

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

**CRA-S-790-SB-2006(O&M)
Date of decision:-14.7.2022**

Rakesh Kumar

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Appellant with counsel Sh.Munish Puri.

Mr.Anmol Singh Sandhu, AAG, Punjab.

Complainant with counsel Ms.Deepthi Ramlal.

H.S. MADAAN, J.

1. Accused Rakesh Kumar faced trial by learned Additional Sessions Judge, Gurdaspur, who vide judgment dated 13.4.2006 convicted him for an offence under Section 307 IPC and vide order of even date sentenced him as under:

Under Section	Sentence Awarded
307 IPC	Rigorous imprisonment for five years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.

2. Briefly stated, the facts of the case as per the prosecution story are that on 12.9.2004, complainant Surjit Kumar working as an

employee in a shoe shop at Dinanagar had gone out for walk after meals; his cousin brother i.e. son of his paternal aunt had purchased a new mobile phone and gave number thereof to the complainant; at about 8:00 p.m., when the complainant had gone a little ahead of octroi post, then he came across Rakesh Kumar @ Gheesa son of Chuni Lal and both of them proceeded towards agricultural land of the village Sarpanch situated near place of Baba Panj Peer; on reaching there, Rakesh Kumar @ Gheesa asked the complainant to dial a number for him; the complainant sat on the ground and started dialing the number provided by Rakesh Kumar @ Gheesa; in the meanwhile, Rakesh Kumar @ Gheesa caught hold of complainant from his hair and caused injuries to him on the right and left side of the neck with knife; when the complainant asked him the reason for doing so and tried to push back Rakesh Kumar @ Gheesa, in that process, the knife hit nose of the complainant and it cut left little finger and right middle finger of his hand; thereafter the complainant pushed back Rakesh Kumar @ Gheesa and ran away, however, Rakesh Kumar @ Gheesa followed him to some distance and then turned back; the complainant entered the house of Gholla wife of Beera and Gholla and her husband took the complainant to his house, where Ashwani Kumar, his sister's husband took him to the hospital at Dinanagar, from where he was referred to Civil Hospital, Gurdaspur. The complainant was medico-legally examined there and was given necessary treatment. The motive for the incident was that shop of the complainant was on mortgage with accused Rakesh Kumar @ Gheesa, although mortgage money stood paid to the accused but accused did not vacate the shop and when the complainant asked him to

vacate the shop, then he attacked him with a knife causing him injuries as detailed above.

3. On getting the information that complainant was admitted in Civil Hospital, Gurdaspur, police from Police Station Dinanagar, led by SI Swinder Singh went there and statement of Surjit Kumar was recorded on 14.9.2004 when he was fit to do so. After appending endorsement on the statement, ruqa was sent to the police station and on the basis thereof, formal FIR was registered. The investigation in the case started. It may be mentioned here that initially the FIR had been registered for an offence under Section 324 IPC, however, subsequently on receipt of medical opinion offence under Section 307 IPC was added. The accused was arrested in this case. He had produced the knife used by him in the incident before the police, which was taken into police possession. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

4. On presentation of challan in the Court of learned Area Magistrate, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 307 IPC is exclusively triable by Court of Sessions, learned Area Magistrate committed the case to the Court of learned Sessions Judge, Gurdaspur from where it was entrusted to the Court of learned Additional Sessions Judge (Fast Track Court), Gurdaspur.

5. On receipt of case in the Court, learned Additional Sessions Judge (Fast Track Court), Gurdaspur, observing that prima facie charge for offences under Sections 307/324 IPC was disclosed against the

accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

6. During the course of its evidence, the prosecution examined as many as 10 witnesses, namely, PW1 Dr.Sudhir Kumar, PW2 Surjit Kumar, PW3 Dr.Vijay Kumar, PW4 Gholla, PW5 Dr.B.S. Bajwa, PW6 Constable Yash Pal, PW7 Dalip Chand, PW8 Balbir Chand, PW9 SI Swinder Singh and PW10 MHC Dalip Kumar. The prosecution also examined PW 11 Dr.Ramesh Mahajan in additional evidence.

7. With that the prosecution evidence got concluded.

8. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and has been falsely involved in this case; father of the complainant wanted to get the shop vacated from him; the shop was mortgaged with the accused; the complainant could not pay the mortgage money within stipulated period, however, a false case was got registered against him to seek the possession of shop; as a matter of fact the complainant had received injuries at the hands of some unknown person in the darkness and he had falsely involved the accused in this case.

9. During his defence evidence, accused examined Dr.Gurmanjit Rai as DW1 and closed his defence evidence.

10. After hearing arguments, learned Additional Sessions Judge, Gurdaspur vide judgment dated 13.04.2006 had convicted and sentenced the accused as mentioned supra, which left the accused/convict aggrieved and he has filed the present appeal, notice of

which was given to the State, which put in appearance through counsel. The complainant has also appeared through counsel.

11. I have heard learned counsel for the appellant – accused – convict, learned Assistant Advocate General for the State of Punjab and learned counsel for the complainant besides going through the record.

12. At the very outset, learned counsel for the appellant states that he does not challenge the judgment on the point of conviction but wants to make submissions with regard to sentence.

13. As it comes out, the prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt that on 12.9.2004 at about 8:00 p.m., accused Rakesh Kumar @ Gheesa had attacked the complainant Surjit Kumar with a knife, which is a sharp edged dangerous weapon used for cutting, causing him multiple injuries including on neck, which is a vital part, thereby showing intention to cause death of the complainant. The complainant/injured Surjit Kumar, who is a stamped witness having suffered injuries had categorically stated so while getting his statement recorded in the Court. He was cross-examined at length on behalf of the accused but his credibility could not be shattered on any material point. Nothing has come on record to show that he had any motive to falsely involve the accused in this case. The medical evidence duly corroborates the ocular evidence inasmuch as some of the injuries found on the person of the complainant were opined to be dangerous to life. The investigation in this case has been conducted in a fair and impartial manner. The accused had failed to render any reasonable or plausible explanation for his alleged false implication in this case. The delay in reporting the matter has been

explained satisfactorily. Therefore, the trial Court was justified in convicting and sentencing the accused for the offence under Section 307 IPC. The judgment of conviction passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

14. Now coming to the sentence part, during the pendency of the appeal, the parties have entered into a settlement placing on file written compromise deed, copy Annexure A-1. It is mentioned therein that both the parties have resolved their differences and are now residing happily having cordial relations with each other and the complainant has no objection, if the appeal filed by the appellant is allowed and his remaining sentence be waived.

15. The complainant and accused had appeared in the Court and had stated regarding the amicable settlement. No doubt offence under Section 307 IPC is quite serious and non-compoundable. However, as per the custody certificate placed on record by the State counsel, the appellant has undergone total sentence of 2 years, 11 months and 29 days including remissions, which includes actual undergone period of 1 year, 11 months and 13 days. The appellant is not shown to be involved in any other criminal case. There is nothing on record to show that he has indulged in any criminal activity after suspension of his remaining sentence and releasing him on bail during the pendency of the appeal. He is stated to be aged about 36 years married having children. If the appellant is directed to undergo the remaining sentence after about 18 years of the incident and more than 16 years of passing of judgment, that may reopen the old wounds and give

rise to further enmity between the parties, which may disturb public peace and tranquility. In my considered view, if the parties want to live in peace and to have cordial relations, in the interest of justice, the sentence awarded to the appellant can be reduced to one already undergone by in this case.

16. In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence is modified and his sentence is reduced to one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant/accused is directed to deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the appellant/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine by Chief Judicial Magistrate, Gurdaspur by issuing Non-bailable warrants of arrest against him.

17. As such the appeal challenging the impugned judgment stands disposed of with above modification in sentence.

Intimation be sent to Chief Judicial Magistrate, Gurdaspur for necessary compliance.

14.7.2022
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No