

**CRA-S-9-SB of 2004**  
**DATE OF DECISION: 19.01.2017.**

**....Appellant.**

## State of Punjab

**...Respondent.**

**CORAM: HON'BLE MR. JUSTICE (DR.) SHEKHAR DHAWAN**

Mr. Yogesh Kumar Gupta,  
Assistant Advocate General, Punjab.

**SHEKHER DHAWAN, J.**

Present appeal is directed against the judgment of conviction dated 11.11.2002 and order of sentence dated 12.11.2002 passed by learned Additional Sessions Judge, Bathinda whereby appellant Dharam Pal was convicted and sentenced as under:-

| Name       | Under Section                                          | Sentence                                                                                     | In default                                              |
|------------|--------------------------------------------------------|----------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Dharam Pal | Section 458 of Indian Penal Code (for short, "I.P.C.") | to undergo Rigorous Imprisonment for a period of seven years and to pay of fine of ₹1,000/-. | To further undergo rigorous imprisonment for one month. |

|  |                       |                                                                                              |                                                            |
|--|-----------------------|----------------------------------------------------------------------------------------------|------------------------------------------------------------|
|  | Section 459 of I.P.C. | to undergo Rigorous Imprisonment for a period of seven years and to pay of fine of ₹1,000/-. | To further undergo rigorous imprisonment for one month.    |
|  | Section 326 of I.P.C. | to undergo Rigorous Imprisonment for a period of five years and to pay of fine of ₹1,000/-.  | To further undergo rigorous imprisonment for one month.    |
|  | Section 324 of I.P.C. | to undergo Rigorous Imprisonment for a period of one year and to pay of fine of ₹500/-.      | To further undergo rigorous imprisonment for fifteen days. |

2. Learned counsel for the appellant contended that he does not challenge the judgment of conviction dated 11.11.2002 and prayed that appeal qua that part be dismissed. However, learned counsel for the appellant with regard to the order of sentence dated 12.11.2002 contended that appellant Dharam Pal is not a previous convict and he is not pursuing any case other than the present one. He has already suffered much agony of law as the incident relates to the year 1997. So, he be released and his sentence be reduced to the actual sentence already undergone by him during the pendency of investigation and trial of this case.

3. While arguing on this point, learned State counsel contended that learned trial Judge has already taken most lenient view while awarding sentence of seven years' rigorous imprisonment and the same does not require any interference and the appeal qua order of sentence be also dismissed.

4. After considering rival contentions, this Court is of the considered view that the present appeal is out come of an occurrence of the intervening night dated 03/04.10.1997. The complainant was sleeping in his house along with his family members. At that time, there was electricity

break-down and generator was working. At about 12:30 A.M. (midnight), mother of the complainant raised hue and cry and when the complainant came out, he saw that appellant Dharam Pal had a dagaar in his hand and was giving blow in the abdomen of Savitri Devi, his mother. The complainant tried to apprehend the accused, who gave blow from the reverse side of dagaar at the head of the complainant as well. Another blow with dagaar was given at the back to the complainant. On raising alarm by him, the appellant fled away from the spot. However, his hue and cry attracted one Darshan Kumar, who came at the spot and took the injured to the hospital. The injured were medico legally examined. Statements of the witnesses were recorded and other investigation formalities were completed. The appellant was arrested.

5. After completion of investigation proceedings, challan was presented in the Court for trial.

6. During the process of trial, learned trial Judge framed charges against the appellant. Statements of the prosecution witnesses, including complainant, namely, Ashok Kumar as PW4 and injured Savitri Devi as PW5 respectively was recorded. Apart from that, learned trial judge also recorded statements of Dr. Avtar Singh Dhillon as PW1, Dr. Rachhpal Singh as PW2 and Dr. I.B. Aggarwal as PW3, besides recording statement of formal witnesses including Investigating Officer. Appellant was also examined under Section 313 Cr.P.C. and after considering the prosecution evidence as well as defence version on record, learned trial Court held the appellant guilty and convicted and sentenced him on 11/12.11.2002 under Sections 458, 459, 326, 324 I.P.C.

7. Aggrieved by the judgment of conviction and order of sentence,

the appellant is before this Court by way of present appeal.

8. As per material and evidence available on the file, the alleged occurrence stands proved as per statement of victim Savitri Devi, who appeared as PW5 and narrated her tale of woe. Her version was duly supported and corroborated by another eye witnesses and victim of the case namely, Ashok Kumar, who appeared as PW4. The ocular testimony by way of statement of eye witnesses was duly corroborated by medical evidence. The remaining prosecution witnesses including Investigating Officer also corroborated the prosecution version. The witnesses well stood by the test of cross-examination. There is nothing to disbelieve the injured and the complainant in this case and learned trial Judge has rightly placed reliance upon the statement of prosecution witnesses and convicted the appellant/accused. There is nothing to interfere with the said judgment of conviction dated 11.11.2002 and the appeal against judgment of conviction dated 11.11.2002 is without any merit and the same stands dismissed.

9. As regard to the appeal against order of sentence, after hearing learned counsel for both the parties on the point of sentence, this Court is of the considered view that the appellant has already undergone substantial period of sentence while remainig in custody during investigation and trial. He is not a previous convict and certainly a little lenient view on the point of sentence can be taken So, the substantive sentence awarded to the appellant is reduced from seven years to five years, under Sections 458 and 459 of I.P.C. in this case. As the appellant is on bail, he be taken in to custody if the remaining sentence is not completed. In that case, his bail/surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the

remaining period of sentence and shall take necessary steps to comply with the order, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of three months, from the date of receipt of a copy thereof. The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

Present appeal stands partly accepted, in the above terms.

**(SHEKHER DHAWAN)**  
**JUDGE**

**19.01.2017.**

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|---------------------------|---|--------|
| Whether Speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |