



2. Succinctly, the facts of the case, as alleged, are that in the intervening night of 29/30.06.2001, a man, with a muffled face, broke into the



house of complainant-Ajmer Singh, armed with a 12 bore DBBL gun. With an intention to kill, he fired a shot at the complainant, which hit his left foot. The complainant tried to snatch the gun away from the assailant, causing the cloth wrapping his face to fall off. As his face was revealed, the complainant identified the assailant to be the appellant. He raised a hue and cry, causing the appellant to flee the spot. However, he left the gun used there itself. Consequently, FIR(supra) was registered against the appellant.

3. After assessing the material available on record, the learned trial Court convicted the appellant vide impugned judgment dated 22.04.2005 and sentenced him to imprisonment, as mentioned above. Aggrieved by the same, the appellant has preferred the present appeal.

4. Learned counsel for the appellant *inter alia* contends that there was an inordinate delay in reporting the alleged incident to the police. The incident is stated to have occurred on 30.06.2001, at around 12:15 AM while the FIR(supra) was allegedly registered at 4:25 AM. However, a copy of the same was received by the Illaqa Magistrate at 12:45 PM. It is contended that the time of registration of the FIR(supra) has been wrongly mentioned and the fact is that the same was lodged at 12 noon, which explains why it reached the Illaqa Magistrate at 12:45 PM. This reason behind the delay is the lack of knowledge qua the identity of the assailant. The appellant has no motive whatsoever to cause any injuries to the complainant and his implication is based on misplaced suspicion. Lastly, the offence under Section 307 IPC is not made out against the appellant as he only shot at the complainant, on his foot, when he tried to get up from the cot. As such, there is nothing on the record that would even suggest an intention to kill. The sentence awarded to the appellant is grossly disproportionate and he deserves to be acquitted, or, in the



alternative, released on probation. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in *Sarju Prasad vs. State of Bihar AIR 1965 SC 843* and this Court in *State of Punjab vs. Parveen Kumari and another 1991(3) R.C.R.(Criminal) 422*, *Surjan Singh vs. Suraj Pal 1993(3) R.C.R.(Criminal) 410*, *Jagdish Ram vs. State of Punjab 2004(4) R.C.R.(Criminal) 227*.

5. *Per contra*, learned State counsel opposes the prayer made by learned counsel for the petitioner and submits that he has been convicted by the learned trial Court on correct appreciation of the facts and the law, as such interference by this Court is not warranted.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that a proper adjudication of this case would require a study of Section 307 IPC (*NOW Section 109 Bharatiya Nyaya Sanhita, 2023*):

Section 307- Attempt to murder.

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Elaborating on the above mentioned provision, a two Judge bench of the Hon'ble Supreme Court in *Lachman Singh vs. State of Haryana (2006) 10 SCC 524*, speaking through Justice Dr. Arijit Pasayat, made the following observations:

“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in



*coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between the act of the accused and its result, if any. **The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.** An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.(emphasis added)*

7. Adverting to the factual matrix of the case at hand, it appears that PW4-Ajmer Kaur, wife of the complainant and an alleged eye witness, has testified that she saw the complainant grappling with the appellant. Significantly, a single shot was fired from the gun held by the appellant, which injured the left foot, a non-vital part, of the complainant. Owing to the placement of the injury caused by the appellant, a reasonable doubt arises if the shot was fired as a result of the scuffle. Moreover, the complainant was medically examined by PW1-Dr. Rajinder Goyal, who categorically admitted in his cross-examination that the complainant was fully conscious at the time of his arrival at the hospital, remained so throughout the medical examination and even thereafter.

8. Additionally, although the incident allegedly took place at 12:15 AM on 30.06.2001, the FIR(*supra*) was registered only at 4:25 AM, after a delay of over four hours. Interestingly, PW4-Ajmer Kaur, who admittedly was at the spot of the occurrence did not report the matter to the police at any stage, in spite of the fact that she did not accompany the complainant to the hospital. This unexplained delay in lodging the FIR(*supra*) creates further suspicion qua the prosecution case.

9. Further, the appellant was an agricultural worker, attached with one Malkiat Singh. Curiously, the complainant and Malkiat Singh shared a



prior inimical relationship. It is a matter of record that the gun recovered from the site of occurrence is registered in the name of Malkiat Singh. Pertinently, he had also registered an FIR bearing No. 123 dated 30.06.2001 (supra) against the appellant, accusing him of theft of the said gun. A cumulative analysis of the material on record would indicate that the prosecution has been unable to cull out a motive on part of the appellant, that could justify such a grave accusation. As such, in absence of an injury that could be dangerous to life or an intention to kill, conviction under Section 307 IPC cannot be sustained.

9. However, the appellant did trespass into the complainant's residence and caused him an injury. While the circumstances do not call for invoking of Section 307 IPC, the matter does fall within the purview of Section 324 IPC. In a similar situation, a three Judge bench of the Hon'ble Supreme Court in *Sarju Prasad vs. State of Bihar AIR 1965 SC 843*, found it appropriate to convict the appellant therein for an offence under Section 324 IPC instead of Section 307 IPC. Speaking through Justice J.R. Mudholkar, the following was opined:

*“7. Having said all this we must point out that **the burden is still upon the prosecution to establish that the intention of the appellant in causing the particular injury to Shankar Prasad was of any of the three kinds referred to in Sections 300, Indian Penal Code. For, unless the prosecution discharges the burden the offence under Sections 307, Indian Penal Code cannot possibly be brought home to the appellant.** The state of the appellant's mind has to be deduced from the surrounding circumstances and as Mr. Kohli rightly says the existence of a motive to cause the death of Shankar Prasad would have been a relevant circumstance. **Here, the prosecution has led no evidence from which it could be inferred that the appellant had a motive to kill the victim of his attack.** On the other hand he points out that as the appellant had no enmity with Shankar Prasad that neither of them even knew each other and that as the appellant inflicted the injury on Shankar Prasad only to make him release the wrist of Sushil while Sushil was in the act of stabbing Madan Mohan he cannot be said to have had the motive to kill Shankar Prasad and, therefore, no intention to cause murder or to cause any injury which may result in death could be inferred...”*



8. The only other question then is whether the appellant intended to cause such injury as he knew to be likely to cause death or intended to inflict an injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was so imminently dangerous that it must in all probability cause death or cause an injury as is likely to cause death.

9. It is true that the witnesses say that, the appellant used a chhura. It is also true that the injury was inflicted on a vital part of the body but the fact remains that no vital organ of the body was injured thereby. Again, we do not know how big the chhura was and, therefore, it cannot be said that it was sufficiently long to penetrate the abdomen deep enough to cause an injury to a vital organ which would in the ordinary course of nature be fatal. The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size. We are, therefore, unable to say with anything near certainty that the appellant had such intention or knowledge. Incidentally we may point out that shankar Prasad does not say that alter he released the wrist of sushil the appellant inflicted or even tried to inflict any further injury on him.

10. In this state of the evidence we must hold that the prosecution has not established that the offence committed by the appellant falls squarely under Sections 307, Indian Penal Code In our opinion, it amounts only to an offence under Sections 324, Indian Penal Code.”
(emphasis added)

10. Further still, a Division bench of this Court in *State of Punjab vs. Parveen Kumari and another* 1991(3) R.C.R.(Criminal) 422 has held that a mere use of a firearm would not automatically attract the offence under Section 307 IPC. Reliance in this regard can also be placed on judgments rendered by this Court in *Surjan Singh vs. Suraj Pal* 1993(3) R.C.R.(Criminal) 410 and *Jagdish Ram vs. State of Punjab* 2004(4) R.C.R.(Criminal) 227. Therefore, the appellant is held to be guilty for commission of the offence under Section 324 IPC, while conviction under Section 307 IPC is set aside.

11. Pertinently, the alleged incident occurred in the year 2001 and the appellant has been facing the agony of trial for the last about 24 years. He has also spent 01 year 05 months 26 days in custody. Since the sentence of the appellant was suspended by this Court vide order dated 26.09.2005, he has been



residing as a peaceful member of the society, without any untoward incident attributable to him. Therefore, in view of the discussion above, this Court finds it apposite to reduce the sentence awarded to the appellant to the custody already undergone by him.

12. In ***Deo Narain Mandal vs. State of U.P. (2004) 7 SCC 257***, the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

13. Further, the Hon'ble Supreme Court in ***Ravada Sasikala vs. State of AP AIR 2017 SC 1166***, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.



14. In view of the facts and circumstances of the case, the instant revision petition is allowed, in the following terms:

1. The judgment dated 22.04.2005 passed by learned Additional Sessions Judge, Bathinda is modified to the extent of conviction of the appellant under Section 307 IPC is set aside. However, the appellant is held guilty for commission of the offence under Section 324 IPC. However, the sentence for the same is ordered to be the duration of custody already undergone by the appellant.

2. The order of sentence dated 22.04.2005 passed by the learned Additional Sessions Judge, Bathinda, is modified to the extent that sentence of rigorous imprisonment of 05 years and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by the appellant.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

21.04.2025

Neha

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