

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-213-2020(O&M)

Date of decision : 21.01.2022

Dalip @ Kalu @ Faludi

... Appellant

Versus

State of U.T. Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.H.S.Jaswal, Advocate
for the appellant.

Mr.Deepinder Brar, Addl.P.P.
for U.T. Chandigarh.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

CRM-1545-2022

This is an application under Section 389 Cr.P.C. for suspension of sentence on behalf of the applicant-appellant Dalip @ Kalu @ Faludi.

Learned counsel for the applicant-appellant as well as learned counsel for the UT, Chandigarh have submitted that they are fully prepared to argue the main appeal today itself and prayed that the main appeal be taken up for hearing today itself.

In view of the same, the present application is disposed of by observing that the main appeal is taken up for hearing today itself. The main appeal is taken up on Board for hearing today itself.

CRA-S-213-2020

Challenge in the present appeal is to the judgment dated 04.12.2019 and order dated 06.12.2019 vide which the appellant has been convicted and sentenced as under:-

Name of the convict	Offence under section	Rigorous Imprisonment (R.I.)	Fine	Sentence in default of payment of fine.
Dalip @ Kalu @ Faludi	323 IPC	R.I. Six months (Six months only)	Rs.1000/- (Rupees One thousand only)	R.I. for 7 days (Seven days only)
	307 IPC	R.I. 5 years (Five years only)	Rs.5000/- (Rupees Five thousand only)	RI for one month (One month only)

Both the sentences shall run concurrently.”

Brief facts of the prosecution case are that on the intervening night of 01/02.12.2018 SI Rajinder Singh received wireless message that two persons had suffered injuries with knife at SCO No.1031-31 Sector 22-B, Chandigarh and on receipt of this information, SI Rajinder Singh along with police party reached at the spot and came to know that the injured persons had been taken to GMSH 16 Chandigarh by the PCR vehicle and as one of the injured namely Sarwan Singh had left after receiving first aid, while the other injured Parveen Kumar had been referred to PGI and then SI Rajinder Singh reached PGI and recorded statement of Parveen Kumar to the effect that he along with his friend Sarwan Singh was sleeping in the verandah of said SCO and in the meanwhile accused Kala @ Faludi, who used to take intoxicant substances, came there and insisted on sleeping with them and when Sarwan Singh opposed him, the appellant under the influence of liquor started beating Sarwan Singh and when the complainant intervened, the appellant took out a sharp edged weapon from his pocket and gave repeated blows to the complainant and injured him and on alarm being raised by the complainant, the appellant fled away from the spot along with weapon. On the basis of same, the FIR was registered and after completion of investigation, challan was filed and the case was committed

triable by the Court of Sessions.

Charges were framed. Prosecution had examined 13 witnesses. PW-1 Parveen Kumar was the complainant who had deposed on the lines of the prosecution case and had proved that the present appellant had caused injury to him with a sharp edged knife. PW-2 Sarwan Kumar (injured) also proved the case of the prosecution. PW-3 SI Rajinder Singh was the Investigating Officer and had duly proved on record documents Ex.P5, P6, P7, P8, recovery memo Ex.P14 and the application for obtaining the x-rays Ex.P16. PW-9 Dr.Satish who was from the department of General Surgery, PGIMER, Chandigarh, had proved the injuries on the person of Parveen Kumar and also gave an opinion to the effect that the injury suffered by him was dangerous to life and the weapon used for inflicting the same was sharp edged weapon. PW-13 Dr.Sukhdeep Singh had proved on record the MLR of Parveen Kumar as Ex.P36 who was stated to have suffered five injuries including stab wounds upon his examination on 01.12.2018. The statement of appellant under Section 313 Cr.P.C. was recorded and after considering the entire evidence and documents on record, the appellant was convicted for the offence under Section 307 and 323 IPC and was sentenced as hereinabove.

During the course of arguments, learned counsel for the appellant has submitted that he does not wish to challenge the conviction of the appellant but would be satisfied if a lenient view is taken with respect to the sentence which has been awarded to the appellant. In this regard, it has been submitted that the incident is of the year 2018 and the appellant has suffered the agony of trial / appeal for all these years. It is further submitted that the appellant is a young boy of 20 years and has already suffered

incarceration for a period of 3 years 1 month and 19 days and has also earned remission of 9 months and 24 days and thus, the total sentence undergone by him including remission is 3 years 11 months and 13 days.

In support of his arguments, learned counsel for the petitioner has relied upon ***CRR-1931 of 2010*** decided on 23.07.2019 titled as ***Chander Bhan Vs. State of Haryana*** in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Saurabh Bakshi, reported as 2015 (2) RCR (Criminal), 495*** was considered. Further reliance has been placed upon a judgment of this Court in ***CRR-4830-2016*** decided on 08.03.2017 titled as ***"Balwinder Singh @ Binder Vs. State of Punjab"*** in which case also the sentence was reduced to four months in a case of conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said case also, the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra) was considered. Further, reliance has also been placed upon case of ***Jaswant Singh Vs. State of Punjab, CRR-1239-2012*** decided on 29.08.2019, reported as ***2020 (1) RCR (Criminal) 163***, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra), the sentence was reduced to already undergone.

Learned counsel for the UT Chandigarh has submitted that the judgment of the trial Court is well reasoned and has been passed after taking into consideration the entire evidence and the material on record. It is further pointed out that the appellant is involved in two other cases.

Learned counsel for the appellant has submitted that both the said cases were filed prior to the registration of the present case and after registration of the present case, the appellant has never indulged in any criminal activity.

This Court has heard learned counsel for the parties and perused the record.

As far as the conviction of the present appellant under Sections 307 and 323 IPC is concerned, this Court is of the view that the trial Court had considered the entire evidence and record in detail and rightly come to the conclusion that the present appellant had committed the said offences. PW-1 Parveen Kumar as well as PW-2 Sarwan Kumar are eye witnesses and had duly proved on record that the present appellant had inflicted injuries including stab wounds upon Parveen Kumar with a sharp edged weapon. PW-3 SI Rajinder Singh, who was Investigating Officer, had duly proved the prosecution case and had also proved on record the documents including the recovery memo Ex.P14 as well as endorsement of doctor declaring Parveen Kumar fit to make statement Ex.P8 and other relevant documents. PW-9 Dr.Satish from the Department of General Surgery, PGI had prepared the medico-legal case summary Ex.P28 and had proved that the injury suffered by Parveen Kumar was dangerous to life. PW-13 Dr.Sukhdeep Singh had proved on record the MLR of Parveen Kumar Ex.P36 and had stated upon his examination on 01.12.2018 that there were as many as 5 injuries including stab wounds inflicted upon the person of Parveen Kumar. The said witnesses had been cross-examined but nothing had come out from the cross-examination so as to demolish the case of the prosecution and thus, the conviction of the present appellant is upheld.

As far as the sentence which has been awarded to the appellant is concerned, this Court is of the view that the incident is of the year 2018 and the appellant has suffered agony of the trial / appeal for all these years and the appellant is a young boy of 20 years and has already undergone actual custody of 3 years 1 month and 19 days and has also earned remission of 9 months and 24 days and thus, the total sentence undergone by him including remission is 3 years 11 months and 13 days and thus keeping in view these facts and circumstances as well as the the judgments relied upon by learned counsel for the appellant, it is ordered that the sentence awarded to the appellant is reduced to the period already undergone by him. The same would however be subject to the appellant depositing a sum of Rs.15,000/- as compensation within a period of 2 months from today in the Court of the Chief Judicial Magistrate, Chandigarh. The said amount would be in addition to the fine of Rs.6000/- which the appellant would also deposit within a period of two months from today. The Chief Judicial Magistrate, Chandigarh, is directed to issue notice to the injured Parveen Kumar and release the said amount of Rs.15000/- as compensation to said Parveen Kumar.

It is made clear that in case the amount of Rs.15,000/- as compensation or fine of Rs.6000/- is not deposited within the period as mentioned aforesaid, then the present appeal would be deemed to have been dismissed.

In view of the aforesaid terms, the present appeal is disposed of.

(VIKAS BAHL)
JUDGE

January 21, 2022

Davinder Kumar

DAVINDER KUMAR
2022.01.24 13:35
I attest to the accuracy of
this order

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No