

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

Criminal Appeal S-759-SB of 2005

Date of Decision: July 17, 2017

Ashok Kumar	Versus	Appellant
State of Haryana		 Respondent

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

Present : Mr. Sanjay Vashisth, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

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

The appellant alongwith Hazari, Mukhtiar Singh and Rajender was tried for committing the offence punishable under Section 120-B IPC. The appellant alongwith Mukhtiar Singh was also charged for committing offence punishable under Section 307 read with Section 34 IPC. Vide judgment and order dated 5/7.4.2005, learned Additional Sessions Judge, Fast Track Court, Bhiwani, acquitted the co-accused of the appellant of all the charges against them. The appellant was also exonerated of the charge under Section 120-B IPC. However, he was convicted

under Section 307 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. The sentence already undergone by him in the course of investigation and trial was ordered to be set-off against the substantive sentence imposed upon him.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 28.4.2005. Subsequently, vide order dated 20.5.2005, this Court suspended his sentence of imprisonment and ordered his release on bail during the pendency of the appeal.

According to the prosecution, during the night of 1.10.2002, complainant-Jagdish alongwith his wife Vidya Devi and their son Pappu were sleeping in the Khudi (kacha hut) situated towards the northern side whereas his other son Raj Kumar, Monu etc. were sleeping in the other Khudi. At about 11.30 p.m., a voice was heard by complainant-Jagdish calling him to come outside. Upon this, the complainant and his wife woke up. It was dark at that time and two young boys were standing in front of his Khudi. The wife of complainant inquired from them as to who they were. Upon this, one of the youth replied that they were residents of village Tiwala. The complainant recognized the

voice to be that of Ashok Kumar appellant, resident of Atela Naya. The complainant stood up from his cot while his wife Vidya Devi got down from the cot. One of the youth fired a shot with an intention to kill them, pellets whereof hit the complainant below his knees and also on the feet of his wife. On hearing their alarm and seeing firing of shot, Raj Kumar and Monu came running. The assailants left towards the canal side. According to the complainant, he was having a dispute with Hazari and Rajender of Atela Naya for the last five years prior to the occurrence and on that account Hazari and others had attacked him with the intention to kill him.

After hearing learned counsel for the parties and on going through the record, the trial Court absolved the three co-accused of the appellant of all the charges against them. However, the appellant was convicted only under Section 307 IPC and sentenced to undergo imprisonment and pay fine, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that the prosecution has led cogent and convincing evidence to connect the appellant with the commission of the crime. The occurrence had taken place on 1.10.2002 at about 11.30 p.m.. The appellant and his co-accused had come to the

house of the complainant party. The appellant was recognized by the complainant from his voice whereas other three accused remained unidentified. The firing resorted to by the accused hit complainant Jagdish on his knees and also on the feet of his wife. Merely because the three co-accused of the appellant stand acquitted is no ground to reject the prosecution case in entirety, especially, when the principle of *falsus in uno, falsus in omnibus* is not applicable in the country. The prosecution had examined complainant Jagdish as PW1 and his wife Vidya Devi as PW2, who deposed about the manner, in which the occurrence had taken place. Under these circumstances, no case is made out for any interference in the conviction of the appellant under Section 307 IPC.

As regards the question of sentence, the appellant is facing the agony of criminal prosecution for the last about 15 years. The firing resorted to was towards the knees of complainant-Jagdish and his wife Vidya Devi. The firing was not repeated. When the appellant was heard by the learned trial Court on the quantum of sentence, he had stated that he was a married person, having two children, besides old parents to look-after. Further, he was not a previous convict and, therefore, he be dealt with leniency.

As per the custody certificate already brought on

record by the learned State counsel, the appellant has undergone total sentence of five months and twenty four days. He is not shown to be either involved or convicted in any other case. He is now on bail pursuant to the order dated 20.5.2005. There is no allegation that after being released on bail, he has misused the concession of bail in any manner. Under these circumstances, no useful purpose will be served by sending the appellant behind the bars once again for undergoing the remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the fine imposed upon him by the learned trial Court can be enhanced so as to compensate the complainant party.

Resultantly, the conviction of the appellant under Section 307 IPC is upheld. The substantive sentence of imprisonment is reduced to the one already undergone by him. The fine of Rs.2,000/- imposed by the trial Court is, however, enhanced to Rs.25,000/-. The fine amount be deposited by the appellant in the Court of learned Chief Judicial Magistrate, Bhiwani, within three months from today failing which he shall undergo rigorous imprisonment for six months.

The entire amount of fine, when deposited by the appellant, be paid to complainant-Jagdish and his wife Vidya

Devi, as compensation in equal shares.

The appeal is, accordingly, disposed of.

July 17, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No