

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA S 1852 – SB of 2003 (O&M)

Date of decision : 27.1.2016

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Satkewal Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. Isha Goyal, Advocate for the appellant.

Mr. Deepak Garg, Assistant Advocate General, Punjab.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

The present appeal has been preferred against the judgment of conviction dated 18.9.2003 passed by Additional Sessions Judge, Amritsar, vide which the appellant was held guilty and convicted for the offences punishable under Section 307 IPC and under Section 27 of the Arms Act and the order of sentence of even date vide which the appellant was sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.500/- or to undergo further rigorous imprisonment for one year in default of payment of fine; to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- or to undergo further rigorous imprisonment for three

months in default of payment of fine, under Section 307 IPC and under Section 27 of Arms Act, respectively.

2) Brief facts of the case giving rise to this prosecution are that on 15.6.2002 the appellant fired two shots from his gun towards Daljinder Singh who is brother of the accused-appellant on the backdrop that they had partitioned their lands about 6 months back. It seems that the appellant was not satisfied/happy with partition. At the time of firing gun shots Sukhjit Singh son of appellant Satkewal Singh, Harpreet Singh son of the complainant - Daljinder Singh and Charanjit Kaur wife of Daljinder Singh were present. Due to injuries suffered by the complainant, he was shifted to Shri Guru Teg Bahadur Hospital, Amritsar by Harpreet Singh and Charanjit Kaur, where he was medico legally examined and treated. Consequently, FIR was lodged and investigation was launched. The Judicial Magistrate Ist Class, Amritsar committed the case for trial. Thus Additional Sessions Judge, Amritsar dealt with Sessions case No. 10 of 2002.

(3) The prosecution examined PW-1 Daljinder Singh - complainant, PW-2 Charanjit Kaur wife of the complainant, PW-3 SI Sukhdev Singh, Investigating Officer, PW-4 Rishi Ram, Draftsman and PW-5 Dr. Gurmanjit Rai, Lecturer, Forensic Medicines, Government Medical College and Hospital, Amritsar, PW-6 Dr. Kumar Bhagat, Radiologist at Government Medical College and Hospital, Amritsar and further testified of having Exhibits P-1 to P-7 and closed its evidence.

4) Statement of the accused under Section 313 Cr.P.C., was

recorded appraising the incriminating circumstances appearing against the appellant in evidence led by the prosecution, to which appellant claims to have acted in defence of his life and property after having been attacked by Daljinder Singh and having fired one shot only. The other accused Sukhjit Singh stated that he was innocent and was not present at the time of occurrence of the incident.

5) Accused Sukhjit Singh was acquitted of the charge having shared common intention with his father and accused Satkewal Singh and the appellant has been convicted under Section 307 IPC and Section 27 of the Arms Act. Thus the present appeal has been filed by the appellant.

6) Learned counsel for the appellant vehemently contended that the appellant and the complainant are brothers. They had partitioned their properties about six months back from the date of the alleged incident. Since both the appellant and complainant were not happy with the partition, consequently, the complainant raised altercation with the appellant. In order to defence his life and property he had used his gun in a fit of anger against the complainant and not with an intention to kill the complainant. Therefore, Section 307 IPC is not at all attracted and the seat of injury is not on the head or chest. As per the medical opinion adduced by Dr. Kumar Bhagat, Radiologist and Dr. Gurmanjit Rai the injuries caused on the complainant were simple in nature. Therefore, sentencing the appellant under Section 307 IPC is incorrect.

7) Further, learned counsel for the appellant submitted that

the appellant and complainant are brothers and the alleged incident relates back 2002 and the appellant, complainant – Daljinder Singh, PW-2 Charanjit Kaur w/o Daljinder Singh and Harpreet Singh son of the complainant entered into a compromise, which is evident from affidavit. The same was brought on record, namely, affidavit of complainant - Daljinder Singh, his wife Charanjit Kaur and son Harpreet Singh (Annexure A-1) (colly) dated 27.5.2005, vide order dated 18.3.2015 passed by this Court in Crl.M.No.8929 of 2015. It was also contended that the appellant is not involved in any other case.

8) Learned counsel for the appellant relied on the following judgments of the Apex Court, as well as, this Court wherein if the parties have entered into compromise, even though the offence is not compoundable, still sentence can be reduced:-

1) Surendra Nath Mohanty and another vs. State of

Orissa AIR 1999 Supreme Court 2181 (1);

2) Rajendra Harachand Bhandari and others vs.

State of Maharashtra and another 2011 AIR (SC)

1821;

3) Bakhtawar Singh and others vs. State of Haryana

2015 (2) RCR (Criminal) 617;

4) Kuldip vs. State of Punjab decided on 2.3.2015 vide

CRA S 955 SB of 2007 and

5) Nanda Gopalan vs. State of Kerala 2015 (2) RCR

(Criminal) 861

9) Learned State counsel contended that in view of the statement of the injured witness – Daljinder Singh (complainant) and other witnesses, namely, Charanjit Kaur wife of complainant and Harpreet Singh son of complainant and other corroborative evidence, namely, medical evidence adduced before the trial Court, it is proved that the accused caused injuries in the manner explained by the prosecution. Therefore, there is no infirmity in the order passed by the trial Court convicting the appellant. The appellant has been convicted under Section 307 IPC, which is a non-compoundable offence. Therefore, question of entertaining compromise among the appellant and complainant and others is not permissible. In so far as, non-involvement of the appellant in any other cases is concerned, it is to be seen that the appellant has been convicted under Section 307 IPC. Therefore, sympathy need not be shown by this Court. Thus the trial Court order be upheld.

10) In support of his argument, learned State counsel relied on the decision of the Apex Court reported as **Narinder Singh and others vs. State of Punjab and another** 2014 (2) RCR (Criminal) 482. The said decision is relating to how the Court should consider the plea of compounding of the offence based on settlement between the parties.

11) Heard counsel for the parties and perused the records.

12) The nature of offence in the present case is very serious and attracts Section 307 IPC. However, the occurrence was a sudden fight and in a heat of passion. Medical evidence of two doctors who

have been examined in the matter, have opined that the injuries were simple in nature. Even seat of injuries are on the thigh and legs. Therefore, the intention of the appellant-accused was not to kill the complainant. The cited decisions by both the parties are taken note. The principle issue is to examine nature of the offence and weapon used and nature of injuries, wherever parties entered into compromise/settlement, in such circumstances whether sentence is to be reduced or not. In the present case no doubt gun has been used for the offence, however nature of the injuries which are simple in nature and which is supported by evidence. Therefore, I am of the opinion that offence under Section 307 IPC is not made out against the appellant. Thus sentence under Section 307 IPC is set aside. However, the sentence under Section 27 of the Arms Act is upheld. Consequently, the compromise entered into between the parties is accepted.

13) In the instant case, the incident took place in the year 2002; parties are real brothers and they are members of a family. It was his first offence. He has already undergone custody for about 1 year and 8 months. During pendency of the appeal, he was enlarged on bail. The appellant is facing the agony of the trial since 2002. The appellant and the complainant had no further tiff among themselves. If the appellant is sent behind the bars, it will revive the old enmity between the appellant and complainant- brother and members of the family. Considering the totality of facts and circumstances, in my opinion, ends of justice would be met if the sentence of imprisonment

awarded to the appellant is reduced to the period already undergone.

(13) For the reasons stated above, the appeal deserves to be partly allowed and accordingly, the conviction recorded by the trial Court under Section 27 of the Arms Act is maintained, but the sentence awarded to the appellant is reduced to the period already undergone by the him. The sentence of fine is modified to the extent that the appellant is directed to remit a sum of Rs.50,000/- in the Court of Chief Judicial Magistrate, Amritsar within three months from today, failing which necessary action should be taken by the Chief Judicial Magistrate, Amritsar against the appellant. The Chief Judicial Magistrate, Amritsar is directed to transfer the said amount to the District Legal Services Authority, Amritsar.

(14) The appeal is allowed partly.

January 27, 2016.
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(P.B. Bajanthri)
Judge