

339

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA-S-1487-SB-2015 (O&M)

Date of Decision: 02.02.2024

HARBHAGWAN SINGH AND ORS.

.....Appellants

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nikhil Ghai, Advocate

with Mr. Ankit Kundu, Advocate

for the appellants.

Mr. Vishal Tartyal for Mr. PPS Brar, Advocates

for the complainant.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the judgment of conviction and the order of sentence dated 18.03.2015 passed against the appellants by learned Additional Sessions Judge, Moga in Sessions case No.39 dated 05.11.2012 arising from FIR No.31 dated 24.05.2007 under Sections 307, 148 read with Section 149 of IPC and Section 27 of the Arms Act. The appellants were sentenced as under:-

Appellant	Under Section	Sentence
Harbhagwan Singh @ Bhagwan Singh	307 IPC	RI 10 years with a fine of Rs.10,000/- in default of which RI for 6 months.
Baljinder Singh	307 IPC read with Section 34 IPC	RI 10 years with a fine of Rs.10,000/- in default of which RI for 6 months.

Baldev Singh	307 IPC read with Section 34 IPC	RI 10 years with a fine of Rs.10,000/- in default of which RI for 6 months.
--------------	-------------------------------------	--

FACTUAL MATRIX

2. Facts, in brief, are that on 24.05.2007, complainant Gurcharan Singh made a statement before the police that land of appellant no.1 adjoins his land. A dispute qua the common passage way between their lands was going on for about 10-12 years. On 23.05.2007, after the official demarcation proceedings were already completed by the concerned officials and after they had left, appellant no.1 directed appellant no.2 to cultivate the portion of the said passage way to amalgamate into his own land. When the complainant, who was present at the spot with his brother Kewal Singh and his sons Hardeep Singh and Gurdeep Singh, objected to the actions of the appellants, a dispute arose. Appellant no.3 caught hold of Kewal Singh from his arms and when the sons of the complainant advanced towards Kewal Singh in order to save him, appellant no.1 and another accused who were armed with spades started scuffling with them. Then appellant no.3 raised a cry telling appellant no.1 to fire a gunshot due to which he fired multiple gunshots. One bullet hit the chest of Kewal Singh. Thereupon, the said appellants-accused ran from the spot. Injured Kewal Singh was then shifted to the Civil Hospital, Badhni Kalan from where he was ultimate referred to a hospital in Ludhiana due to his critical condition. Thereafter, the above-mentioned FIR was registered but during the course of investigation Appellant no.2 & 3 as well as other co-accused namely Bhagat Singh and Bansa Singh were found to be innocent. Weapon of offence was recovered from appellant no.1. On competition of formal investigation, challan under Section 336 of IPC was presented against Harbhagwan Singh

only. However, the complainant filed a complaint against the appellants and three other persons namely Bhagat Singh, Bansa Singh and Balbir Singh in which all the aforesaid accused except Balbir Singh were summoned to face trial under Sections 307, 148 read with Section 149 IPC and Section 25/27 of Arms Act. Ultimately, only the appellants were convicted as mentioned above.

CONTENTIONS

3. Mr. Vishal Tartyal, Advocate has appeared on behalf of Mr. Param Preet Singh Brar, Advocate for the complainant and filed the power of attorney, which is taken on record.

4. Custody certificates dated 02.02.2024 and status report by way of an affidavit of Mr. Shubeg Singh, PPS, Deputy Superintendent of Police, Nihal Singh Wala, District Moga on behalf of respondent-State of Punjab has been filed and the same are taken on record.

5. Learned counsel for the appellants *inter alia* contends that the appellant and respondents No. 2 and 3 are real brothers and after the intervention of the common relatives, they have settled their dispute amicably and effected a compromise dated 18.05.2015 among themselves and since then, they are living in the same village with complete harmony and relies upon ***Ram Gopal Versus State of Madhya Pradesh.***

6. Learned counsel representing respondents No. 2 and 3 submits that he has no objection in case the present appeal is allowed and the appellants be acquitted of the charges framed against them on the basis of compromise.

7. Learned State counsel affirms the factum of compromise and submits that appellant No.3 has unfortunately expired on 13.11.2016, as such the appeal against him stands abated. However, he further submits that the

learned trial Court has passed a well-reasoned judgment based on correct

appreciation of evidence available on record, as such, appellant no.1 & 2 do not deserve any leniency.

OBSERVATION & ANALYSIS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

9. On 18.05.2018, the following order was passed:

Crl.Misc. No.18317 of 2018

“Prayer in this application is for impleading injured/victim Kewal Singh son of Jangir Singh and complainant Gurcharan Singh son of Jangir Singh as respondent Nos.2 and 3 respectively.

For the reasons mentioned in the application, which are supported by an affidavit of appellant No.1 and keeping in view the fact that a compromise has been entered into between the parties, the present application is allowed. Kewal Singh son of Jangir Singh and Gurcharan Singh son of Jangir Singh are impleaded as respondent Nos.2 and 3 respectively. The amended memo of parties appended alongwith the application is taken on record. Registry is directed to place the same at an appropriate place of the case.

Crl.Misc. No.16821 of 2018

Notice of the application.

On the asking of the Court, Mr. Dhruv Dayal, Senior Deputy Advocate General, Punjab, accepts notice. Counsel for the applicant-appellants has supplied complete set of the application to the State counsel. Mr. Param Preet Singh Brar, Advocate, who is present in Court, has filed power of attorney on behalf of newly

added respondent Nos.2 and 3 and acknowledges the factum of compromise, which has been entered into between the parties.

For the reasons mentioned in the application, the same is allowed and the appeal is ordered to be listed for hearing on 19.07.2018.”

10. Pertinently, a two Judge Bench of the Hon’ble Supreme Court in **Ishwar Singh vs. State of Madhya Pradesh, (2008) 15 SCC 667**, speaking through Justice C.K. Thakker observed the following: -

“12. Now, 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.

13. In Jetha Ram v. State of Rajasthan, Murugesan v. Ganapathy Velar and Ishwarlal v. State of M.P., this Court, while taking into account the fact of the compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgement, however, limited submission of the learned counsel for

the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind.

15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused 1) is reduced to the period already undergone”

11. Similarly, a two Judge Bench of the Hon’ble Supreme Court in **Gulab Das and others vs. State of Madhya Pradesh, (2011) 10 SCC 765** speaking through Justice T.S Thakur observed the following: -

“8. In the light of the submissions made at the Bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived at between the parties. Our answer is in the negative.

9. *This Court has in long line of decisions ruled that offences which are not compoundable under Section 320 CrPC cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in Ram Lal v. State of J&K and Ishwar Singh v. State of M.P. We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which the Appellants 2 and 3 stand convicted.*

10. Having said that, we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants.

xxxx

xxxx

xxxx

xxxx

12. *In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them.*

13. In the result, while upholding the order of conviction recorded by the courts below, we reduce the sentence awarded to the appellants to the sentence already undergone by them. The appeal is to that extent allowed and the impugned orders modified. The appellants shall be set free forthwith if not otherwise required in any other case.”

12. Further, a Co-ordinate bench of this Court while reducing the sentence awarded to the appellants to the one already undergone by them in **Bishna Ram etc. vs. State of Haryana, (2006) 3 RCR (Cri) 772**, speaking through Justice T.P.S. Mann made the following observation: -

“12. The appellants faced the agony of the present case for a period of 15 years. Purpose of criminal law is to bring discipline in the society and promote peace and harmony besides giving an opportunity to a criminal to reform himself. The Apex Court in Karamjit Singh v. State (Delhi Admit.), 2000 (3) RCR (Criminal) 561: (2001) 9 SCC 161 opined as under:-

“Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as useful social being. In determining the question of proper punishment in a criminal case, the Court has to weigh the degree of the culpability of the accused, its effect on the others and the desirability of showing any leniency in the matter of punishment in the case. An act of

balancing is, what is needed in such case; a balance between the interest of the individuals and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law attempt has to be made to afford an opportunity to the individual to reform himself and lead a life of normal, useful member of the society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards his fellow beings and towards society at large. Such a situation has to be avoided, again within the permissible limits of law.”

13. As per the custody certificate produced by the learned State counsel, details of custody period of appellant no.1 & 2 are tabulated as under:-

Petitioner- Harbhagwan Singh @ Bhagwan Singh:

Sr No.	Particulars	Period	Duration
1.	Custody under trial	19.11.2007 to 20.11.2007	2 days
2.	Custody after conviction	18.03.2015 to 20.07.2015	4 months 2 days
3.	Parole availed	-	-
4.	Actual custody period after conviction	-	4 months 2 days
5.	Actual undergone period	-	4 months 4 days
6.	Earned remission	-	0 days
7.	Total sentence including remission		4 months 4 days

Petitioner- Baljinder Singh:

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	0 days
2.	Custody after conviction	18.03.2015 to 20.07.2015	4 months 2 days
3.	Parole availed	-	-
4.	Actual custody period after conviction	-	4 months 2 days
5.	Actual undergone period	-	4 months 2 days
6.	Earned remission	-	0 days
7.	Total sentence including remission		4 months 2 days

CONCLUSION

14. The FIR in the present case was instituted on 25.05.2007. Appellants have been facing protracted proceedings for about 17 years. As per the custody certificate of Baljinder Singh, there are no other criminal cases pending against. Out of the total sentence awarded of 10 years, Baljinder Singh has already undergone about 4 months of custody. Whereas, there are no other criminal cases pending against Harbhagwan Singh @ Bhagwan Singh and out of the total sentence awarded of 10 years, he has already undergone about 4 months of custody.

15. Consequently, in view of the above discussion and keeping in view of the compromise dated 18.05.2015, the present appeal is partially allowed and the sentence imposed upon the appellant no. 1 and 2 is modified to the period of sentence already undergone by them, whereas, the appeal qua appellant no.3 stands abated in lieu of his death. The present appeal is disposed of in the following terms: -

- (i) The judgment of conviction and the order of sentence dated 18.03.2015 passed against the appellants by learned Additional Sessions Judge, Moga in Sessions case No.39 dated 05.11.2012 arising from FIR No.31 dated 24.05.2007 under Sections 307, 148 read with Section 149 of IPC and Section 27 of the Arms Act, is modified to the extent that the sentence of rigorous imprisonment for 10 years along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.
- (ii) The sentence of fine of an amount of Rs.10,000/- each, imposed upon the appellants by the learned trial Court is kept intact. The appellants are directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellants shall be liable to be taken into custody and made to undergo rigorous imprisonment each for one month.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

02.02.2024
Rajeev (rvs)

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes