to be dropped at their respective places. In the meantime, one Maruti van came from the side of Wazirpur and stopped near the van of the complainant. The complainant himself was standing at some distance. The said van was driven by the appellant whereas Rinku @ Devender was sitting by his side while Manjit and Rajbir were sitting on the rear seat. The appellant and Rinku @ Devender alighted from the Maruti van and started abusing the driver of the van belonging to the complainant. Rinku @ Devender took out a country made pistol from the right pocket of his pant and fired at the parked van of the complainant. Out of fear, the complainant started running away. Then, appellant Devender @ Dev Dutt as well as Rinku @ Devender fired at the complainant with their country made pistols with the intention to kill him, who entered the Bajra fields and, thus, had a narrow escape. The accused went away after extending threats and also damaged the Maruti van of the complainant.

It may be mentioned here that Rinku @ Devender accused was found to be a juvenile on the date of the commission of the crime and, accordingly, inquiry against him was segregated. The challan was presented only against the

appellant, who was subsequently, convicted and sentenced, as mentioned as above.

After hearing learned counsel for the parties and on going through the record, this Court finds that complainant Rajesh Yadav while stepping into the witness box as PW6 had given all the necessary details about the manner, in which, the occurrence had taken place. He had categorically deposed that it was the appellant and also Rinku @ Devender, who had fired upon him. It was another thing that on account of the fire in question, the complainant was not hit. However, that would not mean that the appellant was not the one, who had fired at the complainant. The firing was resorted to by the appellant as well as Rinku @ Devender with intent to kill the complainant and, thus, the appellant has rightly been held guilty under Section 307 IPC. Similarly, as the van belonging to the complainant was damaged by the appellant and his companions, commission of offence under Section 427 IPC is also made out.

Coming to the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last about 13 years. When he was heard by the learned trial Court on the quantum of sentence in

terms of the provision of Section 235 Cr.P.C., he had pleaded that he was a married person and having two children. He was the sole bread winner of his family. Further, he was not a previous convict. It may also be noticed that admittedly, it was a case of no injury having been suffered by complainant Rajesh Yadav. From the custody certificate produced by the learned State counsel, it is made out that the appellant has already undergone total sentence of one year and twenty six days. He is not shown to be previous convict. However, two other criminal cases stood registered against him. According to the learned counsel for the appellant, in one of those two cases, i.e. FIR No. 456 dated 18.8.2004 the Investigating Agency had presented untraced report.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his sentence of imprisonment is reduced to the one already undergone by him. At the same time, fine of Rs.5,000/- imposed upon him for the offence under Section 307 read with Section 34 IPC can be suitably enhanced.

Resultantly, the conviction of the appellant under Section 307 read with Section 34 IPC and Section 427 read with Section 34 IPC is upheld. His sentences of imprisonment on both the counts shall stand reduced to the one already undergone by him. The fine of Rs.5,000/- imposed for the offence under Section 307 read with Section 34 IPC is, however, enhanced to Rs.10,000/-. The fine amount be deposited by the appellant in the Court of learned Chief Judicial Magistrate, Gurgaon (now Gurugram) within three months from today, failing which, he shall be required to undergo rigorous imprisonment for one year.

The appeal is, accordingly, disposed of.

May 31, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No