

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

CRA-S-1699-SB-2003 (O&M)

Date of Decision: 18.02.2020.

Tohid

... Appellant

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Ashwani Gaur, Advocate,
for the appellant.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.(ORAL)

This appeal is directed against the judgment and order dated 18.07.2003 passed by Additional Sessions Judge, Panipat, vide which the accused/appellant was sentenced to undergo RI for ten years and to pay fine of Rs.15,000/- under Section 307 read with Section 34 IPC and to undergo RI for two years and to pay fine of Rs.1000/- under Section 25 of the Arms Act, 1959 with default stipulation.

Both the substantive sentences were ordered to run concurrently.

Complainant, Ram Saroop made a statement that on the intervening night of 01.09.2001 and 02.09.2001, he along with his family members was sleeping at the *kotha* of the tubewell. At about 2.30/3.00 a.m, he woke up and came to the path. He saw three young men were present there. He inquired from them about their

whereabouts. One of the boys abused him in the name of his sister and hit him on his head with the handle of pistol. The other two boys gave him *danda* blows on his left elbow and arm. The complainant took a *danda* and gave a blow to one of the boys. Then the complainant started raising cries. His wife Nemwati and son Rajinder got up and came to him while armed with sticks. At this, the boy who was armed with pistol stated that he will teach him a lesson. That boy fired at him from the pistol. The pellets hit him on his chest. After that, all the three boys left towards village Garhi Besak. Later on, he was shifted to the hospital.

The FIR was registered; the investigation ensued; the accused were arrested. After completion of investigation, the challan was presented in the Court. The accused were charge-sheeted under Sections 376(2)(g), 342, 307 read with Section 34 IPC and Section 25 of Arms Act, 1959. They pleaded not guilty and claimed trial.

After holding trial, the learned trial Court, vide impugned judgment and order, convicted and sentenced the appellant and his co-accused Sakir as narrated above. However, they were acquitted of the offences under Sections 376(2)(g) and 342 IPC.

Thus, the present appeal has been filed by accused/appellant Tohid.

At the outset, it is submitted by the learned counsel for the accused/appellant that he does not challenge the judgment of conviction on merits and prays for taking a lenient view in the matter of

sentence. It is further contended that the appellant has already undergone actual sentence of 03 years, 04 months and 05 days. It is further contended that keeping in view the long protracted criminal proceedings, the sentence of the appellant may be reduced to the period already undergone by him.

On the other hand, it is submitted by the learned State counsel that the appellant does not deserve any leniency in the matter of sentence.

I have heard the learned counsel for the parties and have gone through the case file.

The custody certificate of accused/appellant Tohid, issued by Deputy Superintendent, Central Jail, Ambala has been placed on record.

Though, the learned counsel for the appellant has not challenged the judgment of conviction on merits yet this Court has gone through the case file and has scanned the entire evidence. The case of the prosecution has been fully proved from the statements of the complainant Ram Saroop, PW-14 and his son Rajinder, PW-15. Both of them have deposed in categorical terms that on the intervening night of 01.09.2001 and 02.09.2001, accused had come to their field and accused Tohid had fired from his pistol at Ram Saroop. The testimonies of both these witnesses are credible and deserve to be accepted. There is nothing on record to discard their testimonies.

Hence, the judgment of conviction is upheld.

As regards the quantum of sentence, as per the custody certificate, accused/appellant has already undergone actual sentence of 03 years and 02 days (3 years, 4 months and 5 days including remissions) out of the substantive sentence of ten years.

Taking into consideration the circumstances of the present case that the FIR was lodged way back in 2001 and by now nineteen years have gone by; the accused is not involved in any other FIR; the sword of damocles remained hanging on his head for nineteen years; he is the only bread winner of his family; while maintaining the conviction of the accused/appellant, his sentence is reduced to the period already undergone by him subject to his paying compensation of rupees one lakh to injured/complainant Ram Saroop, within a period of 45 days from the date of receipt of certified copy of the judgment, failing which the appeal shall be deemed to be dismissed without further delay.

In view of the above, the appeal stands disposed of.

18.02.2020.
SN

(JITENDRA CHAUHAN)
JUDGE

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