

(2005) 03 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 240-SB of 1991 and Criminal Revision No. 655 of 1991

Kulwant Singh

APPELLANT

Vs

State of Punjab
 Sawinder Singh Vs Paramjit Singh and others

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 326

Citation : (2005) 2 RCR(Criminal) 975

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Avtar Singh Patti and Mr. Ranjit Sharma, for the Appellant; Baljit Singh K. Mann, D.A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Saron, J.—This order will dispose of Criminal Appeal No. 240-SB of 1991 and Criminal Revision No. 665 of 1991 as they arise out of the same judgment and order dated 1.6.1991 passed by the learned Additional Sessions Judge, Amritsar, whereby the Appellant Kulwant Singh has been found guilty and convicted for the offence u/s 326 Indian Penal Code (IPC for short) and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 5,000/-. Besides, in default of payment of fine to further undergo rigorous imprisonment for one year.

2. Kulwant Singh in the criminal appeal assails the finding of guilt and consequent conviction as also the sentence imposed on him. In the criminal revision Sawinder Singh complainant prays for setting aside the acquittal of Paramjit Singh and for convicting him for the offence u/s 307/34 IPC and sentencing him accordingly. Besides, for converting the conviction of Kulwant Singh from that u/s 326 IPC to Section 307 IPC and accordingly for enhancing the sentence awarded to him.

3. Case FIR No. 118 dated 1.9.1987 (Ex. PA/2) was registered at Police Station

Kathunangal, District Amritsar for the offence u/s 307/34 IPC and Section 25 of the Arms Act, 1959 (Act for short). The FIR was registered on the statement of Sawinder Singh (Petitioner in Criminal Revision No. 665 of 1991), who is the injured. It is alleged that on 31.8.1987 at about 9.30 p.m. complainant Sawinder Singh along with his mother Manjit Kaur had gone to the tube-well to start the same. While they were returning after starting the tubewell motor at about 10.30 p.m., he saw the accused standing at about one Killa from his house. The complainant had a torch in his hand and it was a moonlit light. Kulwant Singh (Appellant) had a double barrel gun and Paramjit Singh (Respondent No. 1 in Criminal Revision No. 665 of 1991) exhorted a Lalkara that the complainant, who used to quarrel with him should be finished. At this, Kulwant Singh (Appellant) fired at the complainant hitting on his left thigh. On receipt of the fire arm injury he fell down on the ground and Kulwant Singh (Appellant) fired another shot but it did not hit him and passed over his head. The occurrence was witnessed by Manjit Kaur, the mother of the complainant and she raised hue and cry. The accused ran away with the rifle.

4. The Police after investigating the case presented challan on 11.3.1988 u/s 173 of the Code of Criminal Procedure (Cr.P.C. for short). The learned Judicial Magistrate 1st Class, Amritsar vide his order dated 21.3.1988 committed the case to the Court of Session. The learned Additional Sessions Judge, to whom the case was assigned, vide his order dated 25.4.1988 charged Kulwant Singh (Appellant) for having committed an offence punishable u/s 307 IPC whereas Paramjit Singh was charged for having committed an offence punishable u/s 307 read with Section 34 IPC. Besides, Kulwant Singh was charged for having committed offence punishable u/s 27 of the Arms Act. The accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case examined Sawinder Singh (PW-1), Manjit Kaur, mother of the complainant (PW-2), ASI Lakhbir Singh, Police Station, Jandiala (PW-3), Baldev Singh, Class IV employee, office of Civil Surgeon, Amritsar (PW-4), Dr. Ajaib Singh Sandhu, District Health Officer, Amritsar (PW-5) and Dr. N.S. Aneja, Civil Surgeon, Amritsar (PW-6) and closed its evidence. The statement of the Appellant Kulwant Singh was recorded in terms of Section 318 Code of Criminal Procedure in which he stated that he was innocent and he and his son were apprehended from his house and the gun was taken into possession from them along with its licence. The statement of Paramjit Singh was also recorded under Section, 313 Code of Criminal Procedure in which he stated that he was innocent and that Dalip Singh, uncle of the injured was murdered sometime back and his father was helping the accused party and, therefore, he had been falsely implicated in this case. The Appellant Kulwant Singh and Paramjit Singh did not lead any evidence in their defence.

6. Learned trial Court after considering the evidence and material on record, as already noticed, convicted and sentenced Kulwant Singh (Appellant) for the offence u/s 326 IPC whereas Paramjit Singh was acquitted of the charge.

7. Today, when the case was taken up for hearing Shri Ranjit Sharma, Advocate for Appellant Kulwant Singh has submitted that the parties have amicably settled their dispute. He has placed on record a compromise which is signed by the complainant Sawinder Singh (PW-1) and his mother Manjit Kaur (PW-2) in the presence of members of the Gram Panchayat and one Dalbir Singh. The said compromise is to the effect that Sawinder Singh and Kulwant Singh (Appellant) had a fight in which the appeal filed by Kulwant Singh is pending in this Court. It is recorded that the Panchayat and other respectables of the village have effected a compromise and that now both the parties are living peacefully as brothers and they have no grievance against Kulwant Singh and again want peace amongst themselves. The said compromise is taken on record.

8. In view of the said compromise, it is contended that though the offences are not compoundable, however, keeping in view the time that has elapsed from the occurrence that took place on 31.8.1987 and the listing of the appeal as also the fact that the parties are now living happily like brothers, this Court may consider the question of reducing the sentence to that already undergone.

9. Mrs. Baljit K. Mann, learned Senior Deputy Advocate General, Punjab appearing for the State submits that the offence under Sections 326 IPC for which the Appellant has been convicted is not a compoundable offence. It is contended that the compromise entered into between the parties cannot form the basis for reducing the sentence.

10. Shri Avtar Singh Patti, Advocate appearing for the complainant Sawinder Singh has submitted that the compromise has been entered into between the parties and Sawinder Singh has given in writing that he has no grievance against the Appellant Kulwant Singh. He further submits that in view of the compromise, he does not press his Criminal Revision No. 665 of 1991. In the circumstances, he prays that an appropriate order, as may be deemed fit, may be passed in the appeal.

11. I have given my thoughtful consideration to the respective contentions of the learned Counsel appearing for the parties. It is not in dispute between the Appellant Kulwant Singh and complainant Sawinder Singh that the compromise has been effected between the parties. The learned Counsel for the Appellant has also not challenged his conviction but he has only prayed that the sentence imposed may be reduced to that already undergone. It is not in dispute that the offence u/s 326 IPC for which Kulwant Singh (Appellant) has been convicted is not a compoundable offence. However, this Court and the Hon'ble Supreme Court have considered it to be relevant circumstance for the purpose of imposing sentence. In Mahesh Chand and Anr. v. State of Rajasthan, 1988 (1) RCR(Cr.) 498 (SC): AIR 1988 SC 1211, the accused therein were acquitted by the trial Court but were convicted by the High Court for the offence u/s 307 IPC. The parties therein entered into a compromise and prayed that it be treated as a special case even though the offence u/s 307 IPC was not compoundable. One of the accused in the said case was a lawyer practicing in the lower Court and there

was a counter-case arising out of the same transaction. Their Lordships of the Supreme Court after giving anxious consideration to the said case and after examining the nature of the case and the circumstances in which the offence was committed observed that it may be proper that the trial Court shall permit the parties to compound the offence and an earlier decision in *Y. Suresh Babu Vs. State of A.P. and Another*, was referred to. In *Bharat Singh v. State of M.P.*, 1990 SCC (Cri.) 617, the conviction of the Appellant therein for the offence u/s 326 IPC in view of evidence on record was modified to that u/s 324 IPC. The Appellant therein and the injured had entered into a compromise and the Appellant had compensated the injured for the injury sustained by him. The injured person appeared before the Court and admitted the fact of his having received Rs. 15,000/- from the Appellant and that he entered into a compromise. In the said circumstances, it was observed that for maintaining good relationship between the parties the petition for compromise should be allowed. Accordingly, permission was granted to the Appellant therein to compound the offence and he was acquitted for the offence u/s 324 IPC. In *Surendra Nath Mohanty and Anr. v. State of Orissa*, 1999(2) RCR(Cri.) 683 (SC): 1999(2) RCC 584, the Hon'ble Supreme Court upheld the order of the High Court refusing to grant permission to compound the offence u/s 326 IPC. However, keeping in view the fact that the parties had settled their dispute outside the Court and ten years had elapsed from the date of the incident and the Appellants therein had already undergone three months imprisonment, the sentence was reduced to that already undergone and fine of Rs. 5,000/- was imposed on each of the accused therein for the offence u/s 34 IPC. In *Bankat and Another Vs. State of Maharashtra*, it was held that offence u/s 326 IPC was not compoundable and the High Court rightly refused to grant permission to compound the offence. However, considering that the parties had settled the dispute outside the Court and ten years had elapsed from the date of the incident and the accused had already undergone several months of imprisonment, reduced the custodial sentence to period already undergone and imposition of fine of Rs. 5,000/- with default stipulation was held to be proper.

12. In the case in hand, it may be noticed that Kulwant Singh (Appellant) was arrested on 7.9.1987 and he was released on bail on 9.11.1987. In this matter, he had undergone about two months and two days. Thereafter, on his conviction on 1.6.1991, he was again taken into custody and he was released on bail by this Court on 13.6.1991. The Appellant Kulwant Singh had undergone about two and half months of sentence. Besides, as already noticed, the occurrence in the case took place on 31.8.1987 and 17 years have elapsed after the said occurrence. The parties have even otherwise settled their dispute outside the Court. Therefore, it would be just and proper keeping in view the above referred dictum of Hon'ble Supreme Court to reduce the sentence of Appellant Kulwant Singh to that already undergone. However, the imposition of fine of Rs. 5,000/- and to undergo imprisonment for one year in default of payment of fine shall remain.

13. In the afore-noticed circumstances Criminal Appeal No. 240-SB of 1991 is disposed of by reducing the sentence of Appellant Kulwant Singh to that already undergone and payment of fine of Rs. 5,000/- and in the event of default of payment of fine to further undergo rigorous imprisonment for one year. Criminal Revision No. 665 of 1991 is dismissed.

Order accordingly.