

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

104

CRA-S-1737-SB-2004 (O&M)
Date of decision: 19.02.2024

Kulwant Singh and others ...Appellants

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Jasleen Kaur, Advocate for appellant No.1-Kulwant Singh.
Ms. Farheen Bajwa, Advocate for appellant No.2-Beant Singh.
Mr. Rajat Gautam, Advocate for appellant No.3-Makhan Singh.
Mr. Ajit Kumar Sharma, Advocate for appellant No.4-Narain Singh.
Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY. J.

The death certificate of appellant No.2-Beant Singh has been produced as per which he passed away on 21.06.2015. Accordingly, the present appeal stands abated qua him only.

1. Challenge in the present appeal is to the judgment/order dated 07.07.2004, passed by the learned Additional Sessions Judge, Ludhiana, whereby the appellants were convicted and sentenced as under:

Kulwant Singh

Offence u/s	Imprisonment	Fine	Default sentence
336 IPC	RI for two years	-	-
364 IPC	RI for three years	Rs.500	RI for one month
392 IPC	RI for three years	Rs.500	RI for one month

458 IPC	RI for three years	Rs.500	RI for one month
27 Arms Act	RI for three years	Rs.500	RI for one month

Beant Singh, Makhan Singh and Narain Singh

Offence u/s	Imprisonment	Fine	Default sentence
364 IPC	RI for three years	Rs.500	RI for one month
392 IPC	RI for three years	Rs.500	RI for one month
458 IPC	RI for three years	Rs.500	RI for one month

All the sentences were ordered to run concurrently.

2. Succinct facts at first. Zora Singh-complainant made a statement to the police that on 22.05.2000, when he alongwith his wife and others were sitting in his house, all the accused came there. A quarrel ensued between them. Kulwant Singh and other accused caused blows to him and his wife. An FIR came to be registered against the accused.
3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused-appellants. On finding a prima facie case, charges under Sections 336/364/398/458 IPC and Section 27 of Arms Act were framed against them, to which they pleaded not guilty and claimed trial.
4. The prosecution in order to bring home the guilt of the accused examined as many as 6 PWs. On closure of prosecution evidence, statements of the accused-appellants were recorded under Section 313 Cr.P.C. They denied all the incriminating circumstances that appeared against them in the prosecution case while pleading false implication by the police.
5. The learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the accused-appellants as noticed above.
6. Aggrieved appellants are before this Court.

7. Learned counsel for the appellants, at the outset, gives up challenge to the conviction and prays for reducing the sentence awarded to appellants No.3-Makhan Singh and 4-Narain Singh to the period already undergone, it being 6 months and 1 year, 11 months, 1 day, respectively, on the ground that they belong to the poor strata of the society; sole breadwinner of their families; having children of marriageable age; never misused the concession of bail and have been facing the agony of protracted trial for the last 23 years.

8. On the other hand, learned State counsel submits that the trial Court after appreciating the evidence led by the prosecution, has rightly convicted and sentenced the appellants, therefore, prays for the dismissal of the present appeal. He, however, unables to controvert the non-involvement of the appellants except appellant No.1-Kulwant Singh, who is involved in a number of cases, in any other criminal case and the period undergone by them.

9. Heard the learned counsel on either side and perused the record.

10. Evidently, PW5-Zora Singh, eye-witnesses/complainant, in his deposition specifically named the appellants and their roles, which stood corroborated by the statements of PW-4 Manjit Kaur and PW8/A-Balora Singh, who were the eye witenesses.PW-6, SI Mewa Singh deposed that he recorded the disclosure statement of accused Kulwant Singh, on basis of which, he got recovered a .12 bore gun from his house vide recovery memo Ex.PW-5/B. On going through the evidence on record, the prosecution has proved the case against the appellants. Thus, there is no scope for interference in the findings recorded and conclusion arrived at by the trial Court. As such, their conviction is upheld.

11. This Court in **Baldev Singh vs. State of Haryana**, 2015 SCC Online P&H 17782, by following the dictum in **Nasir vs. State of Uttar Pradesh**, 2010 AIR (SC) 1926, and this Court in **Major Singh vs. State of Haryana**, 2013 (1) RCR (Criminal) 141 and **Jagdeep Singh @ Neetu vs. State of Punjab**, 2013 (3)

Crimes 414 and considering the mitigating circumstances, reduced the sentence of the accused to the period already undergone by him. The relevant paras read thus:

“18. Of course, the Court is conscious of the minimum sentence of 3 years prescribed under Section 27 of the Arms Act. The Hon'ble Supreme Court in *Nasir v. State of Uttar Pradesh*, 2010 AIR (SC) 1926, and this Court in *Major Singh v. State of Haryana*, 2013 (1) RCR (Criminal) 141 and *Jagdeep Singh @ Neetu v. State of Punjab*, 2013 (3) Crimes 414 have taken a lenient view even in the face of minimum sentence prescribed under Section 25 of the Arms Act and reduced the sentence to the period already undergone in the special facts and circumstances of those cases.

19. Accused Baldev Singh has undergone 10 months and 26 days. Though he had intended to cause the death, he had caused injury on a non-vital part of the body. Further, he was just 26 years at the time when the occurrence took place. The occurrence had taken place in the year 2006. Sending accused Baldev Singh to jail again to undergo the unexpired portion of sentence imposed by the trial Court would definitely harm the peaceful life they had chosen to lead after burying their long enmity.

20. For all these reasons, the judgement of conviction passed by the trial Court as against accused Baldev Singh stands confirmed. But the sentence imposed on him is reduced to the period already undergone by him. The fine and the default sentence imposed by the trial Court for the offence under Section 307 IPC and Section 27 of Arms Act stand confirmed. If the fine amount is not paid within one month from the date of this judgement, accused Baldev Singh shall undergo the default sentence imposed by the trial Court for the respective offences.”

12. In **Nadar Singh and Ors. vs. State of Rajasthan**, 1989(2) WLN 203 wherein the conviction of co-accused under Section 364/336 IPC and under section 27 Arms Act was maintained by the High Court but the sentence was to the period already undergone by him in terms of Section 364 IPC and Section 27 of Arms Act, considering that the occurrence took place in 1981 and she was not involved in any other criminal case.

13. In **Din Dayal v. State of Delhi (Admn.) (Union Territory of Delhi)**, 1991 SCC (Cri) 1031, the trial Court convicted three of the accused including the

appellant under Section 392 IPC, sentencing them for two and a half years and Hon'ble the Supreme Court observing that the incident was from 1976 reduced it to the period of eight months already undergone by him.

14. In **Ashok & Ors. vs. State Of Rajasthan**, S.B. Criminal Appeal No.198/1990, whereby the accused appellant Ashok was convicted under Section 304 Part II and Section 458 IPC for 4 years and the accused Ranchore and Ganga Ram were convicted for offence under Section 458 IPC for 9 months, the High Court, by enhancing the fine to be paid to the injured, reduced the sentence to the period already undergone, taking into consideration that the incident took place in 1987.

15. In **Rajinder Singh And Others vs State Of Punjab**, CrI. Revision No. 595 of 2006, the accused Rajinder Singh, Bir Devinder Singh, Sukhminder Singh, Surinder Singh, Bhupinder Singh, Niranjana Singh and Kuku Singh were convicted substantially for a period of two years and to pay a fine of Rs. 1000/- under Sections 326/325/324/336/148/149 IPC. The High Court while maintaining the conviction, reduced the sentence qua the imprisonment of the accused-petitioners to the period already undergone.

16. Viewing humanistically, appellant Nos.3 and 4 having suffered the ignominy of trial since long; successfully warded off their crime-proneness-an evident learning of a lesson; their socio-economic circumstances, this Court finds extenuation to be implicit. Thus, it would serve the ends of justice to reduce their sentence to the period already undergone, however, keeping the fine intact and in view of the fact that appellant No.1 is involved in other cases, this appeal qua him is dismissed.

17. The order of sentence dated 07.07.2004 is modified to the aforesaid extent and as such, the present appeal stands partly allowed.

18. Registry is directed to send a copy of the judgment to the concerned Chief Judicial Magistrate for initiating the proceedings against appellant No.1, as per law.

(AMAN CHAUDHARY)
JUDGE

19.02.2024
ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No