

Gulshan suddenly lost his temper, brought his licensed pistol and fired at Manju. She sustained injuries on her breast. She was treated in the hospital. Matter was reported to the police. After completion of investigation proceedings, challan was presented in the Court for trial.

3. During trial, learned Court below completed various proceedings of trial including framing of charges against the accused, recording of statement of the prosecution witnesses as well as examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, the trial Court held the appellant guilty and convicted him for commission of offence under Section 307 IPC and Section 30 of the Arms Act on 27.08.2015 and sentenced him on 29.08.2015.

4. Aggrieved by the judgment of conviction and the order of sentence, the appellant is before this Court by way of present appeal.

5. Learned counsel for the appellant contended that there was absolutely no enmity between the parties rather a family discussion was going on smoothly and at that time alleged incident took place. There was a single firearm injury. Learned counsel for the appellant further contended that as per statement of Dr. Pankaj Mutneja, who was examined as PW5 during the trial, the nature of injury was grievous and was not dangerous to life, still learned trial Judge framed charge against the appellant for commission of offence under Section 307 IPC.

6. Learned counsel for the appellant also contended that otherwise also against the awarded sentence of five years' rigorous imprisonment, the appellant has already undergone 3 years, 5 months and 29 days as per

custody certificate (including remissions) and there is no other case of similar nature against the appellant, so at least, a little lenient view on the sentence part be taken and he be ordered to undergo sentence for the period, which he has already spent while remaining in custody during investigation and trial.

7. While arguing on these points, learned State counsel contended that there is no denial to the fact that the appellant fired from his licensed pistol and the seat of injury was on the breast of Manju. The nature of injury established on the file that it was dangerous to life. Keeping in view the weapon used during commission of offence and the seat of injury and there being no dispute about identity of the appellant, the appeal against the judgment of conviction is without any merit. There is no ground for reduction of period of sentence awarded to the appellant and the appeal be dismissed in toto.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the prosecution has been able to prove the alleged offence against the appellant. Prosecution case is based upon the testimony of eyewitness Sunil Kumar, who was examined as PW2 and Manju victim of this case, who was also examined as PW3. She has also supported the prosecution case that fire arm injury was caused by the appellant and seat of injury was on her breast. The medical evidence supported the ocular testimony of these eyewitnesses and the other prosecution witnesses including statement of Investigating Officer, which has proved the prosecution case. As per report of FSL (Ex.PX), weapon used during commission of offence was found to be in

working condition. To the contrary, the defence version is just a plea of

denial. Learned trial Judge has rightly discarded the testimony of DW1 Ramphal because he had not come forward with any proof of false implication of the appellant at any stage. Hence, the present appeal against judgment of conviction is without any merit and same stands dismissed.

9. As regard to the appeal against order of sentence dated 29.08.2015, the appellant has been ordered to undergo five years' rigorous imprisonment and to make payment of fine of Rs.10,000/- under Section 307 IPC and in default of payment of fine he was sentenced to undergo rigorous imprisonment for three months. He has also been ordered to undergo six months' rigorous imprisonment under Section 30 of the Arms Act. Against the awarded sentence, the appellant has already undergone 3 years, 5 months and 29 days (including remissions) while remaining in custody during trial and pendency of the appeal and the same has been confirmed by learned State counsel on the basis of custody certificate placed on file. The appellant is not involved in any other case of similar nature. As such, this is the case to take a little lenient view on the point of order of sentence. Accordingly, the order of sentence is modified to the extent that the appellant shall undergo sentence for the period which he had already spent while remaining in custody during investigation, trial and pendency of the appeal, with no change in default stipulation. The order of sentence dated 29.08.2015 passed by learned Sessions Judge, Panipat under Section 30 of the Arms Act shall remain intact. The sentences as ordered by learned trial judge shall run concurrently.

10. Resultantly, the present appeal against judgment of conviction stands dismissed and the appeal qua order of sentence is partly allowed and

the order of sentence is modified to the above extent that the appellant shall

undergo sentence for the period already undergone by him while remaining in custody during investigation, trial and pendency of the appeal.

(SHEKHER DHAWAN)
JUDGE

11.05.2017.
komal

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No