

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

283(2)

CRA-S-1786-2019

Date of Decision:27.07.2022

Ram Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

**Present: Mr. Lakhwinder S. Sidhu, Advocate,
for the appellant.**

Mr. Karanbir Singh, A.A.G., Punjab.

**Mr. Ishan Thakur, Advocate,
for respondent Nos.2 and 3.**

VINOD S. BHARDWAJ , J.(Oral)

The present appeal has been preferred against the judgment dated 16.03.2019 passed by the trial Court, whereby the appellant has been convicted by the Sessions Judge, Mansa, in Sessions Case No.219 dated 23.12.2015 arising out of case bearing FIR No.4 dated 13.01.2015 under Sections 307, 336, 337 of the Indian Penal Code and Sections 25, 27, 54, 59 of the Arms Act, 1959, registered at Police Station Joga, District Mansa and the order of sentence of even date, whereby the appellant has been sentenced as under:-

<u>Sr.No.</u>	<u>Under Section</u>	<u>Sentence</u>
1.	Part-II of Section 308 IPC for causing hurt to PW.1 Rani Kaur	to undergo rigorous imprisonment for a period of four years, to pay fine of Rs.2,000/- and in default of payment of fine to further undergo

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| | | rigorous imprisonment for a period of two months. |
| 2. | Part-II of Section 308 IPC for causing hurt to PW.2
Pamalpreet Kaur | to undergo rigorous imprisonment for a period of four years, to pay fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months. |
| 3. | Section 27
Arms Act | to undergo rigorous imprisonment for a period of three years, to pay fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month. |

The prosecution story, in brief, is that on 13.01.2015, a phone call was received from Police Post, DMC, Ludhiana that Rani Kaur wife of Jaskaran Singh and Pamalpreet Kaur wife of Jaskaran Singh, resident of Hamirgarh, District Bathinda are admitted in DMC, Ludhiana and Investigating Officer be sent for further proceedings. On this, HC Harbans Singh along with LC Sarabjit Kaur and other police officials reached DMC and Hospital, after obtaining ruqa from Police Post, DMC, Ludhiana. The Investigating Officer sought the opinion of the doctor regarding fitness of the injured persons to record their statement. Doctor declared both the injured fit to make the statement. Injured Rani Kaur got recorded her statement to the effect that she is resident of above-said address. On 10.01.2015, she along with her husband Jaskaran Singh and daughter Pamalpreet Kaur, aged 9 years, went to attend the marriage ceremony of Sukhwinder Singh, brother-in-law (Jeth) of her sister-in-law (Nanad) Gurmeet Kaur. After the marriage ceremony, she along with her daughter was sitting in the courtyard. Some other women were also sitting there. Her sister-in-law Gurmeet Kaur was also sitting near her. At about 3.30 p.m.

Ram Singh son of Bant Singh, who is resident of village Bhaini Bagha, came along with the rifle. He is maternal uncle (Mama) of bridegroom Gupreet Singh. He was carrying a rifle. A fire got shot by him from his rifle. The gun shot hit her right eye and pellets also hit face of her daughter, who was sitting nearby. This gun shot was fired in the wall and after hitting the wall, the gun shots hit back to them. Their life was rescued, but there could have been a danger to some life. The abovesaid statement was signed by complainant in English, after admitting the same as correct. It was countersigned by Gurmeet Kaur wife of Kulwinder Singh, resident of Bhai Desa and attested by HC Harbans Singh. An offence under Section 336, 337 IPC read with Section 25/27/54/59 Arms Act was made out. Accordingly ruqa was sent for registration of the case. Investigating Officer along with police party proceeded towards the place of occurrence at village Bhai Desa. From the spot, two empty cartridges of .12 bore, on which Shaktiman 12 Express was written with red colour, which were stated to be fired from the rifle of Ram Singh, were lifted and converted into parcel and sealed by Investigating Officer with his seal bearing impression HS. Sample seal was prepared separately. Parcel was taken into possession. Site plan of the place of occurrence was prepared. Statements of witnesses were recorded. On 01.02.2015, accused Ram Singh, resident of Bhaini Bagha was arrested. His disclosure statement was recorded under Section 27 Evidence Act. On the basis of the disclosure statement, he got recovered 12 bore gun and its licence, which was valid till 27.04.2015. Site plan of the place of recovery was prepared. Statements of witnesses were recorded. Accused was produced before Illaqa Magistrate. On 15.05.2015, after taking opinion of the doctor, an offence under Section 307 IPC was added and record from

DMC was obtained. The gun was sent to the office of FSL, Mohali. The report of FSL was awaited till the filing of challan. After completion of necessary formalities, challan under Sections 307, 336, 337 IPC and Sections 25/27/54/59 of Arms Act was prepared and presented before the Illaqa Magistrate.

After presentation of challan before the learned Illaqa Magistrate, copies of the challan were supplied to the accused as envisaged under section 207 Cr.P.C.

Learned Illaqa Magistrate after scrutinizing the documents, found prima-facie commission of offences under Sections 307, 336, 337 IPC and 27/54/59 of Arms Act and the offence under Section 307 IPC being exclusively triable by the Court of Sessions, committed the case against the accused to this Court vide commitment order dated 08.12.2015.

On receipt of case by ways of commitment, after hearing the learned Public Prosecutor and learned defence Counsel and perusing the documents annexed with the report under Section 173 Cr.P.C., charge under Section 307 IPC and Section 27 Arms Act was framed against the accused, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many 12 witnesses and closed its evidence.

Statement of accused was recorded under Section 313 Cr.P.C. wherein all the incriminating circumstances appearing against the accused were brought to the pointed notice of the accused, but he denied the same. He took the plea that he is innocent and has been falsely implicated in this case.

In defence, accused examined DW.1 Gurpreet Singh, the

bridegroom whose marriage was solemnized on 11.01.2015. He has deposed on oath that on the date of occurrence, rifle was lying on the cot in the courtyard. It suddenly fell down from the cot and shot was fired accidentally. It struck against the wall and the pellets hit Rani Kaur and her daughter Pamalpreet Kaur. Both the injured were taken to DMC Hospital by him and his father Sukhwinder Singh and Ram Singh accused. All the expenses of treatment were borne by him and Ram Singh. Ram Singh did not fire shot upon injured intentionally. Thereafter, accused closed the evidence.

Upon consideration of the entire evidence, the charge under Section 307 IPC was found to have not been established and instead the appellant was convicted for the offence mentioned above i.e. under Section 308 IPC and Section 27 of the Arms Act.

The instant appeal was thereafter preferred before this Court.

That during the pendency of the instant appeal, the matter was settled amongst the parties with the intervention of the respectables and a separate quashing petition bearing No.**CRM-M-40550-2020**, titled as **Ram Singh Versus State of Punjab and others** was filed before this Court.

Vide order dated December 04, 2020, the parties were directed to get their statements recorded before the Illaqa Magistrate.

A report vide memo No.40 dated 27.01.2021 was received from the Judicial Magistrate Ist Class, Mansa. The relevant extract of the same is as under:-

“1. One person namely Ram Singh son of Bant Singh R.o village Bheni District Mansa has been arraigned as accused in this case.

2. Apart from the complainant (Rani W/o Jaskaran

Singh son of Karnail Singh aged 36 years resident of near baba shahid, Hamirgarh, Tehsil Phool, District Bathinda and her daughter namely Pamalpreet Kaur (injured) there is no other aggrieved party.

3. *The compromise, which has been entered into by the parties in this case, is genuine, voluntary and without any coercion or undue influence.*

4. *As per the report of SHO PS Joga, the accused has never been declared proclaimed offender in any other case and no other FIR has been registered against him.”*

Learned counsel appearing on behalf of the appellant has submitted during the course of arguments that he does not intend to raise a challenge to the judgment of conviction and would pray for arguments on the quantum of sentence only.

Learned counsel for the appellant has argued that the incident, in question, pertains to the year 2015 and the appellant has already faced incarceration of a criminal prosecution for more than 7½ years. Besides, he has two children, who are studying and the responsibility of their academic expenses is to be discharged by the appellant. Furthermore, his wife remains unwell and that there is no other member in the family to take care of his ailing wife. He further submits that the appellant was sentenced to undergo imprisonment for a period of four years and that as against the said sentence, the appellant has already undergone actual custody of 01 year, 05 months and 12 days which is more than 1/3rd of the sentence already awarded. He also contends that the appellant is not involved in any other case which reflects that the appellant has not indulged in any criminal activities and has displayed reformatory conduct and behaviour. Besides, the dispute, in question, has already been amicably resolved amongst the parties.

Parameters and Principles of Sentencing:

The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the matter of ***State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550***, the relevant extract of the said judgment is reproduced hereinbelow:-

'Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstance of each case.

5. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of Section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. *Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.*

9. *What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.*

10. *In Dhananjay Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:*

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. *Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.*

12. *In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:*

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the

sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be-- as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing: Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice and indeed in the popular press- that there is considerable "disparity" in sentencing.. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise

valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored or consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in *Encyclopedia of Crime and Justice*, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is

whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("nonconviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offenders particular "amenability" to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interest are violated or threatened by the standard case of the crime- physical integrity, material support and amenity,

freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement

3. Culpability of the offender

4. Remoteness of the actual harm as seen by a reasonable man.”

CONCLUSION:

Sentencing invariably is a task that would require considered exercise of judicial discretion. While punitive and retributive object of sentencing may be adopted in matters pertaining to gruesome offences executed in a brutal manner; the offence under strict penal statutes; the offences committed against vulnerable segments of society including children; the offences reflecting pre-meditate commission of heinous offences as well as against habitual offenders and criminals who show no sign of improvement or remorse, a reformatory approach can be adopted in reference to the others. Commission of an offence out of sudden fight or at the spur of a moment or under a given circumstance would be sufficient to convict an offender but may not be sufficient to label him as a criminal beyond reform. Where the subsequent conduct inspires confidence and satisfaction regarding reform, the same can be taken as a sufficient basis to consider the request for reduction of sentence.

Taking into consideration the position and law referred to above and the mitigating circumstances pointed out by the learned counsel for the appellant including the fact that the dispute, in question, has been amicably resolved between the parties, the present appeal is partly allowed.

While upholding the judgment of conviction passed by the Sessions Judge, Mansa, the sentence awarded to the appellant is reduced to

the period already undergone by him.

The aggregate fine of ₹5,000/- imposed upon the appellant is enhanced to ₹10,000/- to be deposited within a period of one month from the date of receipt of a certified copy of this order.

July 27, 2022
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No