

Crl. Appeal No.S-1884-SB of 2003  
DATE OF DECISION: January 12, 2015

Shamshad Khan @ Sadha and others

....Appellants

versus

The State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Argued by: Mr.Mohd. Yousaf, Advocate for the  
appellants.  
Ms.Minakshi Goyal, AAG, Punjab.  
Injured-Shokat Ali is in custody in some  
other case.

RAJ RAHUL GARG,J.

The prosecution was launched under Sections 307,  
324,452,34 of the Indian Penal Code (for short, `the Act')  
and Section 25 of the Arms Act against the appellants.

The facts, in nutshell, are that on 10.3.2001, a  
medico legal report was received from Civil Hospital,  
Malerkotla regarding admission of Shokat Ali, upon which,  
ASI Gurmeet Singh along with the police party reached there  
and obtained opinion of the doctor in writing. However,  
Shokat Ali (injured) was declared unfit to make the  
statement. Liakat Ali, eye witness, met the police party who  
recorded the statement to the effect that they are three

brothers and residing together in the village Binjoki Kalan. His elder brother-Shokat Ali (injured) is running grocery shop, whereas, younger brother-Aslam is doing the labour work. Their parents were alive. On the fateful day, at 10.00 a.m., he was standing near the mosque of the village. A white colour maruti car No.PB-12C/0290 came from the side of phirni of the village and stopped in the chowk near mosque. He already knew Gama Khan, Sadha, Saudagar Khan and Sukhdev who came out from that car. The aforesaid appellants went towards his home. After some time he heard a noise of fire shot. Immediately, he proceeded towards his home and saw that the aforesaid appellants were running out from the shop of Shokat Ali. On reaching the shop, Shokat Ali narrated woeful tale to him that Sadha, who was armed with .12 bore pistol and Gago, who was armed with knife, had caused injuries by firing and with the blows of knife. After causing injuries, all the appellants fled away from the spot. The motive for causing injuries to his brother Shokat Ali was that he solemnized the Court marriage with Sajia Parveen about two years ago. However, relatives of Sajia Parveen, after exerting pressure upon her, got her statement recorded in the Court and took her back to their home and she was residing with her maternal uncles Pokar and Roshan Khan, residents of Dhuri. That being the situation, the appellants were feeling insulted

and nursing grudge against his brother Shokat Ali and with their common intention, caused injuries to Shokat Ali. The entire incident was witnessed by his aunt Ms.Latifan, who was residing nearby that place. Shokat Ali was hospitalized by Ranjit Singh. On the basis of statement of Liakat Ali, formal FIR was registered. Investigation was commenced. Challan was presented.

Finding a prima facie case against the appellants, they were charge sheeted under Sections 452,307,324,34 IPC, besides this, appellant Shamshad Khan was charge sheeted under section 25 of the Arms Act. The appellants did not plead guilty and claimed trial.

In order to prove its case, prosecution examined as many as thirteen witnesses and closed the evidence.

On trial, the appellants were found guilty under Sections 307/324 read with section 34, section 452 IPC and appellant Shamshad Khan was found guilty under section 25 of the Arms Act and appellant Shamshad Khan was: sentenced to undergo rigorous imprisonment for seven years and imposed a fine of Rs.1,000/- under Section 307 IPC with default stipulation of three months' RI; sentenced to undergo rigorous imprisonment for two years and imposed a fine of Rs.1,000/- under Section 452 IPC with default stipulation of three months' RI; sentenced to undergo rigorous imprisonment for two years and imposed a fine of

Rs.1,000/- under Section 324 read with section 34 IPC with default stipulation of three months' RI; and sentenced to undergo rigorous imprisonment for one year and imposed a fine of Rs.1,000/- under Section 25 of the Arms Act with default stipulation of three months' RI. Appellant Saudagar Khan alias Gago was sentenced to undergo rigorous imprisonment for five years and imposed a fine of Rs.1,000/- under Section 307 read with section 34 IPC with default stipulation of three months' RI; sentenced to undergo rigorous imprisonment for two years and imposed a fine of Rs.1,000/- under Section 452 IPC with default stipulation of three months' RI; and sentenced to undergo rigorous imprisonment for three years and imposed a fine of Rs.1,000/- under Section 324 IPC with default stipulation of three months' RI. Appellant Sukhdev Singh was sentenced to undergo rigorous imprisonment for five years and imposed a fine of Rs.1,000/- under Section 307 read with section 34 IPC with default stipulation of three months' RI; sentenced to undergo rigorous imprisonment for two years and imposed a fine of Rs.1,000/- under Section 452 IPC with default stipulation of three months' RI; and sentenced to undergo rigorous imprisonment for two years and imposed a fine of Rs.1,000/- under Section 324 read with section 34 IPC with default stipulation of three months' RI. All the sentences of each convict are ordered to run concurrently.

During the pendency of appeal, an application bearing Crl.Misc. No.38712 of 2014 has been moved placing on record the compromise, Annexure A-1, which speaks that the parties have arrived at compromise and wishes to set at rest this controversy. To authenticate the factum of compromise, injured-Shokat Ali, who was in custody in some other case, produced before this Court, who affirmed the compromise arrived at between the appellants, complainant-Liakat Ali and him in order to maintain the tranquility.

On the threshold, learned counsel for the appellants submits that he does not wish to challenge the finding of conviction on merits. He argued only on the question of sentence. He argued that as per custody certificates, appellant No.1-Shamshad Khan @ Sadha has undergone the actual sentence for a period of one year, five months and thirteen days out of seven years of maximum sentence, appellant No.2-Saudagar Khan @ Gagu has undergone the actual sentence for a period of one year and twenty eight days out of five years of maximum sentence, appellant No.3-Gulam Khan @ Gama has undergone the actual sentence for a period of nine months and nineteen days out of five years of maximum sentence and appellant No.4-Sukhdev Singh has undergone the actual sentence for a period of ten months and nine days out of five years of maximum sentence. He further argued that the appellants

at the time of commission of crime were young and they have been facing agony of trial since the registration of the case and sword of Damocles have been hanging over their head for more than 13 years and moreover, the matter has been amicably settled between the parties and, therefore, the sentence of the appellants may be reduced to the period already undergone.

On the other hand, learned Assistant Advocate General, Punjab contested the submissions of learned counsel for the appellants for reducing the period of sentence. On that basis, she argued that the order of sentence may be maintained.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and have also gone through the records of the case.

Now coming to the question of sentence, there are certain circumstances which have to be taken into consideration. The occurrence took place on 10.3.2001. It is nearly 13 years ago and since then the appellants have undergone great mental agony. Further, they were of young age on the date of commission of offence. The appellants suffered agony and the harassment of the criminal proceedings for more than thirteen years and the matter has also been patched up between the parties which would facilitate the parties to live in peace forever without any ill-

will and, therefore, to meet the ends of justice the sentence is reduced to the period already undergone. Accordingly, I confirm the conviction and reduce the sentence of seven years and five years rigorous imprisonment, respectively, to the period already undergone. The sentence of fine, however, is confirmed. The fine imposed by the trial Court is to be paid, if it is not so paid, then the appellants shall undergo the period of sentence awarded in default of payment of fine.

Subject to the modification of order of sentence the appeal is dismissed. The bail bonds shall stand discharged.

January 12, 2015  
KD

(Raj Rahul Garg)  
Judge