

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-763-SB of 2005

Date of Decision : October 11, 2017

Bhola @ Ajit

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Jitender Dhanda, Advocate
for the appellant.

Mr. Kapil Aggarwal, Additional Advocate General, Haryana.

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

The appellant was tried for committing the offence punishable under Section 307 IPC. Vide judgment and order dated 17/18.3.2005, learned Additional Sessions Judge, (FTC), Hisar held him guilty for the said offence and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. The period already undergone by him during the trial was ordered to be set off.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 28.4.2005. Subsequently, vide order dated 10.1.2008, a Co-ordinate Bench of this Court suspended his sentence of imprisonment and ordered his release on bail during the pendency of the appeal.

According to the prosecution, on 25.5.2001 at about 1/1.30 p.m. complainant Ramphal was present in his house. On hearing the noise from the Baithak, he and his wife Santosh rushed there and saw that the appellant was quarrelling with his brother Subhash and was demanding a

cassette. On refusal by Subhash, the appellant get enraged and picked up a hammer, which he wielded in giving 3/4 blows on his head. The appellant, thereafter, ran away from the spot.

After hearing learned counsel for the parties and on going through the evidence, the trial Court accepted the prosecution case and, accordingly, convicted and sentenced the appellant as mentioned above.

Learned counsel for the appellant has not challenged the impugned judgment of conviction passed by the trial Court. However, he has submitted that the appellant is facing the agony of criminal prosecution for the last more than sixteen years. There was no prior enmity between the parties and the occurrence had erupted all of a sudden when injured Subhash refused to give a cassette to the appellant. It is also submitted that the appellant is a first offender. When he was heard by the learned trial Court on the quantum of sentence, he had stated that though he was married yet he had no issue and there was none to look after his wife and aged mother. It is also submitted that he was not shown to be armed with any weapon and the hammer which he had used in giving blows on the head of Subhash was picked up by him from the spot. Further, he has already undergone about half of the sentence. 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 it was the appellant who had caused 3/4 blows with a hammer on the head of injured Subhash. The injuries noticed on the head of the injured were declared to be dangerous to life. Learned State counsel has, however, produced the custody certificate, as per which the appellant has

already undergone an actual period of three years, five months and eight days, besides earning remissions of six months and twelve days. In all, he has undergone a period of three years, eleven months and twenty days.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is on bail for the last about ten years, need not be sent behind the bars, once again, to undergo his remaining sentence of imprisonment. Ends of justice would be amply met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the fine amount can be suitably enhanced to disburse the same in favour of the complainant by way of compensation.

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 sentence of fine of Rs.2,500/- is, however, enhanced to Rs.10,000/-. The entire amount of fine be deposited by the appellant with the learned Chief Judicial Magistrate, Hisar within a period of three months from today, failing which he shall be required to undergo rigorous imprisonment for one year.

The entire amount of fine, if deposited/recovered from the appellant be paid to injured-Subhash as compensation.

The appeal is, accordingly, disposed of.

October 11, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO