

i) the Occurrence in This Case Is of 10.1.2001 and He Has Already Faced Vs. the State of Punjab

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SooperKanoon Citation : sooperkanoon.com/1092334

Court : Punjab and Haryana

Decided On : Sep-16-2013

Appellant : i) the Occurrence in This Case Is of 10.1.2001 and He Has Already Faced

Respondent : The State of Punjab

Judgement :

CRA No.685-SB of 2003 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRA No.685-SB of 2003 Date of Decision:-16.9.2013 Prem Kumar ...Appellant Vs. The State of Punjab ...Respondent CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR Present:- Mr.Paras Talwar, Advocate for the appellant. Mr.K.S.Aulakh, AAG Punjab for the respondent-State. Mehinder Singh Sullar, J.

(Oral) The epitome of the facts & evidence, unfolded during the course of trial, which needs a necessary mention for the limited purpose of deciding the core controversies, involved in the instant appeal and emanating from the record, as claimed by the prosecution, is that on 10.1.2001 at about 9.45 A.M., complainant Naresh Kumar son of Lal Chand (PW3) (for brevity the complainant.) had gone to Sodal temple as usual. After paying the obeisance in the temple, as soon as, he was purchasing the flowers from the shop of Kali Flower House, situated near the gate of temple, in the meantime, a Maruti car, bearing registration No.PCS-62,

being driven by accused Raghunath son of Chhaju Ram, came there. The driver remained sitting in the car, whereas appellant- convict Prem Kumar son of Malook Raj (for short the appellant.) armed Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 2 with sickle (Dattar) and his co-accused Rakesh Kumar son of Raghunath having a sword (Kirpan) alighted from the car with muffled faces. They attacked and started causing injuries on the head of the complainant. He raised his left hand in order to save his head. In that process, appellant Prem Kumar inflicted a sickle (Dattar) blow, which landed on the fingers of his left hand and three fingers were chopped off. He gave another sickle blows, which hit on the head and wrist of his left arm. Thereafter, accused Rakesh Kumar inflicted injuries with the sword near the ankle of his right leg. He raised noise Mar Ditta Mar Ditta.. Then all the accused decamped from the place of occurrence with their respective weapons in the same car. While going, Rakesh Kumar was stated to have proclaimed that they had taken the revenge from him. Meanwhile, Sudesh Kumar, brother of the complainant, (PW4) reached the spot, arranged the vehicle, removed to and admitted him in an injured condition to Civil Hospital, Jalandhar for treatment. After providing first aide and keeping in view of his serious condition, the doctors had referred him to CMC Ludhiana. Thereafter, he was shifted to Janta Hospital, Jalandhar for further treatment.

2. Leveling a variety of allegations and narrating the sequence of events, in all, the prosecution claimed that on 10.1.2001, the appellant and his accomplices Rakesh Kumar and Raghunath, with their common intention, attempted to murder and caused multiple injuries to the complainant. In the background of these allegations and in the wake of statement (Ex.PC) of the complainant, the present criminal case was registered against the accused, vide FIR No.10 dated 11.1.2001 Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 3 (Ex.PE/2), on accusation of having committed the offences punishable under sections 307, 323, 324 and 326 read with section 34 IPC by the police of Police Station Division No.3, Jalandhar in the manner depicted here-in-above. It is apparent from the commitment order and impugned judgment of conviction that the whereabouts of accused Rakesh Kumar and his father Raghunath were not known. They were neither arrested by the

police nor faced the trial.

3. After completion of the investigation, the police submitted the final police report (challan) only against the appellant. Accordingly, he was charge-sheeted for the commission of offences punishable under section 307, 326 and 324 IPC and the case was slated for evidence of the prosecution by the trial Court.

4. Sequel to, the prosecution, in order to substantiate the charges framed against the appellant, examined complainant Naresh Kumar (PW3), who has deposed in the following terms:- On 10.1.2001, I was going to Sodal Mandir as usual at about 9.45 AM. After paying obeisance in the Sodal Mandir, I reached the flower shop. A maruti car No.PCS62 of white colour came from the side of sodal chowk. The car stopped near me. Two persons alighted from that car who were Prem Kumar accused present in court. He was armed with datar. The other was Rakesh Kumar @ Sonu armed with kirpan. The car was being driven by Raghunath father of accused. Prem Kumar gave a datar blow on me which I took on my left hand as a result of which my three fingers were cut while two were chopped off. Prem Kumar and Sonu started giving blows with their weapons on my head and I received four injuries on the head. Prem Kumar gave a datar blow on my left wrist. Rakesh Kumar gave a kirpan blow which hit near my ankle on the right leg. This blow was given to me from reverse side of kirpan. I raised raula at which all these accused persons sped away in their car towards the railway crossing. While going Sonu, raised lalkara that they have taught me a lesson for filing criminal case against them. Sudesh Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 4 Kumar my brother reached the spot who arranged the conveyance and took me to civil hospital, Jalandhar. There the doctor referred me to CMC, Ludhiana as my condition was serious. My one finger was joined by giving medical treatment while the remaining two fingers could not be joined. Thereafter my brother got me discharged from CMC Ludhiana and brought me to Janta Hospital. I was treated in Janta Hospital, Jalandhar. The police came to the hospital and recorded my statement on 11.1.2001. The statement was read over and explained to me and I signed the same after admitting the same as correct. My statement is Ex.PC, on which, I identify my signatures. The motive of the occurrence was that a dispute

had taken place with the accused in 1995 and a case was registered against the accused. A compromise was got effected by the Panchayat. The accused were nursing the grudge on this count against me and caused me injuries.. 5. Likewise, PW4 Sudesh Kumar has stated that on 10.1.2001, he saw his brother near the Sodal temple in an injured condition with bleeding injuries. He arranged the vehicle and took him to Civil Hospital, Jalandhar, from where, he was referred to CMC Ludhiana as his condition was serious. Then, he took and got him admitted in Janta Hospital, Jalandhar for further treatment. He has specifically maintained that his brother Naresh Kumar narrated the manner of occurrence and names of assailants to him. The police has recorded their statements in Janta Hospital, Jalandhar. He accompanied and the police took into possession the blood stained earth from the place of occurrence, by way of recovery memo (Ex.PD), which was signed by him. The blood stained clothes of the injured were also taken into possession by the police, vide memo (Ex.PE) on 18.1.2001, which was signed by him as marginal witness.

6. Now coming to the medical evidence, PW1 Dr.Gurmeet Kaur, Medical Officer, Civil Hospital, Jalandhar has medico legally Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 5 examined the complainant-injured on 10.1.2001 at 10.15 A.M., by means of MLR (Ex.PA) and pictorial diagram (Ex.PA/1) showing the seat of injuries. He found the following injuries on his person:- 1. An incised wound 5 cm x 1 cm obliquely placed on the right parietal region of the skull, depth was not explored due to bleeding, fresh bleeding was present, advised x-ray.

2. Incised wound 8 cm x 1 cm on the left parietal region of the skull, fresh bleeding was present, advised x-ray.

3. Incised wound 2 cm x .5 cm x 1 cm injury was present 1 cm medial to injury No.2, x-ray was advised.

4. Incised wound 4 cm x 1 cm x1 cm present 1 inch posterior and lateral to injury No.2 underlying bone was fractured, x-ray was advised.

5. Traumatic amputation of left ring finger at the level of proximal inter-phalangeal joint, fresh bleeding was present. Patient's attendant brought the remaining portion of the finger. Kept for ortho opinion.

6. Traumatic amputation of left little finger at the level of middle of middle phalanx, remaining finger attached with the skin tag, profusely bleeding. Injury was kept under ortho opinion.

7. Incised wound 1.5 cm x .5 cm x 1 cm on dorso-medial aspect of left forearm, 2 cm above elbow. Fresh bleeding was present.

8. Incised wound 2 cm x 1 cm at the dorso-lateral aspect of middle finger, wound was bone deep, obliquely placed, fresh bleeding was present. X-ray was advised for injuries No.7 and 8.

9. A lacerated wound 2 cm x .5 cm on the anterior aspect of right leg, 3 cm above ankle, fresh bleeding was present.

7. In the same sequence, PW5 Dr.Amarjit Singh has deposed that on 10.1.2001 patient Naresh Kumar came in the hospital with multiple injuries i.e. regular amputation was done at the base of middle phalanx for little and ring fingers with fracture intra articular from proximal and distal phalanx middle finger with K-wire fixation was done and 3 wounds over scalp with injury on right leg over the lower 1/3rd, 1. wound over the wrist. The patient was known diabetic. He proved his reports (Ex.PD & Ex.PF)) and certificate (Ex.PE). PW7 Dr.Yashbir Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 6 Diwan, Head of Neuro Surgery, CMC Ludhiana, has maintained that on 10.1.2001 at 1.04 P.M. patient Naresh Kumar came to the hospital with laceration on right fronto parietal region, left parietal region, left parieto occipital region. All these injuries were sutured at Civil Hospital, Jalandhar. Besides this, he had near total amputation of left little finger, total amputation of distal ring finger of left hand and laceration with bone chopped of middle finger of left hand. Revision amputation of ring and little fingers of left hand was done along with K-wiring of distal inter phalanx of left middle finger was done. The injured left the hospital at 7.15 P.M. on the same day. The suturing of the

scalp was also done in his hospital by Dr.Sarabjit Singh. The patient was advised CT scan of head and x-ray of cervical spine. PW7 has deposed that both were reported as normal and maintained that if the aforesaid injuries were not treated, these could prove fatal.

8. Now adverting to the evidence of police officers, PW6 ASI Balkar Singh (Investigating Officer) has stated that on 10.1.2001 MHC handed over the MLR pertaining to injured Naresh Kumar to him. He along with other police officials reached Civil Hospital, Jalandhar, where the doctor informed him that the injured was referred to CMC Ludhiana. Then, he reached there, moved an application (Ex.PG) and doctor declared the injured fit to make statement, vide endorsement (Ex.PG/1). However, the injured told him that he will give his statement on the next day. Then, on 11.1.2001, he came to know that the injured was shifted to Janta Hospital, Jalandhar. He reached there and correctly recorded his statement (Ex.PC). It was read over and he signed the same in token of its Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 7 correctness. He (PW6) made his endorsement (Ex.PC/1) and sent it to the police station for registration of a case, on the basis of which, formal FIR (Ex.PE/2) by ASI Jaswinder Kumar. He has identified his signatures. Thereafter, he reached the spot and took into possession the blood stained earth, vide recovery memo (Ex.PD), which was signed by PW4 Sudesh Kumar. He prepared the rough site plan (Ex.PH) of the spot with its correct marginal notes and recorded the statement of Sudesh Kumar u/s 161 Cr.PC. On reaching police station, he deposited the case property on the same day intact with the MHC. PW Sudesh Kumar handed over blood stained clothes of injured, which were taken into possession by him, by virtue of recovery memo (Ex.PE) attested by the witnesses. He arrested the appellant on 20.1.2002. He has further testified that the proceedings for declaring the remaining accused as proclaimed offender were initiated by the Magistrate. After completion of investigation, the final police report (challan) was submitted against the appellant by SHO Swarandeeep Singh.

9. After conclusion of the prosecution case, the statement of the appellant was recorded. The entire incriminating material/evidence was put to enable him to

explain any circumstance appearing against him therein, as contemplated under section 313 Cr.PC. However, he has denied the prosecution evidence in its entirety and pleaded that the injured had been given the injuries by some unidentified persons and later on he was falsely implicated in the present case on account of previous enmity.

10. Similarly, the appellant, in order to prove his defence plea, Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 8 has examined DW1 Rajiv Kumar son of Amar Nath, who has stated that on the fateful day at about 10.45 A.M., he came out of the temple. On hearing noise, he immediately rushed to the spot and found that two young persons, who had wrapped themselves in the blankets with the monkey caps were giving injuries to the injured. Thereafter, they slipped away from the place of occurrence. He enquired from the injured about the whereabouts of assailants, but he feigned his ignorance. DW2 Ashwani Kumar son of Gurdial Singh, Deed Writer, has deposed that the appellant was helping him. On the fateful day as usual, he was present with him in the Tehsil office at about 9/9.15 A.M. DW3 C.Rajesh Kumar produced the inquiry file and copy of report (Ex.DA). DW4 Raj Rani wife of Malook Raj is the mother of the appellant, who has stated that she has property adjacent to the house of complainant. They were pressurizing them to alienate their property in their favour, but they refused to oblige them and as such they became inimical towards them. DW5 Jagdish Kalia son of Ram Lal has maintained that when Naresh Kumar complainant received injuries on 10.1.2001, he was neither present at the spot nor witnessed the occurrence. According to DW6 Ilyas son of Lachhman Dass, Deed Writer, the appellant was working with Ashwani Kumar Deed Writer and used to come to his place of work everyday at 9 A.M. and on 10.1.2001 when he came to his seat, he had noted that Prem Kumar was present on the seat of Satish Kumar Deed Writer. This is the total oral as well as documentary evidence brought on record by the parties.

11. Taking into consideration the entire evidence brought on Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 9 record by the prosecution, the appellant

was substantively convicted and sentenced to undergo rigorous imprisonment (for short RI.) for a period of five years, to pay a fine of ` 10,000/- and in default thereof, to further undergo RI for a period of one year, for having committed an offence punishable u/s 307 IPC. He was further convicted & sentenced to undergo RI for a period of five years, to pay a fine of ` 10,000/- and in default thereof, to further undergo RI for a period of one year for the commission of an offence punishable u/s 326 IPC. He was also convicted & sentenced to undergo RI for a period of one year, to pay a fine of ` 5,000/- and in default thereof, to further undergo RI for a period of six months u/s 324 IPC. However, all the sentences were ordered to run concurrently, by way of impugned judgment of conviction & order of sentence dated 6.3.2003 by the trial Court of Addl. Sessions Judge.

12. Aggrieved thereby, the appellant has preferred the instant appeal. That is how I am seized of the matter.

13. Assailing the impugned judgment of conviction & order of sentence, the learned counsel for appellant has contended with some amount of vehemence that there is a delay of more than one day in lodging the FIR (Ex.PE/2), the co-accused, namely Rakesh Kumar and his father Raghunath were never arrested by the police and the alleged motive is not believable. The argument is that even no offence punishable u/s 307 IPC is made out against the appellant. Thus, he prayed for acceptance of the appeal.

14. Hailing the prosecution evidence, on the contrary, the learned State counsel has vehemently urged that the prosecution has led Arvind Kumar Sharma
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Chandigarh CRA No.685-SB of 2003 10 sufficient evidence and since the ocular version finds corroboration from the medical evidence, so, no interference is warranted in this regard.

15. Having heard the learned counsel for the parties, having gone through the evidence on record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present appeal as regards the conviction of the appellant is concerned.

16. As is evident from the record that PW3 complainant Naresh Kumar is the main injured witness of the incident. He has duly supported the prosecution version on all vital counts as regards the participation of the appellant in the commission of crime is concerned. The ocular version of PW3 is duly corroborated by the medical evidence of PW1 Dr.Gurmeet Kaur, PW5 Dr.Amarjit Singh and PW7 Dr.Yashbir Diwan. There were multiple incised wounds on skull & parietal region of skull. So much so, there was a fracture of underlying bone pertaining to incised wound relating to injury No.4 as declared by PW1. There were traumatic amputation of fingers of left hand of the injured, as confirmed by PW5. The regular amputation was done at the base of middle phalanx for little and ring fingers with fracture intra articular from proximal and distal phalanx middle finger with K-wire fixation was done. PW7 has also so confirmed in his statement.

17. Not only that, PW4 Sudesh Kumar has deposed that immediately after the incident, he noticed his brother Naresh Kumar (PW3) near Sodal temple bleeding from the injuries. He told him the entire occurrence and the manner, in which, the accused caused him the injuries. Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 11 injuries. However, the contention of learned counsel for appellant that the evidence of PW4 is of no help to the prosecution as he did not actually witness the occurrence, lacks merit. PW3 had immediately narrated the entire incident and the manner in which the accused caused him the injuries to his brother PW4, who reached the spot. His presence is natural as he was the person, who got him admitted at the first instance in Civil Hospital, Jalandhar, then he was shifted to CMC Ludhiana and Janta Hospital, Jalandhar by him. Although he may not have actually seen the appellant causing injuries to the injured, but still, an immediate narration of sequence of the facts by the injured (PW3) to him about the entire occurrence and the manner in which the accused caused him the injuries, are so connected with the fact in issue as to form part of the same transaction. Such evidence is relevant, as contemplated u/s 6 of the Indian Evidence Act, 1872.

18. An attempt has also been made on behalf of appellant that the motive of occurrence of previous enmity of 1995 is false. PW3 has maintained that the previous registration of criminal case against the accused in the year 1995 was the

main reason to cause him the injuries despite a compromise was effected by the panchayat. He has stated that the appellant was nursing the grudge on account of previous criminal case/litigation. There appears to be no improbability in it, as contrary urged on his behalf. Moreover, the prosecution version is duly corroborated by the injured complainant and his brother Sudesh Kumar (PW4) coupled with the medical evidence. When the case is based on ocular, injured/eye witness account, then, the motive part even otherwise Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 12 pales into insignificance in this respect.

19. Ex facie, the next celebrated submission of learned counsel for appellant that since there is a delay of more than one day in lodging the report with the police, so, the prosecution version should be thrown out, is not only devoid of merit but misplaced as well. As indicated earlier, the occurrence in this case had taken place on 10.1.2001 at 9.30 A.M., but the statement (Ex.PC) of the complainant was recorded at 2.30 P.M. on 11.1.2001. The injured sustained as many as nine injuries with multiple incised wounds on the skull and its parietal region including the fracture of skull bone. Then, his three fingers were chopped off by the appellant. His brother arranged a vehicle and immediately he was removed in an injured condition to Civil Hospital, Jalandhar at the first instance, from where, he was referred to CMC Ludhiana. No doubt, PW6 ASI Balkar Singh has stated that the doctor gave his opinion that the injured was fit, but he refused to make his statement. Thereafter, he was shifted to Janta Hospital, Jalandhar for further treatment. PW6 reached there and recorded his statement (Ex.PC) on 11.1.2001, which formed the basis FIR (Ex.PE/2). In that eventuality, only either God or the complainant-injured could know about the initial tension, traumatic pain, suffering, confusion and lot of grief suffered by him. If the injured had suffered the pointed multiple incised/fractured injuries on the skull and on other parts of his body, his natural conduct would warrant and endeavour have always been to have best treatment to save his precious life at the first instance than to rush to make the statement to police under such serious conditions. Moreover, he may not be in a proper frame of Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 13 mind to make the statement in CMC Ludhiana. The same principle applies to his brother

(PW4) as the first preference for him was to provide the immediate and adequate medical treatment to save the life of his brother than to entangle himself with the police proceedings. In order to achieve the required object, PW4 has taken him to Civil Hospital, Jalandhar, from where, he was shifted to CMC Ludhiana. Then he took him to Janta Hospital, Jalandhar for further proper/adequate treatment.

20. Likewise, the mere fact that PW3 and PW4 did not lodge the FIR on 10.1.2001, ipso facto, is not a ground, muchless cogent, even to infer that some unknown persons caused injuries to PW3 or to throw the prosecution version in its entirety, which is otherwise proved by the indicated ocular and medical evidence. As soon as, the condition of PW3 became stable, immediately he made his statement (Ex.PC) to the police, which formed the basis of FIR (Ex.PE/2) specifically naming the appellant and his co-accused as real assailants. Under these compelling circumstances, it cannot possibly be saith that the appellant and his co-accused were not the assailants or some unknown persons caused injuries to PW3. In this manner, the delay of more than one day occurred on account of shifting the injured from one hospital to other hospitals for better treatment to save his precious life, is very much acceptable. The explanation is natural, probable and very well explained. The alleged delay has got no adverse affect on the prosecution version, as contrary urged on behalf of the appellant.

21. Faced with the situation, the further contention of learned counsel for appellant that since the police did not obtain any opinion of Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 14 the doctor with regard to dangerous nature of injuries on the person of the injured, so, the offence punishable u/s 307 IPC is not made out, sans merit as well. The perusal of evidence would reveal that PW7 Dr.Yashbir Diwan has categorically maintained, on oath, that if the abovesaid injuries were not treated, these could prove fatal.

. In cross-examination, he has explained that the police has not sought his opinion in this respect. If the Investigating Officer had showed his incompetency, failed in his duty and did not obtain the pointed opinion of the doctor, then, to me, the complainant-injured cannot possibly be blamed for it.

22. This is not the end of the matter. Section 307 IPC postulates that 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. Section 300 IPC further posits that culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death and if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

23. A conjoint and meaningful reading would reveal that in order to attract the penal provisions of Section 307 IPC, it is not always Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 15 necessary that there should be an opinion of the doctor that the inflicted injuries were dangerous to life. The Court is competent to infer the requisite intention and knowledge to cause death or such bodily injuries, which were sufficient to cause death in the ordinary course of nature, from the evidence on record. As mentioned here-in-above, PW3 suffered as many as nine injuries on his person. Most of the injuries (injuries No.1 to 4) on the skull and its parietal region are incised wounds caused by the appellant with a sharp edged sickle (Dattar), even underlying bone of skull was fractured as per injury No.4 on his person. The appellant had repeated the injuries with big sickle (Dattar) on the skull (vital part) of the body. Not only that, when the injured raised his left hand to save his head, then the blow was so eminent and forceful that it chopped off his three fingers. Had he not raised his hand to save his head, then forceful blow on his head would have proved fatal under the present set of circumstances ?.

24. Therefore, if the manner and nature of repeatedly caused injuries with sharp edged weapon by the appellant on the skull (vital part) of the injured are

cumulatively put together, then, to my mind, the conclusion is inescapable that it stands proved on record by cogent evidence that the appellant caused injuries on the vital part of the injured with a clear intention and knowledge that bodily injuries intended to be inflicted were sufficient in the ordinary course of nature to cause his death. In this manner, the offence committed by the appellant squarely falls within the domain and ambit of section 307 IPC.

25. Meaning thereby, the narration given by the PWs is natural, Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 16 genuine and probable. The ocular version was corroborated by the medical evidence. The investigation was duly testified by the Investigating Officer and chain of link evidence is also otherwise complete. PW3 and PW4 have fully proved the complicity of the appellant. They were cross-examined at length, but no substantial material could be elicited in their searching cross examination to dislodge their testimony and impeach their credibility. No motive could possibly be attributed to the complainant-injured/eye witnesses as to why they would falsely implicate the appellant in this case. They gave a vivid, consistent and cogent version of the occurrence and supported the prosecution story on all vital aspects. On the contrary, there was a clear motive of previous litigation with him to cause injuries to the injured. There is no dispute about the identification of the appellant and his co-accused, who were earlier known to the injured. Their names were mentioned in his initial version/statement (Ex.PC), which formed the basis of FIR(Ex.PE/2).

26. Similarly, the mere routine denial by the appellant that he was falsely implicated and some unknown persons caused injuries to the injured, outrightly deserves to be rejected in the absence of any cogent material on record in this relevant direction. There would be no difficulty for him to procure the witnesses in order to screen him from legal punishment. DW4 Raj Rani, mother of the appellant, is bound to help her son. The mere fact that Jagdish Kalia cited witness was not examined by the prosecution and was examined by the appellant as DW5 is of no consequence and has got no direct bearing on the prosecution version. He Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 17 has only stated that he

was not present at the time of alleged occurrence in his shop. Moreover, in cross-examination, he has admitted that the injured came to his shop to purchase the flowers from him, which corroborates his (PW3) statement. Mere his non-examination would have no adverse bearing on the prosecution version, which is otherwise proved by oral as well as medical evidence as described here-in-above. The learned counsel for appellant did not point out any other legal infirmity or major contradictions and inherent improbabilities, muchless cogent, to dislodge the prosecution version, which is otherwise duly proved by the ocular, medical and documentary evidence as depicted here-in-above. Thus, the contrary arguments of learned counsel for appellant *stricto sensu*. deserve to be and are hereby repelled.

27. Faced with the situation, learned counsel has fairly acknowledged that he will not be in a position to contest the conviction of the appellant any more, in view of the pointed cogent evidence brought on record by the prosecution. As no other legal infirmity has been pointed out by the learned counsel for the appellant, therefore, the impugned judgment of conviction and order of sentence of fine are hereby maintained in the obtaining circumstances of the case.

28. Be that as it may, however, the argument of learned counsel that since the appellant is not a previous convict and he is ready to pay the adequate compensation to the injured, so, there is a large scope of reduction in the period of his sentence, has considerable force. This factual position is acknowledged by the learned State counsel.

29. Having regard to the rival contentions of learned counsel for Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 18 parties, to my mind, it would be in the interest and justice would be sub- served if the sentence of imprisonment imposed on the appellant by the trial Court is reduced, *inter-alia*, on the following grounds:-
i) The occurrence in this case is of 10.1.2001 and he has already faced the pangs and suffered the agony of protracted trial & appeal for the last about 12 years. ii) He is ready to pay the adequate compensation to injured on account of injuries suffered by him. iii) He is a first offender and is not a previous convict. iv) He is a

young person at the time of commission of offence. v) The parties belong to the same locality. vi) All the sentences were ordered to run concurrently by the trial Court and as per custody certificate, the appellant has already undergone the period of his substantive sentence of one year, seven months and 24 days , out of the total awarded maximum sentence of imprisonment of five years.

30. In the light of aforesaid reasons, as there is no merit, therefore, the appeal filed by the appellant is hereby dismissed and the impugned judgment of conviction and order of sentence of fine imposed on the appellant are maintained. However, taking into consideration the totality of the facts & circumstances, emanating from the record, as discussed here-in-above, the sentence of imprisonment is reduced to the period (1 year 7 months and 24 days) already undergone by him. At the same time, he is also directed to pay a sum of ` 1,00,000/- to complainant-injured (PW3) as compensation, in lieu of his injuries and expenses of treatment within a period of three months, in addition to the amount of fine already awarded by the trial Court on each count. Accordingly, the impugned order of sentence is modified to the extent and in the manner depicted here-in-before. Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh CRA No.685-SB of 2003 19 31. However, it is made clear that if the appellant fails to pay the indicated compensation to injured (PW3) within the stipulated period, then, the sentences of imprisonment already awarded to him by the trial Court, would automatically be deemed to have been revived. Needless to say that necessary consequences & compliance will naturally follow accordingly. Sd/- 16.9.2013 (Mehinder Singh Sullar) AS Judge Whether to be referred to reporter ?. Yes/No Arvind Kumar Sharma 2013.09.18 17:35 I attest to the accuracy and integrity of this document Chandigarh

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