

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

**Criminal Appeal S-596-SB of 2006
Date of Decision: December 6, 2017**

Jommu		Appellant
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Sarfraj Hussain, Advocate
for the appellant.

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

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

The appellant was tried for committing offences punishable under Sections 307 and 452 IPC and Section 25 of the Arms Act. Vide judgment and order dated 20/21.12.2005, learned Additional Sessions Judge, Gurgaon convicted him for the offence under Section 307 IPC and sentenced him to undergo rigorous imprisonment for six years and to pay a fine of Rs.4,000/- and in default of payment of fine, to further undergo simple imprisonment for

six months. He was further convicted under Section 452 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo simple imprisonment for six months. He was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for four months. The period of sentences awarded for the various offences were ordered to run concurrently. The period of custody during investigation and trial was ordered to be discharged against the period of sentence awarded to him.

According to the prosecution, complainant Mehmood was sleeping in one of the rooms of his house on 31.10.2002 whereas his son and daughter-in-law were sleeping in the adjoining room. Khurshid, brother of the complainant was in the nearby house. At about 10.00 p.m., when the complainant was sleeping with his face downwards, he felt sudden pain in his back and heard noise of firing. He stood up and started raising an alarm. He saw the appellant going out of the room. Soon after the appellant returned with the intention to kill him and, accordingly, aimed his pistol

towards the complainant. The appellant was identified by the complainant in the electricity light. The complainant grappled with the appellant and caught his country made pistol. Tofiq, son of the complainant and Khurshid, brother of the complainant appeared there. All of them caught hold of the appellant. Soon thereafter, Jalwa, Mehroom, Jamil and Sabir, who had hidden themselves nearby appeared and helped the appellant to escape from the spot. At that time, they also fired in the air with the pistol.

Further case of the prosecution is that the complainant was taken to Kalyani Hospital, Gurgaon for treatment, where he was medico-legally examined. Three injuries were noticed on his person. The bullet injury sustained by him was opined to be dangerous to life. The appellant was arrested on 26.11.2002 and pursuant to the disclosure statement suffered by him, got recovered a country made pistol with a missed live cartridge from a place near the hilly area on Taoru-Nuh Road.

Learned counsel for the appellant has not challenged the impugned judgment passed by the learned trial Court whereby the appellant stood convicted under Sections 307 and 452 IPC and Section 25 of the Arms Act. However, he has submitted that the appellant is facing the

agony of criminal prosecution for the last more than fifteen years. The appellant is a poor person and sole bread winner of his family consisting of seven children and aged mother. He is not shown to be either involved or convicted in any other case. Prayer has, accordingly, been made for taking a lenient view in the matter of his sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that the appellant had fired at the back of complainant Mehmood, which injury was declared to be dangerous to life and as such, the sentence of imprisonment awarded to him is commensurate with the crime, which he had committed.

As per the custody certificate already brought on record by the learned State counsel, the appellant has already undergone a total sentence of three years, nine months and five days out of the sentence of six years imposed upon him.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is on bail pursuant to the order dated 25.8.2006, need not be sent behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is

Criminal Appeal S-596-SB of 2006

:-5:-

reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Sections 307 and 452 IPC and Section 25 of the Arms Act is upheld. His substantive sentence of imprisonment on all the counts is reduced to the one already undergone by him. The fine of Rs.4,000/- imposed upon him for the offence under Section 307 IPC is, however, enhanced to Rs.10,000/-. The sentences of fine for the offences under Section 452 IPC and also under Section 25 of the Arms Act are maintained. The entire amount of fine be deposited by him in the Court of Chief Judicial Magistrate, Gurgaon (Now Gurugram), within three months from today, failing which, he shall undergo simple imprisonment for one year. The entire amount of fine, if recovered from or deposited by the appellant be disbursed in favour of complainant Mehmood as compensation.

The appeal is, accordingly, disposed of.

December 6, 2017

amit rana

(T.P.S. MANN)

JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No