

..

558
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3671-SB-2014 [O&M]
Date of Decision:- December 19, 2017

Tinku Petitioner

Versus

The State of U.T., Chandigarh Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. H.S.Jaswal, Advocate,
for the petitioner.

Mr. Nagar Singh, Advocate,
for Mr. A.S.Virk, Advocate for U.T. Chandigarh.

SHEKHER DHAWAN, J.

The petition appeal is directed against the judgment of conviction dated 16.7.2014 and order of sentence dated 21.07.2014 passed by learned Additional Sessions Judge, Chandigarh whereby the appellant was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 326-A of Indian Penal Code (for short, "I.P.C.")	to undergo Rigorous Imprisonment for 10 year and to pay fine of Rs.25,000/-.	To further undergo Simple Imprisonment for 5 months.
Section 326-B IPC	to undergo Rigorous Imprisonment for 05 years and to pay fine of Rs.25,000/-.	To further undergo Simple Imprisonment for 5 months.

..

The sentences were ordered to run concurrently.

2. Facts relevant for the purpose of decision of this appeal; that complainant in this case is Sanjay, who is husband of Usha and accused Tinku is wife of Raj Kumar, who is sister-in-law of Sanjay and as such parties are closely related to each other. The wife of the complainant had a dispute with Tinku over some issue. In order to settle the same, he went to Tinku's dwelling unit (*Jhuggi*) alongwith his wife on 19.4.2013 at about 5.00 PM on 19.4.2013 which was situated at a little distance from his *jhuggi*. At that time, Shanti, mother-in-law and Tinku, sister-in-law of the complainant were also present there. During that time, some altercation took place and the appellant-accused, who was having a green coloured plastic canny of 5 litres, opened the canny and poured some liquid over his wife. In that incident, the wife of the complainant and his mother-in-law also got burn injuries due to acid thrown by appellant, Tinku.

3. The appellant was tried for the offence punishable under Sections 307, 326-A and 326-B IPC in this case and was acquitted for the offence punishable under Section 307 IPC, but was convicted and sentenced under Sections 326-A and 326-B IPC by learned Additional Sessions Judge, as detailed above.

4. Appeal was filed and the same is pending before this Court. During the pendency of the appeal, the parties settled the matter amicably as the parties are closely related to each other. An application bearing CRM-31265-2017 was filed for quashing the FIR and judgment of

..

conviction and order sentence passed against the appellant on the basis of compromise having been arrived at between the parties.

5. During the course of hearing, the trial Court was directed to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the compromise by this Court.

6. In compliance thereof, report from Special Judge (Crime against Women), Chandigarh, has been received through District and Sessions Judge, Chandigarh, with statement of parties, in which, it has been mentioned that the compromise is genuine and there was no undue influence or coercion from any side.

7. At the time of arguments, learned counsel for the appellant contended that as the parties are related to each other and with the intervention of the respectable, the parties have settled the matter vide compromise deed, dated 8.8.2016 (Annexure A/1), necessary permission to compound the offence be granted. More so, the appellant has already undergone more than 4-1/2 years against awarded sentence of 10 years.

8. Learned State counsel opposed the application on the ground that the judgment of conviction has been recorded on the basis of material and evidence available on the file and otherwise, there is no ground to set-aside the judgment of conviction and the present application as also the appeal are liable to be dismissed.

9. In **Pritam Singh Vs. State**, AIR 1950 SC 169, Hon`ble Supreme Court observed as under:-

“On a careful examination of Article 136 with the preceding article, it seems clear that the wide discretionary power with

..

which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those cases where special circumstances are shown to exist. The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases, which were reviewed by the Federal Court in *Kapildeo Vs. The King*. It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.”

10. In **National Commission of Women Vs. State of Delhi & Anr., 2010 (4) R.C.R. (Criminal) 758**, Hon`ble Supreme Court observed that even where minimum sentence is provided under the Statute and the parties have settled the matter, which has been accepted by the Court,

..

there is no ground to interfere in the same. Hon`ble Apex Court, in Para No. 10 of the said judgment, observed as under:-

“10. Ms. Priya Hingorani's submission with regard to the reasons which weighed with the Court while reducing the sentence must now be dealt with. Sub-section (1) of 376 of the IPC provides for the imposition of a sentence of upto ten years or life but the proviso says that the Court may for adequate and special reasons, impose a lesser sentence. We are of the opinion that the discretion exercised by a Court, particularly a superior court, should not be lightly interfered with. We have quoted from the judgment of the High Court hereinabove and find that several factors had been taken into account while imposing a lesser sentence and it would be improper for us to interfere in the High Court's discretion on the quantum of sentence except in extraordinary circumstances. We do not see any such circumstance. We, accordingly, dismiss the Special Leave Petition as not maintainable. The permission to file the Special Leave Petition granted vide this Court's order dated 2nd April, 2009, is, accordingly, revoked.”

11. The Hon'ble Full Bench of this Court in case **Kulwinder Singh vs. State of Punjab and another, 2007(3) RCR (Criminal) 1052** and Hon'ble Division Bench of this Court in case **Sube Singh and another vs. State of Haryana and another, 2013(4) RCR (Criminal) 102** observed that compounding of offence can be allowed even after conviction, during proceedings of the appeal against conviction pending in Sessions Court and in case of involving non-compoundable offence. In **Sube Singh's case** it has been observed as under:-

..

“(21). In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would dis-harmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Cr.P.C. after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.”

12. Co-ordinate Bench of this Court in **Mahabir Vs. State of Haryana**, **1010(4) R.C.R. (Criminal) 919**; and Hon`ble Jharkhand High Court in **Mukdeo Naik Vs. State of Bihar**, **2010(5) R.C.R. (Criminal) 809** and **Kamdeo Mahto Vs. State of Bihar**, **2006 (1) R.C.R. (Criminal) 495** held that the orders in such like cases, the Court can restrict the order of sentence to the period having already undergone by the accused.

13. In this case, the occurrence stands admitted by the accused-appellant even if her statement recorded under Section 313 Cr.P.C. is taken to be correct. Learned trial Judge has rightly placed reliance upon the statement of PW-1, Sanjay, complainant who specifically deposed before the Court that he alongwith his wife visited the house of the accused for sorting out the dispute having been arisen between the accused and his wife, which took place some days back. His mother-in-

..

law was also present there, who even tried to prevail upon and during that period, the complainant had gone inside and noticed that a 5 litre Canny containing acid was brought by the accused and the same was poured on his wife. The statement of the complainant is Ex. PA on the file. His version has been duly supported and corroborated by PW-2, Usha and PW-3 Shanti, who was also injured in this case. The medical evidence also supports the same. The defence version has been rightly discarded in the light of that. There is no ground to set-aside the order of conviction passed by learned trial Court. So, the appeal against the judgment of conviction dated 16.7.2014 stands dismissed.

14. In view of the fact that the parties have settled their dispute amicably and the matter in controversy is such that the same is effecting the parties *inter se* and not against the society at large, the appeal qua sentence part is partly allowed and the order of sentence dated 21.07.2014 passed by learned Additional Sessions Judge, Chandigarh is modified to the extent that the substantive sentence awarded to the petitioner is reduced to the one already undergone by her while in custody. The appellant, who is in custody in this case be set free, if not required in any other case.

15. Resultantly, the present appeal stands partly allowed in the above terms.

December 19, 2017

som

Speaking/Reasoned
Reportable**(SHEKHER DHAWAN)****JUDGE**

Yes

Yes