

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

Crl. Appeal S-1525-SB of 2007
Date of Decision : January 13, 2017

Surender Kumar alias Surya and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Aditya Sanghi, Advocate and
Mr. Lokesh Sharma, Advocate
for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

None for the complainant.

T.P.S. MANN, J. (Oral)

The appellants, namely, Surender Kumar alias Surya and Ravinder Kumar, sons of Krishan Kumar, residents of village Pur, Police Station Bawani Khera, District Bhiwani were charged for committing the offences punishable under Section 307 read with Section 34 IPC. Surender Kumar alias Surya-appellant was also charged for committing the offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 25.07.2007, learned Additional Sessions Judge (Fast Track Court), Bhiwani convicted them for the aforementioned offences and sentenced them as below:-

- i) Rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- each under Section 307 read with Section 34 IPC and in default of payment of fine, to further undergo simple imprisonment for six months; and
- ii) Rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- under Section 25 of the Arms Act in the case of Surender Kumar alias Surya-appellant and in default of payment of fine, to further undergo simple imprisonment for three months.

Both the sentences of imprisonment of convict Surender Kumar alias Surya were ordered to run concurrently.

Aggrieved of their conviction and sentence, the appellants filed the present appeal which was admitted on 10.08.2007. Subsequently, they were granted the concession of suspension of sentence.

According to the prosecution, complainant-Singari got recorded her statement before ASI Desh Raj on 7.11.2006 to the effect that there was a house of the father of the appellants in her neighbourhood. A drain was constructed along side the houses for draining out the dirty water. However, the appellants caused obstruction in the flow of water by putting stones in the drain. On 07.11.2006 at about 8.00 a.m., her son Rajesh had an altercation with the appellants over the drain. At about 11.00 a.m., she alongwith her son was going with their cattle and when they

reached near the house of the appellants, Surender Kumar alias Surya-appellant armed with a double barrel gun and Ravinder Kumar armed with a country made pistol came out from their house. Ravinder Kumar gave a *lalkara* that enemies had come and they be killed. Surender Kumar alias Surya then fired a shot from double barrel gun and, as a result, Rajesh suffered injuries on his left arm and chest. One pellet also hit the forehead of complainant-Singari above her left eye. The complainant and her son were rescued by Sanjay and Shamsheer. The appellants then ran inside their house.

Learned counsel for the appellants has not challenged the impugned judgment of conviction passed by the learned trial Court. He has, however, submitted that during the pendency of the appeal, the parties have amicably sorted out the matter between themselves. It is also submitted that there was no serious enmity between the parties and the occurrence had erupted on the question of obstruction in the flow of water through the drain. He has also submitted that complainant-Singari as well as her son Rajesh have already sworn in their respective affidavits dated 11.2.2010 in support of the compromise reached between the parties and placed them on record. Learned counsel for the appellants has also submitted that Surender Kumar alias Surya-appellant has already undergone a period of about two years and nine months whereas Ravinder Kumar-appellant has

undergone more than one year and two months out of the sentence of ten years imposed upon them. While relying upon the judgments of the Hon'ble Supreme Court in the cases of **Ram Lal vs. State of J&K**, 2000(1) RCR (Criminal) 92, **Bankat vs. State of Maharashtra**, 2005 (1) RCR (Criminal) 306, **Surendra Nath Mohanty vs. State of Orissa**, 1999(2) RCR (Criminal) 683, **Ishwar Singh vs. State of Madhya Pradesh**, 2009 (1) RCR (Criminal) 1, learned counsel for the appellants has submitted that though the offences for which the appellants stand convicted are non-compoundable yet the factum of compromise arrived at between the parties can be taken as a mitigating circumstance in the matter of awarding the sentence of imprisonment to them.

Learned State counsel has vehemently opposed the prayer by submitting that the appellants had committed serious crime by firing at the complainant party and, as a result, each of the two injured had received three injuries.

Custody certificates have already been placed on record by the learned State counsel. As per the same, Surender Kumar alias Surya-appellant has undergone total sentence of two years, eight months and eleven days whereas Ravinder Kumar-appellant has undergone one year, two months and one day. They are also not shown to be either involved or convicted in any other case.

Having heard learned counsel for the parties and considering the factum of compromise arrived at between the appellants on the one hand, and, the complainant, on the other, this Court finds that prior to the present occurrence, there was no serious dispute between them. The occurrence had erupted on account of the appellants causing obstruction in the flow of water by putting stones in the drain. The appellants and the complainant party have since settled the matter by way of compromise. Both the parties belong to the same village and in order to avoid any bad blood and to restore cordial relations between them, they have rightly moved in the direction of amicably settling the matter between themselves.

In the aforementioned judgments passed by the Hon'ble Supreme Court, it has been observed that though the convicts therein stood convicted for non-compoundable offences yet the factum of compromise arrived at between them could be taken as a mitigating circumstance while considering the question of sentence. In all these judgments, the sentences of imprisonment imposed upon the convicts therein stand reduced to the one already undergone by them. The facts of the present case are almost identical in the sense that the appellants have committed offences which are non-compoundable in nature. The parties have amicably resolved their differences by entering into a

compromise. Further, both the appellants have undergone substantial part of their sentences of imprisonment. Under these circumstances, ends of justice will be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants under Section 307 read with Section 34 IPC and of Surender Kumar alias Surya-appellant under Section 25 of the Arms Act are upheld and their substantive sentences of imprisonment are reduced to the one already undergone by them.

The appeal is, accordingly, disposed of.

January 13, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No