

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

Crl. Appeal S-366-SB of 2005
Date of Decision : October 04, 2017

Duli Chand and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Salil Bali, Advocate
for the appellants.

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

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

The appellants were tried for committing the offence punishable under Section 307 read with Section 34 IPC. Vide judgment and order dated 14/17.1.2005, learned Additional Sessions Judge, Fatehabad convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo simple imprisonment for one year. The period of custody already undergone by them during the trial of the case was ordered to be set off as per the provisions of Section 428 Cr.P.C.

According to the prosecution, complainant-Rasal

Singh made a statement to ASI Gunia Ram alleging that he alongwith his father Dalip Chand was working as crop-sharer with Harbhagwan. On the intervening night of 26/27.5.2002, his father Dalip Singh stayed at the tubewell of Harbhagwan for irrigating the fields during the night whereas he came back to his house. The complainant further alleged that in the morning of 27.5.2002 at about 3.30 a.m., he alongwith his uncle Jagdish was going to the tubewell of Harbhagwan for providing tea to his father. On the way, when they were at a distance of 1½ acres from the tubewell, they saw two persons going towards the tubewell side, on which they reached near the tubewell and when they were at a distance of 15-16 feet from the tubewell, they saw that Sarwan, one of the accused gave kassi blow on the forehead of his father, which hit on his left temple. Duli Chand-accused also gave lathi blow, which also hit on the left side of the head of his father.

Learned counsel for the appellants has submitted that he does not challenge the impugned judgment of conviction passed by the learned trial Court. He has, however, submitted that the appellants are facing the agony of criminal prosecution for the last more than fifteen years. They are first offenders. When they were heard by the learned trial Court on the quantum of sentence, Sarwan-appellant had stated that he was a poor person; he had two sisters; and there was no other family

member to look after them. Similarly, Duli Chand-appellant had stated that he was a poor person having young children and aged parents and there was no other family member to look after them. It is also submitted that out of the sentence of five years imposed upon them, Sarwan-appellant has undergone total sentence of more than three years whereas Duli Chand-appellant has undergone more than one year. They are on bail pursuant to the order passed by this Court on 2.5.2005. There is no allegation that they have misused the concession of suspension of their sentences of imprisonment. Both of them were attributed causing of a solitary blow each. Prayer has, accordingly, been made for setting aside their remaining sentences of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that the injury attributed to Sarwan-appellant on the head was declared grievous in nature and later on, it was opined to be dangerous to life.

As per the custody certificate already brought on record by the learned State counsel, Sarwan-appellant has undergone an actual period of three years inclusive of remissions of twelve days whereas Duli Chand-appellant has undergone one year and twenty seven days inclusive of remissions of twelve days. None of them is shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants under Section 307 read with Section 34 IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentences of fine alongwith their default clauses are maintained.

The appeal is, accordingly, disposed of.

October 04, 2017

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**(T.P.S. MANN)
JUDGE**

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No