

(2013) 12 SC CK 0033

In the Supreme Court Of India

Case No : Criminal Appeal No. 2063 of 2013 (Arising out of S.L.P. (Criminal) No. 7707 of 2013)

Manoj @ Panu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Arms Act, 1959 — Section 25, 27, 39
Criminal Procedure Code, 1973 (CrPC) — Section 173, 31
Penal Code, 1860 (IPC) — Section 307

Citation : (2014) 1 ACR 1 : (2014) 1 AD 321 : AIR 2014 SC 644 : (2014) 1 CCR 131 : (2014) 1 Crimes 81 : (2014) 1 JCC 737 : (2013) 15 JT 384 : (2014) 1 RCR(Criminal) 525 : (2013) 15 SCALE 149 : (2014) 2 SCC 153

Hon'ble Judges : V. Gopala Gowda, J;Sudhansu Jyoti Mukhopadhyaya, J

Bench : Division Bench

Advocate : Nitin Bhardwaj, for the Appellant; Manjit Singh, AAG, Nupur Chaudhary, Tarjit Singh and Kamal Mohan Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

V. Gopala Gowda, J.—Leave granted. The application for bail is rejected.

2. This appeal is filed by the Appellant Manoj against the final judgment and order dated 13.05.2013 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 1357-SB of 2007 whereby the High Court has confirmed the conviction and sentence passed by the learned Additional Sessions Judge (Fast Track Court), Bhiwani in Sessions Case No. 21-RBT of 2006 dated 23.04.2007 for the offences punishable u/s 307 of Indian Penal Code, 1860 (Indian Penal Code in short) and Sections 25 and 27 of the Arms Act and sentenced the Appellant-Manoj as under:

The sentences were ordered to run consecutively in terms of Section 31 of Code of Criminal Procedure.

3. The case of the prosecution is that on 10.08.2005, when Satender (PW-7),

with other accused persons in some other case, was being taken to judicial lock-up by the complainant-Head Constable Ram Kishan (PW-11) after producing him in the court of Additional Sessions Judge, Bhiwani, a voice was heard saying Manoj, Anil is going, shoot him Thereafter, a boy shot Satender from the back side and the shot hit Satender on his right thigh. The assailants were chased and the person who had fired the shot was allegedly apprehended at the spot with a pistol. On inquiry, his name was disclosed as Manoj @ Panu. On the basis of the statement of Head Constable Ram Kishan the PW-11, FIR No. 136 of 2005 for offences u/s 307 Indian Penal Code and under Sections 25 and 27 of the Arms Act was registered. During investigation, it was found that it was a case of mistaken identity as Satender (PW-7) was shot in place of one Anil. The injured Satender was sent for treatment at Government Hospital, Bhiwani. After preliminary treatment, he was referred to PGIMS, Rohtak.

4. On 23.08.2005 the injured Satender gave his statement (Exh. DA) stating that on 10.08.2005 he was brought to the District Court, Bhiwani as under trial in the murder case of one Ramesh Masta. After his attendance in the court he was heading towards judicial lock-up with PW-11. On reaching the gate of the court PW-11 saw Pawan Masta alias Munna S/o. Ramesh Masta and Rohtash Sharma (father-in-law of Ramesh Masta) and a boy who was standing in front of them. All the above three pointed towards Satender saying he is the same boy. On this, the fourth boy present with them fired three shots at Satender (PW-7). Thereafter, all the three raised fingers and asked if result is seen, Anjam dekh lia?"

5. The co-accused Sudhir was arrested by the police on 31.8.2005. On 30.10.2005 the charge-sheet u/s 173 Code of Criminal Procedure was prepared and submitted in the court of Illaqa Magistrate. The District Magistrate, Bhiwani issued sanction order on 31.10.2005 u/s 39 of the Arms Act pertaining to a pistol of .315 bore. It was also noted in the sanction order that the said pistol was recovered from the Appellant. On 14.12.2005, the matter was committed for trial to the court of the Sessions Judge. The prosecution listed 28 witnesses to be examined against the Appellant. However, the prosecution examined only 13 witnesses dropping 15 witnesses.

6. The learned Sessions Judge vide his judgment and order dated 23.04.2007 convicted the Appellant u/s 307 Indian Penal Code and Sections 25 and 27 of the Arms Act and acquitted all the other accused persons. The Sessions Judge held that from every angle, the prosecution has successfully proved the guilt of the accused for the offence u/s 307 of the Indian Penal Code, and that he has fired two shots at Satender with the intent of committing murder and as for offences under Sections 25 and 27 of the Arms Act, it was observed that it has been sufficiently proved on record that the accused Manoj was apprehended on the spot with a pistol along with 4 live cartridges. The learned Sessions Judge vide order dated 23.4.2007 passed the order of sentence and the Appellant was ordered to undergo rigorous imprisonment for 10 years u/s 307, Indian Penal

Code and to pay a fine of Rs. 5000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months, and 3 years rigorous imprisonment each under Sections 25 and 27 of the Arms Act and to pay a fine of Rs. 2000/- each and in default of payment of fine to undergo further rigorous imprisonment for two months each. The sentences imposed were ordered to run consecutively on the ground that the accused Manoj was a previous convict for committing an identical offence and in the present case, he has committed a very heinous crime of shooting in the court premises and thus, it was ordered that the sentences imposed on him shall not run concurrently and the substantive sentences imposed on him shall run consecutively.

7. Being aggrieved by the same, the Appellant filed Criminal Appeal No. 1357-SB of 2007 before the High Court of Punjab & Haryana at Chandigarh.

8. The High Court vide judgment and order dated 13.5.2013 dismissed his appeal and confirmed the conviction and sentence passed by the trial court observing that the facts and circumstances of the case do not persuade the court to show any mercy in the matter of sentence on the accused as he has a tendency of repeating commission of similar offences in the court premises. It was further stated that the accused cannot be permitted to use the court premises as a battle ground, and the trial court having given cogent reasons for the sentences to run consecutively in terms of Section 31 of the Code of Criminal Procedure, the High Court was totally disinclined to reduce the sentence or to lift the consecutive sentences passed by the trial court. Hence, the accused filed this appeal urging various grounds in support of the questions of law raised by him.

9. The grounds urged by the learned Senior Counsel for the Appellant Mr. U.U. Lalit are stated hereunder:

It was submitted that the courts below have committed a grave error of law by convicting the Appellant despite the prosecution having failed to prove the case against the Appellant and having not considered the tender age of 18 years of the Appellant as also that the Appellant has already undergone almost six years of imprisonment. He also contended that as per the law laid down by this Court the punishment and sentence for offences under a single transaction should have run concurrently and that in the present case, the firing incident pertains to a single FIR, and that the courts below failed to understand that the consecutive sentences awarded in the present case are disproportionate to the facts.

The learned senior Counsel for the Appellant further contended that the courts below failed to consider the settled legal position and also the provisions of Section 31 of Code of Criminal Procedure and the decision in *Chatar Singh v. State of M.P.* (2006) 12 SCC 37 wherein it was observed that in a sentence for conviction for several offences, accused cannot be sentenced to imprisonment for a period longer than 14 years. Therefore, the order passed by the lower courts in sentencing the Appellant for more than 14 years is not only perverse but also illegal and is liable to be set aside.

Reliance was also placed upon the judgment in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Asst. Collector of Customs (Prevention), Ahmedabad & Anr. (1988) 4 SCC 183 in support of the proposition of law laid down by this Court on the issue of concurrent or consecutive sentences, the relevant portion of which is extracted hereunder:

10. The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences

The same position of law was adopted by this Court in the case of
by observing in para 5 that:

5. The majority view in State of Maharashtra v. Najakat Alia Mubarak Ali (2001) 6 SCC 311 was to the similar effect. It was held in para 17 as follows:

17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well.

10. On the other hand, Mr. Manjit Singh, Additional Advocate General appearing for the Respondent-State has sought to justify the impugned judgment contending that the High Court on re-appreciation of evidence on record has rightly concurred with the findings of fact recorded on the points raised and not interfered with the sentence imposed by the learned Sessions Judge and, therefore, the same does not call for interference by this Court.

11. We have heard the learned Counsel for both the parties. The ground on which the Appellant was awarded the sentence which was to run consecutively was due to the previous criminal record of the Appellant for a similar type of offence of shooting in the court premises, which charge was proved as per Ex. P-1. This is the basis on which the trial court considered the extenuating circumstances into consideration to impose punishment for offences committed by the Appellant, sentencing him to different periods for each one of the offences committed by him. The sentences were ordered to run consecutively, and the same was upheld by the High Court in exercise of its appellate jurisdiction. In view of the aforesaid legal position laid down by this Court regarding concurrent and consecutive sentences, the sentences imposed upon the Appellant for different offences to run consecutively under the Indian Penal Code and the Arms Act, are erroneous in law, as the same are contrary to law laid down by this Court as per the cases referred to supra upon which reliance has been rightly placed by the learned Senior Counsel on behalf of the Appellant.

12. Further, having regard to the age of the Appellant at the time of committing

the offences, we feel it would not be just and proper to allow the sentences to run consecutively. As the offences committed by the Appellant have been committed under a single transaction, it is well settled position of law that the sentences must run concurrently and not consecutively.

13. Hence, the Appellant is entitled to the relief as prayed for in this case and the sentences are modified to run concurrently and not consecutively and for this reason, we hold that the sentence must be reduced to 10 years in total with regard to the aforesaid settled position of law, as also keeping in view the tender age of the Appellant on the date of the offence.

14. The appeal is partly allowed in the above terms by modifying the judgment of the High Court, by reducing the sentence to 10 years in total, the remainder of which he must serve.