(2010) 08 P&H CK 0390

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Shammi		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Aug. 13, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 34

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Judgement

T.P.S. Mann, J.

The appellant was tried for an offence u/s 302 IPC whereas his brother Kishore u/s 302/34 IPC on the allegations that on 7.6.1995 at about 6.30 p.m. accused Kishore took Kulwinder Singh in his grip while appellant Shammi took out a knife and used the same in inflicting a blow to Kulwinder Singh near his left thigh, as a result of which Kulwinder Singh died on reaching the Government Hospital, Uklana. Vide impugned judgment dated 3.5.1997, learned Sessions Judge, Hisar acquitted accused Kishore of the charge against him. Even the appellant was absolved of the charge u/s 302 IPC and, instead, convicted u/s 304 IPC on the ground that there was a sudden quarrel between the parties; there was a single knife blow caused by the appellant; the blow was not caused on any vital part of the body; and that the appellant did not know that it would cut the main artery, i.e. femoral artery. Vide order dated 10.5.1997 passed by the learned trial Court, the appellant was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- for the offence u/s 304 IPC and in default of payment of fine, to undergo further rigorous imprisonment for two years. Fine, if realized, was ordered to be paid to Sunder Singh complainant, father of deceased Kulwinder Singh.

2. Learned Counsel for the appellant has not challenged the conviction of his client for the offence u/s 304 IPC. Instead, he has submitted that the appellant has been facing the agony of criminal prosecution since June, 1995. He was 23 years of age at the time of passing of the impugned judgment of conviction and sentence. The appellant had caused

only a solitary blow to Kulwinder Singh and, that too, without knowing that it would cut femoral artery. Moreover, it was a case of sudden occurrence when the appellant had asked Kulwinder Singh to go with him to his shop for settlement of accounts. The appellant has already undergone a period of more than one year in jail including the under trial period. The appellant is willing to pay an amount of Rs. 1,50,000/- to Sunder Singh complainant by way of compensation. Therefore, the substantive sentence of imprisonment of the appellant be reduced to that already undergone by him.

3. Learned State Counsel has opposed the prayer made on behalf of the appellant by submitting that the appellant had taken out a knife at the time of occurrence and used the same in inflicting an injury on the inner side of left thigh of Kulwinder Singh, which proved fatal as femoral artery was cut. Therefore, the appellant does not deserve any leniency in the matter of sentence. However, learned State Counsel has placed on record the custody certificate as per which the appellant has already served an actual sentence of one year and five days out of the sentence of seven years imposed upon him.

4. Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose would be served by sending the appellant behind the bars especially when he has expressed his willingness to pay an amount of Rs. 1,50,000/- to Sunder Singh complainant by way of compensation.

5. Resultantly, the conviction of the appellant for offence u/s 304 IPC is maintained. His substantive sentence of imprisonment is reduced to that already undergone by him subject to his depositing an amount of Rs. 1,50,000/- with the trial Court within four months from today, failing which he shall be required to undergo the substantive sentence of imprisonment, as earlier directed by the trial Court. The sentence of fine alongwith its default clause is maintained. The amount of Rs. 1,50,000/-, when deposited by the appellant, be disbursed to Sunder Singh complainant, as compensation.

6. The appeal is, accordingly, disposed of.