

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

Crl. Appeal No.S-363-SB of 2012

Date of Decision: 25.11.2017

Ramesh

....Appellant

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajiv Vij, Advocate
for the appellant.

Mr. S.S. Mann, Sr. D.A.G., Haryana.

DAYA CHAUDHARY, J.

Appellant-Ramesh has filed the present appeal before this Court to challenge the judgment of conviction and order of sentence passed in case FIR No.126 dated 20.06.2010 registered under Section 304 IPC at Police Station Sadar Gohana.

Vide judgment passed by learned Additional Sessions Judge, Sonapat, the appellant was held guilty for committing an offence punishable under Section 325 IPC instead of Section 304-II of Indian Penal Code. He was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- under Section 325 of Indian Penal Code and in default of payment of fine, he was sentenced to undergo simple imprisonment for a period of one month. It was also mentioned by the learned trial Court that the period during which the accused appellant remained in judicial custody during trial or investigation will be set off from the sentence awarded.

The judgment of conviction and order of sentence has been

challenged by the appellant by raising various grounds.

Learned counsel for the appellant submits that the trial Court has not properly appreciated the evidence available on record. He further submits that no case was made out against the appellant even under Section 325 IPC as there was no intention on the part of the appellant to cause injury or to cause death. It was by-chance that the injury was caused with *brick*. Learned counsel also submits that there was a dispute between the parties over a house and it is a case of false implication due to litigation. Learned counsel also submits that the trial Court has failed to appreciate the statements of DW-1 Om Parkash and DW-2 Hoshier Singh, who deposed that the daughter of the complainant was sleeping on a cot and a *brick* was thrown by Monkey on her head. It was also stated by them that the father of the deceased refused to bury the deceased and by doing so, the appellant was falsely implicated. Learned counsel also submits that there were serious contradictions and inconsistencies in the statements of the witnesses. There was no intention on the part of the appellant to cause injury as he was empty handed. At the end, learned counsel for the appellant submits that the appellant has undergone actual custody of more than one year and nine months against total sentence of three years and appeal is of the year 2012. The sentence of the appellant was suspended vide order dated 02.04.2012 and since then, he is on bail. Learned counsel also submits that the appellant would be satisfied, in case, his sentence is reduced to the period already undergone and he is ready to compensate the complainant party in monetary terms.

Learned State counsel has not disputed the custody period but opposes the submissions made by learned counsel for the appellant.

Heard the arguments of learned counsel for the parties and have also perused the record available on the file.

Facts relating to lodging of FIR; facing of trial; conviction for offence punishable under Section 325 IPC and imposition of sentence of three years with a fine of Rs.1,000/- are not disputed.

Initially, the FIR, in question, was registered under Section 304 IPC at Police Station Sadar Gohana. As per case of complainant, the FIR was registered on the basis of statement of complainant-Dalip on 20.06.2010. It was stated that his father was having a plot measuring 100 square yards in the Village. Half share of the plot was of his brother and half share was given to him but the house was constructed by his brother on the entire plot and dispute arose between them. Complainant objected the construction over the entire plot, accused Ramesh and his son Suraj gave beatings to him and threw a *brick* on him which hit on the head of daughter of the complainant, who was of ten months only and was lying on the cot. Accused ran away from the place of occurrence. Ultimately, the daughter of the complainant died due to injuries. During investigation, Suraj was found innocent and accused-appellant Ramesh was arrested in the case. The challan was presented before the Court and charge was framed under Section 304 IPC against accused vide order dated 14.09.2010 to which the appellant pleaded not guilty and faced trial. On completion of evidence of the prosecution and after recording statement of the accused under Section 313 Cr.P.C., the accused-appellant was held guilty and was convicted for offence punishable under Section 325 IPC in stead of Section 304-II IPC and sentenced as mentioned above.

Although various arguments have been raised but at the end,

learned counsel for the appellant has restricted his prayer to the extent that the appellant is first offender; he is not having any criminal background; he is the only earning member of his family and except him, no other member is there to support his family; he has also undergone sentence of more than one year and nine months and has also faced the agony of trial since lodging of FIR i.e. 20.06.2010 and his sentence may be reduced to the period already undergone by him.

By considering the limited prayer and the submissions made by learned counsel for the appellant and also the fact that the appellant has undergone more than one year and nine months against the total sentence of three years, being having no criminal background and undergone period, his sentence is reduced to the period already undergone. However, the appellant is directed to deposit an amount of Rs.1,000/- as fine which has been stayed by this Court at the time of admission of appeal along with Rs.2,000/- as compensation with the trial Court, to be paid to the complainant party within a period of one month from the date of receipt of certified copy of the order. In case, the appellant fails to deposit the said amount of Rs.3,000/- within the stipulated period, he will have to undergo the remaining part of his sentence.

However, it is made clear that the appellant is already on bail as his sentence was already suspended at the time of admission of appeal.

The appeal is disposed of with the said modification in sentence.

(DAYA CHAUDHARY)
JUDGE

25.11.2017

gurpreet

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No