

2024:PHHC:147356



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

243

CRA S-4109-SB-2018 (O&M)
Date of Decision: 24.10.2024

Kuldeep ...Appellant

Versus

State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Diwan S. Adlakha, Advocate, for the appellant.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. Amit Kohar, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The appellant has filed the present appeal against the impugned judgment of conviction dated 06.09.2018 and order of sentence dated 12.09.2018 passed by the Court of Sessions Judge, Yamuna Nagar, whereby, the appellant was convicted for the offence punishable under Section 307 of IPC and Section 25 of the Arms Act and was sentenced as under:-

Offence under Section 307 IPC	Imprisonment
	To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 7,000/-. In default of payment of

fine, to further undergo rigorous imprisonment for a period of six months.

25 of Arms Act To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 3,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

2. The FIR in the present case was registered on the basis of the statement made by Raj Kumar son of Puran Chand and the same has been reproduced as under:-

“He used to drive his auto-rickshaw from village Damla to Yamuna Nagar. On 24.02.2017 at about 3:30 PM, he brought his auto-rickshaw to Bus Stand, Damla after taking lunch at his house and was waiting for passengers. In the meantime, accused Kuldeep came there on a motorcycle bearing registration No. HR-02AK-4063, make Pulsar, from the side of village Kamboj Majri, Damla. Immediately after alighting from the motorcycle, the accused fired a shot upon him with the help of a country made pistol which hit his right arm. He ran towards his village. The accused again fired a shot upon him, but it did not hit him. About three years ago, an altercation had taken place between the accused and him and due to this grudge, the accused fired shots upon him with intent to kill him. After firing shots, the accused fled from the spot alongwith country made pistol on his motorcycle. Rakesh

Kamboj son of Sulekh Chand, resident of Kamboj Majri, Damla took him to hospital for treatment from where the doctor referred him to PGI Chandigarh. He got recorded his statement to ASI Mahender Singh at the gate of hospital and prayed for taking action against the accused."

3. After the registration of the FIR, the investigation was initiated and on completion of the investigation, the final report under Section 173 Cr.P.C., was submitted in the Court of Area Magistrate.

4. After the presentation of the challan, the case was committed to the Sessions Court and charge under Section 307 IPC and Section 25 of the Arms Act was framed against the appellant, to which, he pleaded not guilty and claimed trial.

5. During the course of trial, the prosecution examined 16 witnesses, namely, ASI Shamsheer Singh as PW1, Dr. Jainesh Saini as PW2, Raj Kumar complainant/injured as PW3, ASI Mem Singh as PW4, Mahesh Kumar as PW5, ASI Amar Singh, Armourer as PW6, Abhishek, Patwari, Halqa Damla as PW7, Dr. Harjot Singh as PW8, HC Vijay Kumar as PW9, ASI Mahender Singh as PW10, SI/SHO Naresh Kumar as PW11, Ishwar Singh, Reader to District Magistrate, Yamuna Nagar as PW12, Constable Kuldeep Singh as PW13 and Constable Pawan Kumar as PW14.

6. After the completion of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and

he again denied all the incriminating circumstances and the evidence appearing against him and pleaded that he was innocent.

7. No defence was produced by the accused in the present case.

8. Learned counsel for the appellant has vehemently argued that in the present case, during the pendency of the present appeal, the case has been compromised between the parties. He further contends that the complainant/injured has also sworn an affidavit (Annexure A-2) and he has no objection, in case, the appellant is ordered to be acquitted by this Court on the basis of the compromise. Consequently, it was prayed that the appellant may be acquitted by this Court.

9. On the other hand, learned State counsel opposed the submissions made by the learned counsel for the appellant on the ground that the offence under Section 307 IPC is a serious offence and can never be permitted to be compounded, on the basis of the compromise between the parties.

10. I have heard the rival submissions made by the learned counsel for the parties and perused the record carefully.

11. During the course of the trial, the prosecution had examined Raj Kumar complainant/injured as PW3. While appearing as PW3, the complainant had reiterated the version, as mentioned in the FIR in the present case. He clearly stated that the appellant came

on a motorcycle and took out a pistol from his pant and fired a shot on the complainant, which hit on his right arm. The appellant again loaded the pistol with another cartridge, but he had fled from the spot.

12. The prosecution further examined PW2 Dr. Jainesh Saini, the then Medical Officer, Civil Hospital, Yamuna Nagar, who stated that he had medico legally examined injured Raj Kumar vide MLR Ex.PC and also sent rukka Ex.PD to the police. He noticed the following injuries on the person of Raj Kumar, injured/complainant:-

“(i) Lacerated wound of size 2x2cm, internal bleed matter (muscle) everting outside with swelling over right forearm. Advised ortho opinion.

(ii) Multiple round abrasions over abdomen over right lower quadrant area. Advised surgeon opinion”.

13. The prosecution had further examined PW5 Mahesh Kumar as an eye witness to the occurrence. He also supported the case of the prosecution and withstood the test of cross-examination. The prosecution further examined PW8 Dr. Harjot Singh, Senior Resident, Department of Orthopaedics, PGI, Chandigarh, who stated that Raj Kumar, injured/complainant was admitted in PGI Chandigarh on 25.02.2017 with alleged history of gunshot injury. The injury was open fracture dislocation, which was declared grievous in nature. He also prepared the medico legal case summary Ex.PU. Apart from that, ASI Mahender Singh, who partly investigated the crime was

examined as PW10 and he had supported the case of the prosecution in totality.

14. Apart from that, the prosecution examined PW12 Ishwar Singh, Reader to District Magistrate, Yamuna Nagar, who proved the order dated 08.06.2017 Ex.PCC whereby sanction for prosecution of the accused under Arms Act was accorded by the then District Magistrate, Yamuna Nagar. The prosecution also examined Devender Kumar, Senior Scientific Officer (Serology) Forensic Science Laboratory, Madhuban, Karnal, as PW16, who deposed that after examining the blood stained earth and shirt contained in sealed parcels, he had prepared his reports Ex.PDD and Ex.PEE. He also identified the plastic box containing blood stained earth Ex.MO-6 and Shirt Ex.MO-7.

15. In the present case, the prosecution was launched against the appellant on the basis of the statement made by PW3 Raj Kumar. The statement of PW3 Raj Kumar was fully corroborated by the statement of PW5 Mahesh Kumar an eye witness. Both the witnesses had clearly stated that the appellant had reached at the spot and after reaching the spot, he fired shots at PW3 Raj Kumar. Even, the testimonies of these two witnesses were further corroborated by the testimony of PW2 Dr. Jainesh Saini, who had medico legally examined Raj Kumar and proved the injuries suffered by PW3.

16. Apart from that, I have gone through the findings recorded by the trial Court and find no reasons to set-aside the impugned judgment passed by the trial Court. The trial Court has correctly recorded that the accused had committed the offence under Section 307 IPC and Section 25 of the Arms Act. Even, the submissions made by the learned counsel for the appellant have been noticed in detail and have been rejected by the trial Court after due appreciation of evidence and law.

17. Now adverting to the order on quantum of sentence, vide the impugned order of sentence, the appellant was directed to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 7,000/- under Section 307 IPC and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 3,000/- under Section 25 of the Arms Act. However, this Court is also conscious of the fact that the appellant is facing the prosecution in the present case for the last more than 07 years. Still further, the present appellant is a labourer and was taking care of his old aged mother and deserted sister. He is stated to be sole bread earner of the family. Apart from that, the appellant has already undergone 04 months and 16 days of sentence in the present case. After the grant of bail, the appellant never misused the concession of bail. Still further, after the grant of bail, the parties have entered into a compromise vide compromise deed (Annexure A-2).

18. Learned counsel for the appellant has also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **"Gulab Das and others v. State of M.P., 2011(10), SCC 765"**. He also relied upon the judgment passed by the Co-ordinate Benches of this Court in case titled as **"Sukhdev Singh Sukha v. State of Punjab, 2019(4) RCR (Criminal) 760"** and **"Inderjit Inder v. State of U.T.. 2011 (1) RCR (Criminal), 234"**. In the matter of Gulab Das (supra), the Hon'ble Supreme Court upheld the order of conviction recorded by the learned trial Court, however, the sentence awarded to the appellants was reduced to the period already undergone by them. Even the conviction in the said case was under Section 307 IPC and the Hon'ble Supreme Court had not allowed the parties to compound the offence under Section 307 IPC, but the sentence was reduced to the period already undergone by the appellants. Even the Co-ordinate Benches of this Court have held to the similar effect in the judgment cited by the learned counsel for the appellant.

19. In view of the facts and circumstances, it would be just and expedient, if the sentence awarded to the present appellant is reduced to the period already undergone by him. However, the amount of fine in the present case is enhanced to Rs. 1,00,000/-, which shall be deposited within 03 months from today in the Punjab and Haryana High Court Bar Clerks' Association, failing which, the

appellant shall undergo rigorous imprisonment for a period of 06 months.

20. With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 1,00,000/- as observed, which shall be deposited by him within a period of three months from today, as directed above, failing which, the appellant shall undergo rigorous imprisonment for a period of 06 months.

21. All pending applications, if any, are disposed off, accordingly.

22. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

24.10.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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