

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

CRA-S No.1007-SB of 2017 (O&M)

Date of decision: 01.12.2017

Rajbir Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Thakur, Advocate for the appellant.

Mr. Amandeep S. Gill, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

The present appeal has been filed challenging the judgment and order of sentence dated 23.01.2012 passed by the trial Court convicting the appellant – Rajbir Singh along with co-accused Harpreet Singh, Som Nath, Pradeep Kumar under Sections 307, 450, 325, 323, 506, 341, 148 and 149 of the Indian Penal Code (in short 'IPC') vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.19,500/-.

At the very outset, counsel for the appellant has submitted that he do not want to contest the appeal qua the conviction of the appellant under Section 307 IPC and has further submitted that his sentence may be reduced to the sentence which the appellant has already undergone as the appellant is in judicial lock up since 18.03.2014.

Brief facts of the case are that FIR No.230 dated 05.11.2009 under Sections 307, 450, 325, 323, 506, 341, 148 and 149 IPC at Police Station Sadar Phagwara was registered on the statement

of Tilak Raj who stated that on 04.11.2009, he was coming to his village on a motorcycle make Bullet bearing No.PB10-AA-1339 and in the meantime, another motorcycle overtook his motorcycle. The driver of the said motorcycle was co-accused Harpreet Singh @ Happy and pillion rider was his brother namely Rajbir Singh (appellant). The third person was Soma and the fourth person was not known to him. After blocking the way, all the four persons started abusing him and gave injuries. Later in the evening at about 06:30 PM, the accused persons along with 14-15 other persons came armed with weapons and caused injuries to the complainant – Tilak Raj, Gurcharan Kaur, Vijay Kumar and Surjit. It is further stated that the appellant – Rajbir Singh gave gandasi blow on the head of Surjit. Thereafter, Mohinder Pal and Rajbir caught hold his sister Gurcharan Kaur and they gave gandasi blow from the reverse side on the person of his sister. They also inflicted injuries on the person of Vijay Kumar upon his shoulder and left wrist and on raising voice, people gathered there and saved them.

The trial Court on appreciation of the oral as well as medical evidence held all the persons guilty of offences punishable under Sections 307, 450, 325, 323, 506, 341, 148 and 149 IPC.

The appellant was awarded 10 years rigorous imprisonment under Section 307 IPC for causing injuries to the complainant and Gurcharan Kaur, which was declared dangerous to life. The other 04 accused persons were awarded 03 years rigorous imprisonment along with fine.

Counsel for the appellant has submitted that the appellant is in judicial custody since 18.03.2014 and has undergone 05 years, 04

months and 06 days of actual sentence and 09 years and 28 days of total sentence including remissions out of 10 years rigorous imprisonment awarded by the trial Court.

As noticed in the order dated 29.11.2017, there was a delay of 1808 days in filing the appeal which has been condoned vide separate order, it is apparent that the appellant is in continuous judicial custody.

Counsel for the respondent – State has filed the Custody Certificate of the appellant dated 28.11.2017 and according to this certificate, the appellant has undergone 05 years, 04 months and 06 days of actual sentence and 09 years and 28 days of total sentence including remissions. However, a perusal of the Custody Certificate show that the appellant has already undergone sentence awarded by the trial Court in 02 other FIRs i.e. FIR No.53 dated 08.11.2013 registered under Section 379 IPC at Police Station Satnam Pura, District Kapurthala and FIR No.122 dated 17.10.2013 registered under Section 382 read with Section 34 IPC at Police Station Goraya.

A perusal of the Custody Certificate further show that the appellant was acquitted in 02 other FIRs i.e. FIR No.141 dated 13.11.2013 registered under Section 21 of the NDPS Act at Police Station City Phagwara and FIR No.115 dated 28.09.2013 registered under Sections 395, 379, 411 IPC at Police Station City Phagwara.

At this stage, counsel for the appellant has submitted that all the FIRs relate to the period 2009 to 2013, in which the appellant has either undergone the sentence and has been acquitted by the Court in the said cases and after 2013, the appellant is not involved in any

other case. Counsel for the appellant has further submitted that the appellant has already undergone the substantive sentence and he has his own family to support and in case, the Court takes a lenient view, the same will enable the appellant to reform himself.

After hearing counsel for the parties and in view of the fact that the appellant has not challenged his conviction awarded by the trial Court under Section 307 IPC and has only restricted his arguments qua the sentence awarded by the trial Court and further considering the fact that the appellant has undergone 05 years, 04 months and 06 days of actual sentence and 09 years and 28 days of total sentence including remissions out of 10 years rigorous imprisonment awarded by the trial Court; the appellant is a young person and has his own family to support; he has been acquitted in 02 other FIRs; after 2013, he is not involved in any other case/FIR; he has faced the agony of protracted trial since 2009 i.e. for a period of 08 years and also in view of the fact that he is a poor person as he could not file the appeal within time which was filed after a delay of 5½ years, the present appeal is partly allowed and the sentence of 10 years awarded by the trial Court along with fine of Rs.19,500/- is reduced to the period already undergone by the appellant. The appellant be released forthwith, if not required in any other case.

With the aforesaid modification, this appeal is disposed of.

01.12.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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