

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-4177-SB-2013

Date of Decision: 30.07.2019

Tejinder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None.

SURINDER GUPTA, J.

This is appeal filed by the appellant against judgment passed by Sessions Judge, Fatehgarh Sahib, whereby he was convicted for offence punishable under Section 304 Part II of Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹5000/-. In default of payment of fine he was directed to undergo further rigorous imprisonment for nine months.

FACTS:-

2. Case of prosecution, in brief, is that complainant-Rajwinder Kaur was married with appellant about 1½ year before the incident, which took place on 14.11.2012 and from this marriage one girl child, namely, Damandeep Kaur (deceased), was born, who was 1½ month old on the date of incident. The appellant used to give beatings to his wife (complainant) and two days before Diwali festival, she was again given beating. On her complaint, her mother, namely, Manjit Kaur, accompanied by her second

daughter, namely, Sukhwinder Kaur, came to the house of appellant on 14.11.2012. At the time of their arrival, appellant was not present at home. On his reaching home, Manjit Kaur, mother of complainant, enquired about beatings given to her daughter at which he flatly refused to talk to them and asked them to leave. At this Manjit Kaur asked the complainant to leave the house and accompany her. Complainant picked up her daughter Damandeep Kaur to accompany her mother and sister, at which Kailash Kaur, mother-in-law of complainant, intervened saying that they should not leave at night time as it will cause insult to them. She locked the main gate of the house. Appellant snatched his daughter from hands of complainant and took her inside. Complainant followed him in the room at which he threw the infant on the floor resulting in injuries on her head and she became unconscious. Complainant with her mother and sister arranged for a conveyance and took the deceased to Mandi Gobindgarh, where the doctor referred her to PGI, Chandigarh, however, she died on the way and was declared brought dead by the doctor at PGI, Chandigarh.

3. On receiving the information, ASI Pavittar Singh reached PGI, Chandigarh and recorded statement of complainant-Rajwinder Kaur, on the basis of which instant FIR was registered. Dead body of the deceased was taken to Civil Hospital, Mandi Gobindgarh, where her postmortem was conducted. The appellant was arrested on 23.11.2012 and after completion of investigation challan was presented against him in Court.

4. Copy of charge-sheet was supplied to appellant and learned Sub Divisional Judicial Magistrate, Amloh committed the case for trial to Court of Sessions. On finding a *prima facie* case for offence punishable under Section 302 IPC, the appellant was charge-sheeted, who pleaded not

guilty and claimed trial.

5. In support of its case, prosecution examined Dr. Parminderjit Singh, Medical Officer, Civil Hospital as PW-1, Dr. T.S. Nagra as PW-2, Parmod Kumar, Patwari as PW-3, HC Pakhar Singh as PW-4, ASI Pavittar Singh as PW-5, complainant-Rajwinder Kaur as PW-6 and Manjit Kaur eye-witness as PW-7.

6. Learned counsel for the appellant has not challenged the conviction and sentence awarded to the appellant on merit and has requested for a lenient view. He submits that the appellant is father of deceased. The unfortunate incident has taken place in the fit of rage for which he has compromised with his wife, who has made statement to this effect before the Chief Judicial Magistrate, Fatehgarh Sahib. The appellant has already undergone actual sentence of 01 year 10 months and 11 days and 02 years 02 months and 26 days with remissions. Keeping in view the factum of compromise between the parties a lenient view may be taken *qua* quantum of sentence, which may be reduced to the sentence already undergone by the appellant. In support of his contention he has relied on observations in cases of ***Sardara Singh and others vs. State of Punjab, 2004 (3) RCR (Criminal) 265, Mohammad @ Biliya vs. State of Rajasthan, 2000 (10) SCC 486 and Bal Kishan @ Bali vs. State of Punjab, Crl. Appeal no. 65-SB of 2001, decided on 20.11.2012.***

7. It is an unfortunate case in which father was convicted and sentenced for killing his infant child. As per allegations, he had thrown the child on the ground resulting in injuries and her ultimate death.

8. As per report of learned Chief Judicial Magistrate, Fatehgarh Sahib, the matter has been compromised between husband (appellant) and

wife. Statement of complainant-Rajwinder Kaur was recorded wherein she has stated that she has compromised the matter with the appellant. Copy of the compromise has been placed on file as Ex. PX.

9. In case of **Sardara Singh (supra)**, the appellants had caused injuries to one Amar Singh, which resulted in his death. They were convicted for offence under Section 304 Part II IPC. Later on parties effected the compromise. A coordinate Bench while reducing the sentence of appellants to the period of imprisonment already undergone by them observed in para 14 as follows:-

“14. A settlement, which emerges from the hearts of the individuals will be more lasting as compared to the one which will be enforced by penal provisions of law. Now a days Lok Adalats have become very popular, wherein attempt is being made to settle the matter amicably and maintain the relationships between the parties. In the case in hand also an attempt has been made by the parties to rehabilitate in life, which this Court feels is required to be appreciated. One of the appellant had already died during pendency of this appeal and others have already undergone some sentence. Accordingly, keeping in view ratio of the judgments mentioned above and the facts of this case, conviction is upheld, however, sentence is reduced to the one already undergone by them.”

10. Observations in other case of **Mohammad @ Biliya (supra)** relied by learned counsel for the appellant are not relevant to this case as in

that case appellant was less than 21 years of age on the day of occurrence and on this ground was ordered to be released on probation.

11. In case of ***Bal Kishan @ Bali (supra)***, appellant was convicted and sentenced to undergo rigorous imprisonment for eight years and to pay a fine of ₹5000/- for offence under Section 304 Part II IPC. A coordinate Bench while relying on compromise between the parties in that case has observed as follows:-

*“No doubt, compromise cannot be allowed in offence under Section 304 Part II IPC, but this Court in authority reported as **Sardara Singh and others vs. State of Punjab, 2004 (3) RCR (Criminal) 265**, reduced the sentence of the accused who was convicted under Section 304 Part II IPC, on the ground that parties can settle amicably and their relations can be maintained in view of the compromise and in those circumstances, compromise was allowed in reducing the sentence.*

*The Hon'ble Apex Court in authority reported as **Ishwar Singh vs. State of Madhya Pradesh, (2008) 15 SCC 667**, held that offence under Section 307 IPC cannot be allowed to be compounded in view of compromise, but the compromise is a circumstance which can be taken into consideration for reducing the sentence.*

The appellant has already undergone incarceration for a period of 2 years 3 months and 27 days and has earned remission of 16 days. So, in view of compromise, the ends of justice would be met in case the sentence is reduced to the

period already undergone. I order accordingly. However, the sentence of fine stands affirmed.”

12. Applying the ratio of judgment in case of ***Sardara Singh (supra)***, relied upon in subsequent judgment in case of ***Bal Kishan @ Bali (supra)*** and keeping in view the fact that appellant has undergone actual sentence of 01 year 10 months and 11 days and 02 years 02 months and 26 days including remission as on 18.07.2019, I am of the opinion that in view of compromise ends of justice would be met in case sentence awarded to the appellant is reduced to the period already undergone by him.

13. As a sequel of my above discussion, this appeal is partly accepted. The conviction of appellant as recorded by learned trial Court is upheld. However, the sentence awarded to him for offence under Section 304 Part II IPC is reduced to the period of sentence already undergone by the appellant. Sentence of fine as awarded is maintained. Recovery of fine was stayed vide order dated 03.12.2013 passed in this appeal. Chief Judicial Magistrate, Fatehgarh Sahib is directed to initiate proceedings against the appellant for recovery of fine in accordance with law.

14. Copy of this order be conveyed to Chief Judicial Magistrate, Fatehgarh Sahib and concerned Jail Superintendent for information and necessary action.

July 30, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No