

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Revision No.3653 of 2014
Date of Decision : 18.5.2015

Dilbagh Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Ranjit Sharma, Advocate for the petitioner.
Mr. D.S. Virk, A.A.G., Punjab.

...

1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Instant criminal revision petition is directed against the impugned judgement dated 26.9.2014 passed by the learned Additional Sessions Judge, Tarn Taran, whereby appeal of the petitioner was dismissed, with modification in the order of sentence reducing it for a period of one and half years instead of two years under Section 326 of the Indian Penal Code ('IPC' for short), upholding his conviction, as recorded by the learned trial court, vide impugned judgement of conviction dated 18.1.2012.

Brief facts of the case, as recorded by the learned Additional Sessions Judge, in para 2 of the impugned judgement, are that accused Dilbagh Singh was sent to face trial u/s 326, 324, 323, 34 IPC by the investigating agency before the lower court, on the allegations that he has caused injuries on

the person of complainant Jarnail Singh. As per prosecution version, 12.10.2008, SI Harjit Singh, Incharge Police Post Kairon alongwith his associates was present at bus stand of village Laukha, in connection with patrolling. There, one Kashmir Singh had produced MLR regarding injuries on the person of Jarnail Singh. Two injuries were found to be mentioned in the MLR produced by Kashmir Singh and were kept under observation. After X-ray examination, x-ray report was obtained and produced alongwith MLR of injured Jarnail Singh. Injury no.1 was found to be simple caused with blunt weapon and injury no.2 was found to be grievous caused with sharp edged weapon. After receiving the said MLR, SI Harjit Singh had gone to Civil Hospital, Tarn Taran, where injured Jarnail Singh was admitted. The present case was registered on the basis of statement given by Jarnail Singh who stated before the police that he was resident of Patti and was agriculturist by profession. The complainant further stated that they were three brothers and their uncle (Taya-elder brother of their father) Angrej Singh had died unmarried and issueless. The complainant further stated that his uncle Angrej Singh had given his land to all the three brothers during his life time and therefore the complainant has been residing by constructing his residential house and boundary wall in the land belonging to his share. The complainant further stated that his brother Dilbagh Singh wanted to grab the land belonging to his share and he used to raise dispute in this regard. The complainant further stated that on 7.10.2008 at about 7 a.m., he was going by his cycle for getting some labourer, his brother Dilbagh Singh came out of his house, being armed with Sabbal and had assailed the complainant. The complainant further stated that accused Dilbagh Singh came out of his house alongwith his son Surinderbir Singh alias Sonu who raised lalkara that "Jarnail Singh should not be escaped

free and he should be caught and taught a lesson.” The complainant further stated that in the meantime, accused Dilbagh Singh had given Sabbal blows, one of which hit on right side of his chest, due to which, the complainant had fallen on the ground. Accused Dilbagh Singh had given other Sabbal blow which hit on his left leg. The complainant further stated that he raised alarm “Maar Ditta Maar Ditta” and thereafter his wife Dalbir Kaur came on the spot and had witnessed the occurrence. The complainant further stated that his wife Daljit Kaur also raised alarm “Na Maaro Na Marro”. In the meantime, accused had run away from the place of occurrence. It is further alleged that complainant was taken to Civil Hospital of village Kairon by arranging a vehicle, where he was medically treated. The statement of complainant was recorded. Case was registered against the accused. Site plan regarding the place of occurrence was prepared. Injury no.1 was found to be caused with sharp edged weapon and after x-ray report, injury no.1 was declared as simple. Injury no.2 was declared as grievous. After the necessary formalities and completion of investigation, challan against the accused Dilbagh Singh was prepared under sections 326, 324, 323, 34 IPC, whereas a separate challan against co-accused Surinderbir Singh was presented before Juvenile Justice Board.

The challan having been presented, copy thereof alongwith documents attached therewith, was supplied to the accused, as required under Section 207 of the Code of Criminal Procedure ('Cr.P.C.' for short). A prima facie case was found to be made out against the accused and accordingly he was charge sheeted for the offences under Sections 326, 324 and 323 IPC.

With a view to prove its case, prosecution examined as many as 6 PWs, besides producing on record other documentary evidence. After closing

the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating evidence brought on record was put to the accused. He denied the allegations against him and pleaded false implication. However, despite having been granted opportunity, accused did not lead any evidence in his defence.

After hearing learned counsel for both the parties and going through the evidence brought on the record, learned trial court came to the conclusion that the prosecution has successfully proved its case, bringing home the guilt of the accused. Accordingly, the accused was convicted for the offences under Sections 326, 324 and 323 IPC, vide impugned judgement of conviction dated 18.1.2012. Consequently, vide impugned order of sentence of same date i.e. 18.1.2012, the learned trial court awarded the sentence to the accused, which is as under :-

<u>“under section</u>	<u>sentence</u>	<u>Fine</u>	<u>in default S.I.</u>
326 IPC	R.I. 2 years	Rs.2000/-	in default 15 days
324 IPC	R.I. 1 year	Rs.1000/-	in default 7 days
323	R.I. 6 months	Rs.500/-	in default 7 days”

Dissatisfied, petitioner filed his appeal, which came to be dismissed by the learned Additional Sessions Judge, Tarn Taran, with modification in the order of sentence reducing it to a period of one and half years instead of two years, vide impugned judgement dated 26.9.2014. Hence, this criminal revision petition.

Notice of motion was issued.

Vide order dated 11.3.2015, on the oral request made by learned counsel for the petitioner, complainant Jarnail Singh s/o Kundan Singh was

ordered to be impleaded as party-respondent no.2. Thereafter, on 5.5.2015, learned counsel for the petitioner sought time to get instructions, whether the petitioner was ready to compensate the complainant-respondent by paying an amount of Rs.90,000/-.

Learned counsel for the petitioner, at the very outset, submits that he does not intend to press this revision petition on merits and let the present petition be considered only for the purpose of reduction of sentence to the period already undergone by the petitioner. He further submits that in compliance of the order dated 5.5.2015 passed by this court, he has got the instructions to say that the fine may be enhanced to the extent of Rs.90,000/-, so that the injured-respondent no.2 can be duly compensated, who was none-else but the real brother of the petitioner.

Highlighting the mitigating circumstances in favour of the petitioner, learned counsel submits that the occurrence took place at the spur of moment. Petitioner as well as complainant are the real brothers. The dispute took place regarding a small portion of share in the land and that too because of some misunderstanding. Petitioner has been facing the mental agony of criminal trial for the last about 7 years. He concluded by submitting that let the conviction of the petitioner be upheld, but his sentence may be ordered to be reduced to the period already undergone by him, as the petitioner has already undergone a substantial period of sentence of more than 10 months, out of total sentence of 1 year 6 months, as per the custody certificate dated 5.5.2015.

On the other hand, learned counsel for the State submits that in view of the peculiar facts and circumstances of the case, petitioner does not deserve any kind of relief. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable

length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered view that keeping in view the peculiar fact situation of the present case, noticed herein above, this court is of the considered opinion that it is just and expedient to uphold the conviction of the petitioner, while reducing his sentence to the period already undergone by him, for the following more than one reasons.

In compliance of the order dated 30.4.2015 passed by this court, learned counsel for the State ensured the presence of respondent no.2 before this court. Respondent no.2 stated before this court that he has suffered at the hands of the petitioner and had to spend enough amount of money on his medical treatment. When asked whether he was willing to accept an amount of Rs.90,000/- towards compensation, he gracefully accepted the same. In this view of the matter, present one has been found to be a fit case for reduction of sentence to the period already undergone by the petitioner, while directing him to deposit an amount of Rs.90,000/-, to be paid to respondent no.2-injured, by way of compensation.

It is also a matter of record that petitioner has been facing the mental agony of criminal trial for the last about 7 years. Further, as per the custody certificate filed by way of affidavit dated 5.5.2015, petitioner has undergone the actual sentence, including the period of remission, for a period of 9 months and 23 days as on 5.5.2015, thus, more than a period of 10 months by now, out of total sentence awarded to him for a period of 1 year and 6 months.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass Vs. State of Himachal Pradesh 1988 (2) RCR (Criminal)**. The relevant observations made by Hon'ble the Supreme Court in **Braham Dass's case** (supra), which can be

gainfully followed in the instant case, read as under:-

“6. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.”

In another case titled as **“Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723,”** the Hon'ble Supreme Court observed as under:-

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the

milk sold by him was 0.4% in the fat contents. 2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.”

An identical question fell for consideration before this Court in **Des Raj v/s State of Haryana 1996(1) RCR (Crl.) 689**. The relevant observations made in para 9 of the judgment aptly apply here and the same read as under:-

“9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that the speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such

inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extraordinary jurisdiction.”

Revering back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as by this court in the cases referred to hereinabove, it is unhesitatingly held that the ends of justice would be adequately met, if the conviction of the petitioner is upheld and his sentence is reduced to the period already undergone by him, while directing him to pay an amount of Rs.90,000/- as compensation to be paid to respondent no.2-injured,who was none-else, but his real brother.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered opinion that the petitioner deserves reduction of sentence to the period already

undergone by him. Accordingly, present petition is partly allowed. While upholding the conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him, which is more than 10 months, out of total sentence for 1 year and 6 months, as per custody certificate dated 5.5.2015. Fine is increased to the tune of Rs.90,000/-, over and above what has already been imposed by the learned trial court, which is stated to have been paid by the petitioner.

Consequently, petitioner is directed to deposit the amount of Rs.90,000/- before the learned Chief Judicial Magistrate, Tarn Taran, within a period of one week from the date of receipt of certified copy of this order. In case, the amount of Rs.90,000/- is not paid within the above said stipulated period, sentence awarded by the learned trial court, shall stand revived automatically and the petitioner shall be bound to serve his remaining sentence.

The amount of Rs.90,000/- deposited by the petitioner shall be released by the learned Chief Judicial Magistrate, Tarn Taran in favour of the complainant-injured namely; Jarnail Singh s/o Kundan Singh r/o Village Waan, Police Station Patti, Distt. Tarn Taran, against proper receipt. Petitioner is directed to be released forthwith, if he is not required in any other case.

With the abovesaid observations made and directions issued, the present criminal revision petition stands disposed of.

18.5.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE