

CRA-S-372-SB of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-372-SB of 2015 (O&M)
Date of decision: 22.07.2015

Gurtej Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: - Mr. Kamal Mor, Advocate, for the appellant.
Mr. K.S. Sidhu, DAG, Punjab.
Mr. Saurabh Dalal, Advocate, for the complainant.

PARAMJEET SINGH, J. (ORAL)

Challenge in this appeal is to the judgment of conviction dated 19.12.2014 and order of sentence dated 20.12.2014 passed by learned Sessions Judge, Sangrur, whereby appellant has been held guilty under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹ 5,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

I need not dilate upon the facts of this case in detail as the same have already been recapitulated in the judgment of the Court below and in view of the ultimate prayer of the appellant seeking reduction in sentence.

I have heard the learned counsel for the parties and perused the record.

Learned counsel for the appellant states that he is not pressing

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this appeal on merit and is not challenging the conviction on merit. He is only aggrieved against the sentence part. However, he prays that the sentence of the appellant be suitably reduced as this criminal trial is hanging on his head like damocle's sword for more than one year and it should be a sufficient mitigating circumstance to treat him leniently. Learned counsel for the appellant contends that parties are close relatives i.e. appellant is the son of the complainant and brother of the injured and have compromised the matter. Learned counsel for the appellant relies upon the judgments of the Hon'ble Supreme Court in **Nanda Gopalan v. State of Kerala**, 2015(3) R.A.J. 186 and **Bankat v. State of Maharashtra**, 2005(1) R.C.R.(Criminal) 306 and contends that in view of the compromise between the parties, sentence awarded to the appellant can be reduced to already undergone. The appellant has suffered the ordeal for a sufficient period. The appellant is a young person and now has reformed. Learned counsel submits that appellant was on parole and now has surrendered back to jail. He has already undergone sentence for 01 year 02 months and 17 days.

On instructions, learned counsel for the complainant submits that he has no objection if the sentence awarded to the appellant is reduced to already undergone as good sense has prevailed between them and dispute has been buried with amicable settlement between the parties.

Learned counsel for the State has produced custody certificate dated 22.07.2015 in Court, which is taken on record. The learned State

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counsel opposed the reduction in sentence.

I have considered the contentions raised by learned counsel for the parties.

Ancient penological approach was custodial measure to curb crime. But in modern days, penological approach should be balanced keeping in view the needs of the community and interests of the accused: such as compensation to the victims, release on admonition, probation etc. These are being adopted to reform the criminal convicts. The object of criminal justice system is to reform the offenders and to make them see and follow the right path. Otherwise also jails are often overcrowded.

Hon'ble Supreme Court in ***Ishwar Singh v. State of Madhya Pradesh***, (2008) 15 SCC 667 has held as under: -

“13. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

*14. In **Jetha Ram v. State of Rajasthan**, (2006) 9 SCC 255, **Murugesan and others v. Ganapathy Velar**, (2001) 10 SCC 504 and **Ishwarlal v. State of M.P.**, JT 1988 (3) SC 366 (1), this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the*

*appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in **Mahesh Chand v. State of Rajasthan**, AIR 1988 SC 2111, such offence was ordered to be compounded.*

15. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind.

16. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No.1) is reduced to the period already undergone.”

Complainant is the father of appellant and injured/victim is real brother of the appellant. Parties are blood relations. This Court is of the view that no useful purpose will be served by keeping the appellant behind the bars further as the matter stands amicably settled between the parties. In view of the judgments of the Hon'ble Supreme

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Court in *Nanda Gopalan, Bankat* and *Ishwar Singh* (supra) it is a fit case wherein sentence awarded to the appellant can be reduced to already undergone. Ordered accordingly. The impugned judgment of conviction and order of sentence, including default clause, stand affirmed with aforesaid modification. It goes without saying that if the amount of fine is not deposited, the appellant will serve the remaining part of sentence.

With the observations made above, present appeal is disposed of with a direction that the appellant be released immediately upon deposit of amount of fine, if not required in any other case and his sentence shall be treated reduced upto his actual release.

(Paramjeet Singh)
Judge

July 22, 2015
R.S.