
(2015) 03 DEL CK 0013

In the Delhi High Court

Case No : Criminal Rev. P. 503/2008 and CM No. 3640/2015

Hem Chand and Others

APPELLANT

Vs

State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320
Penal Code, 1860 (IPC) — Section 307, 313, 324, 326, 34

Citation : (2015) 03 DEL CK 0013

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Sumita Kapil, for the Appellant; P.K. Mishra, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.S. Teji, J.—Aggrieved by the judgment of conviction dated 19.03.2008 and order on sentence dated 01.04.2008 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioners to undergo rigorous imprisonment for a period of two years and fine of Rs.1,000/- each under Section 326 IPC, in default of payment of fine to further undergo simple imprisonment for a period of one month; to undergo rigorous imprisonment for a period of one year under Section 324 IPC and to pay fine of Rs.500/- each, in default of payment of fine to further undergo simple imprisonment for 15 days and upholding the same by the learned Additional Sessions Judge vide judgment dated 24.07.2008, the present revision petition has been filed by the petitioners.

2. Factual matrix, as emerges from the record, is that on 05.09.1995 at about 10.30 p.m., when Naresh and Manoj were proceeding towards their houses, petitioner Hem Chand caught Naresh; co-accused Pawan caught Manoj; petitioner Raisuddin gave razor blows to Manoj and petitioner Hem Chand gave knife blows to Naresh. One Rajesh also reached the spot on hearing the alarm. The petitioners and co-accused had fled from the place of occurrence. Naresh

and Manoj were taken to hospital and were medically examined. Injuries suffered by Manoj were opined to be grievous in nature. An FIR of the case was registered. On completion of investigation, charge-sheet was filed.

3. Charge under Section 324/326/34 IPC was framed against the petitioners and co-accused, to which they pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined 8 witnesses. After conclusion of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. in which they had claimed innocence. They did not opt to lead any evidence in their defence. The learned Metropolitan Magistrate vide judgment dated 19.03.2008 held all the accused guilty for the offence punishable under Sections 324/326/34 IPC and convicted them for the said offences vide order on sentence dated 01.04.2008.

5. Thereafter, the petitioners and other convict filed an appeal bearing Criminal Appeal No. 28/2008. The learned Additional Sessions Judge vide judgment dated 24.07.2008, dismissed the appeal.

6. Feeling aggrieved by the same, the petitioners preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.

7. During the course of arguments, learned counsel for the petitioners and complainant submitted that the parties have arrived at compromise. The compromise deed has been placed on record. It was argued that the petitioners and complainant are living in neighbourhood and have cordial relations.

8. Manoj who has entered into compromise with the petitioners is the injured of the present case. As per Memorandum of Understanding filed on record, the injured and petitioners have amicably settled all their disputes and the injured Manoj has no objection if the conviction of the petitioners is set aside.

9. The submission made by learned counsel for the injured is that the petitioners and the injured have already entered into a compromise and are having very cordial relations and the injured does not wish the conviction of sentence against the petitioners.

10. The petitioners have been awarded the sentence of two years rigorous imprisonment with a fine of Rs.1,000/- each and in default simple imprisonment for one month under Section 326 IPC. In the normal circumstances, the sentence is to be awarded in view of the injury suffered by the injured. The learned trial Judge has awarded two years of imprisonment. As per the facts and the circumstances of the present case, the sentence was awarded after about more than thirteen years of taking place of the incident i.e. 1995; FIR was registered on 6.9.1995; charge-sheet was filed on 29.03.1996; charge was framed on 27.08.1996; appeal was dismissed by the learned Additional Sessions Judge on 24.07.2008; petitioners remained in judicial custody for a period of about two months; they are suffering the proceedings for the last more than twenty years;

they have already entered into a compromise with the complainant/ injured, who does not want to have any punishment for the petitioners.

11. Our own High Court in similar circumstances in case of Randhir Singh Vs. State--> : reduced the sentence awarded to the appellant to the period already undergone for the offence under Section 326 IPC. Relevant paras read as under :

"30. Randhir has undergone a sentence of 8 months and 13 days and Daya Singh has undergone a sentence of 9 months as per the nominal roll and report dated 1.4.2011 received from the Superintendent Central Jail Tihar. The two have no previous criminal record and none after the unfortunate incident which took place on 23.7.1986. More than 24 years have gone by. The youth in the two which had roused their passions and anger in the year 1986 has lost its vigour and the two are passed their middle age. Life has mellowed down the two. In the decision reported as : Ram Pujan and Others Vs. State of Uttar Pradesh, , the Supreme Court permitted the long lapse of time between an offence and date of decision of the appeal to be taken in as a factor to levy an appropriate sentence.

31. Keeping in view the aforesaid circumstance we direct that the appropriate sentence to be imposed upon the Appellants would be to direct that the two should suffer imprisonment for the period already undergone but should compensate the legal heirs of the deceased and Rajesh and for which we direct that Appellant Randhir would pay a sum of 25,000/- to the legal heirs of deceased Dharamvir and Appellant Daya Singh would pay a sum of 50,000/- to the legal heirs of deceased Dharamvir and 25,000/- to Rajesh. The amounts are by way of compensation."

12. In similar circumstances, the Hon"ble Apex Court in case of Ram Pujan and Others Vs. State of Uttar Pradesh, : reduced the sentence of imprisonment to the period already undergone for the offence under Section 326 IPC. Relevant paras from the judgment read as under :

"The appellants during the pendency of the appeal were not released on bail and are stated to have already undergone a sentence of rigorous imprisonment for a period of more than four months. As the parties who belong to one family have settled their dispute, it is, in our opinion, not necessary to keep the appellants in jail for a longer period. The major offence for which the appellants have been convicted is no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. It would, in our opinion, meet the ends of justice if the sentence of imprisonment awarded to the appellants is reduced to the period already undergone provided each of the appellants pays a fine of Rs. 1,500 in addition to the period of imprisonment already undergone for the offence under Section 326 read with Section 34 Indian Penal Code. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for a total period of one year for the offence under Section 326 read with Section 34 Indian Penal Code. Out of the fine, if realised, Rs. 2,000 should be paid to Ram Sewak and Rs. 2,000 to Ram Samujh as

compensation. We order accordingly." 13. The above law has been followed in case of Hasi Mohan Barman and Another Vs. State of Assam and Another, in which it was held as under :

"The first decision on this point was rendered by this Court in Ram Pujan and Others Vs. State of Uttar Pradesh, , wherein the trial court had convicted the accused under Section 326 IPC which is a non-compoundable offence and had sentenced the accused to four years R.I. The High Court took into consideration the compromise between the accused appellant and the injured and reduced the sentence to two years R.I. This Court, after observing that the fact of compromise can be taken into account in determining the quantum of sentence, reduced the sentence to the period already undergone which was little more than four months and further imposed a fine of Rs.1500/- on each of the appellants. Surendra Nath Mohanty and Anr Vs. State of Orissa, is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate contained in Section 320 Cr.P.C. an offence can be compounded only in accordance with the provisions of the said section. The Court followed the view taken in the case of Ram Pujan (supra) and having regard to the fact that the parties had compromised and a period of ten years had elapsed from the date of the incident reduced the sentence of five years R.I. imposed under Sections 307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs.5,000/-.

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence has been reduced mostly to the period already undergone and they are Bankat and Another Vs. State of Maharashtra, , Badrilal v. State of M.P. (2005) 7 SCC 55 and Jetha Ram and Others Vs. State of Rajasthan, .

12. Following the view taken in the above noted cases we are of the opinion that the complainant and the principal accused having already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly partly allowed. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside. The appellants are on bail. Their sureties and bail bonds are discharged."

14. The circumstances of the present case, as mentioned above, reveals that this is a case of exceptional nature where the sentence awarded under Section 326 IPC needs to be modified. Although there is no provision of compounding the offence under Section 326 IPC, but in the present case, in the interests of justice, warrants modification of sentence. It has been submitted that the petitioners have already remained behind the bars for about two months. Accordingly, in view of the law laid down in case of Randhir Singh (supra), Ram Pujan (supra) and Hasi Mohan Barman (supra), the sentence awarded under Section 326 IPC is modified to the period already undergone. However, the

sentence of fine is upheld.

15. As mentioned above, the period of sentence of imprisonment under Section 326 IPC has already been treated to be undergone. Similarly, the sentence under Section 324 IPC is also modified to the sentence already undergone. The fine shall be subject to adjustment, if already paid.

16. The petitioners shall appear before the Chief Metropolitan Magistrate (Central) within a period of thirty days from the date of this order to deposit the fine or to undergo the sentence in default thereof, if the fine is already not paid.

17. The present revision petitions are disposed of accordingly. Pending applications are also disposed of. File of the trial court be sent back.