

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-2024-SB-2004 (O&M)
Date of decision : 15.01.2024

Gurmukh Singh
.....Appellant

Versus

State of Punjab
..... Respondent

CRA-S-2061-SB-2004 (O&M)

Kulwinder Kumar
.....Appellant

Versus

State of Punjab
..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Randhir Singh, Advocate for
Ms.Simsi Dhir Malhotra, Advocate for the appellants

Mr.Manipal Singh Atwal, DAG, Punjab

Ms.Rekha Luhach, Advocate for
Ms.Ekta Thakur, Advocate for the complainant

AMAN CHAUDHARY, J.

1. This common order shall dispose of the above-mentioned criminal appeals, as they arise out of the same impugned judgment and order.
2. Challenge in the present appeals is to the judgment/order dated 06.10.2004, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur, whereby both the appellants were convicted and sentenced as under:

Offence u/s	Imprisonment	Fine	Default sentence
307 IPC	RI for five years	Rs.2000/-	RI Six months

307/34	RI for five years	Rs.2000/-	RI six months
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All the sentences were ordered to run concurrently.

2. The facts, which are necessary for adjudication of the present cases are that, one Lakhwinder Singh s/o Satpal made statement wherein he stated that on 24.11.2002 at about 12.00 noon, when he, alongwith his brother Surinder Singh and one Jagdish @ Deesa went to the the shop of Kulwinder Kumar for taking photographs of marriage, he refused to give it and started abusing them. The person standing there caught hold of Surinder Singh and accused-Kulwinder Kumar attacked him. He fell down on the ground. In the meantime, accused ran away from the spot. The injured was rushed to Civil Hospital at Hoshiarpur and the FIR in question was registered.
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 307/34 of IPC 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 8 PWs. On closure of their evidence, statements of the accused-appellants were recorded under Section 313 of Cr.P.C. They denied all the incriminating circumstances that appeared against them.
5. The learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the accused as noticed in para 2.
6. Aggrieved accused-appellants have preferred the present appeals.
7. Learned counsel for the appellants, at the very outset, submits that he does not wish to challenge the judgment of conviction and prays for reducing the sentence awarded to the appellants on account of the facts, that the matter stands compromised between the parties; appellant Gurmukh Singh had undergone 8

months, whereas appellant Kulwinder Singh 01 year 21 days; are poor persons; sole bread winners of their respective families; not involved in any other case and have been facing the agony of protracted trial since 2002.

8. Learned counsel appearing on behalf of the complainant also admits the factum of compromise and submits that she has no objection to the prayer made by the appellants.

9. 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. Though he is unable to dispute the statement of the parties regarding settlement, however, affirms that they are not involved in any other case.

10. Heard and perused.

11. Though, the appellants have not challenged the judgment of conviction, but this Court still deems it appropriate to examine the same. PW-3 Surinder Singh, who was the injured in his deposition specifically named the appellants, having caused injuries to him. His testimony stood corroborated by PW-2 Lakhwinder Singh. Dr.Rajesh Mehta, Medical Officer, Civil Hospital, Hoshiarpur proved the MLR of the injured. Thus, the trial Court has rightly convicted the appellants and there is no scope for interference in the findings recorded and conclusion arrived at. As such, the conviction of the appellants is upheld.

12. As regards the prayer made for reduction of sentence to the period already undergone, in CRM-21222-2019 filed by the appellants the matter stands compromised between the parties, this Court vide order dated 21.07.2023, had directed the parties to appear before the concerned Trial Court/Illaq Magistrate/ duty Magistrate to get their statements recorded. In pursuance of the said order,

vide letter dated 02.08.2023, Additional Chief Judicial Magistrate, Hoshiarpur has sent his report wherein it has been stated that the complainant Lakhwinder suffered statement on the basis of which the present FIR was registered. Now with the intervention of the respectables of the society, a compromise has been affected between him and the accused, who have not pressurised or used coercion upon him for effecting the same. Another victim/injured, namely Surinder Singh also got recorded his similar statement with regard to compromise having taken place with the accused persons. No accused has been declared proclaimed offender.

13. The object of the criminal justice system is to reform the offenders and to make them see and follow the right path. However, the ancient penological approach was of custodial measure to curb crime. A balanced approach keeping in view the interests of the victim and accused and their families, release on admonition, probation, etc. is the way forward.

14. A gainful reference can be made the judgment in **Badrilal v. State of M.P.**, (2005) 7 SCC 55, wherein the accused was convicted under Section 307/34 IPC and has undergone 14 months, Hon'ble the Supreme Court, disposed of the appeal by reducing the sentence to the already undergone as the matter stands compromised between the parties.

15. In **Ishwar Singh v. State of M.P.**, (2008) 15 SCC 667, Hon'ble The Supreme Court held that, "it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence."

16. Further in **Murali vs. State**, (2021) 1 SCC 726, the compromise having been arrived at between the parties in non-compoundable offence registered under Section 307 and 324 IPC was considered only with respect to the reduction in the quantum of sentence to the period already undergone by the accused. Relevant portion thereof reads thus:

“8. There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 (“CrPC”) does not encapsulate Sections 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.

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12. Given this position of law and the peculiar circumstances arising out of subsequent events, we are of the considered opinion that it is a fit case to take a sympathetic view and reconsider the quantum of sentences awarded to the appellants. We say so because: first, the parties to the dispute have mutually buried their hatchet. The separate affidavit of the victim inspires confidence that the apology has voluntarily been accepted given the efflux of time and owing to the maturity brought about by age. There is no question of the settlement being as a result of any coercion or inducement. Considering that the parties are on friendly terms now and they inhabit the same society, this is a fit case for reduction of sentence.

13. Second, at the time of the incident, the victim was a college student, and both appellants too were no older than 20-22 years. The attack was in pursuance of a verbal altercation during a sports match, with there being no previous enmity between the parties. It does raise hope that parties would have grown up and have mended their ways. Indeed, in the present case, fifteen years have elapsed since the incident. The appellants are today in their mid-thirties and present little chance of committing the same crime.

14. Third, the appellants have no other criminal antecedents, no previous enmity, and today are married and have children. They are the sole bread earners of their family and have significant social obligations to tend to. In such circumstances, it might not serve the interests of society to keep them incarcerated any further.

15.Finally, both the appellants have served a significant portion of their sentences. Murali has undergone more than half of his sentence and Rajavelu has been in jail for more than one year and eight months.”

17. This Court considering the judgments referred to above and the mitigating circumstances, particularly that matter stands compromised; the appellants are aged about 45 and 46 years respectively; belong to poor strata of the society; not previous convicts; suffering the ignominy of trial for the last more than 2 decades; after release on bail, have not misused such concession granted to them, finds that the ends of justice would be adequately met if the sentence of the appellants is ordered to be reduced to the period already undergone by them.
18. Accordingly, while upholding the conviction of the appellants, their sentence is ordered to be reduced to the period already undergone by them. However, the fine shall remain intact.
19. With the aforesaid modification in the order of sentence dated 06.10.2004, the present appeals stands partly allowed.
20. Photocopy of the judgment be placed on the file of the connected case.

15.01.2024
Hemant/gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

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Yes / No

Whether reportable

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Yes / No