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Court : Supreme Court of India

Decided On : Jul-06-2009

Reported in : 2009(9)SCALE235; (2009)7SCC178; 2009AIRSCW4714; 2009(4)LHSC2691

Judge : Mukundakam Sharma and; B.S. Chauhan, JJ.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 34, 279, 304A, 307 and 324; [Probation of Offenders Act, 1958](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360 and 361

Appeal No. : Criminal Appeal Nos. 958 and 959 of 2004

Appellant : Karamjit Singh

Respondent : State of Punjab

Advocate for Def. : Kuldeep Singh, ; R.K. Pandey and ; T.P. Mishra, Advs.

Advocate for Pet/Ap. : Arvind K. Nigam, Sr. Adv.,; Kamini Jaiswal,; Shomila Bakshi

Disposition : Appeal dismissed

Prior history : From the Judgment and Order dated 26.03.2003 of the Hon'ble High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 160-SB of 1990

Judgement :

B.S. Chauhan, J.

1. These appeals have been preferred against the judgment and order dated 26.3.2003 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 160-SB and 161-SB of 1990 by which the High Court has dismissed the appeals filed by the appellant against the judgments and orders of the Sessions Judge dated 3.5.1990 passed in Sessions Case No. 71 of 1988 wherein the appellant stood convicted under Section 307 IPC and sentenced to undergo R.I. for three years and to pay a fine of Rs. 1500/- and in default of payment of fine to further R.I. for one year and in Sessions Case No. 81 of 1989, wherein appellant stood convicted under Section 27 of the Arms Act and sentenced to undergo RI for one year. However, the High Court reduced the sentence under Section 307 IPC from three years to one year but enhanced the fine from Rs. 1500/- to Rs. 15,000/-. Both the sentences have been directed to run concurrently.

2. The facts and circumstances giving rise to these appeals are that on 24.6.1987 at about 9.00 A.M. Tasbir Singh (PW.2), an Inspector in a Cooperative Society, was going on his bicycle towards his house in Darsh Nagri Malout. When he reached near the main entrance on the G.T. Road, a Maruti car driven by Karamjit Singh appellant came from behind and passed by the side of Tasbir Singh. After covering some distance the car stopped. Tasbir Singh again passed by his side of that car and when he had reached about 100 yards ahead of the car, it came from behind and hit the cycle of Tasbir Singh. When Tasbir Singh(PW2) made a complaint to Karamjit Singh appellant about the incidents, he replied that he would do the same again. Tasbir Singh (PW2) then went to his house and met his friend Gurmit Singh Brar. From there, Tasbir Singh (PW2) alongwith Gurmeet Singh Brar went to village Saranwan Bodla where he is married. Tasbir Singh(PW2) told his father-in-law Chattarpal Singh about the incident as Chhattarpal Singh was closely related to Mohinder Singh, father of Karamjit Singh, appellant. Harjinder Singh (PW3), Parshotam Singh(PW4) sons of Chattarpal Singh were also there. They all five went to the Focal Point of Village Katianwali just to lodge complain

against the conduct of Karamjit Singh appellant to his father Mohinder Singh. Mohinder Singh and Karamjit Singh were present in the office of Cooperative Society at that time as both of them were employed there. Chhattarpal Singh made a complaint to Mohinder Singh about the behaviour of Karamjit Singh appellant and this resulted into exchange of hot words between the two. Karamjit Singh appellant then asked Chhattarpal Singh to take Tasbir Singh (PW2) from there otherwise he would be dealt with properly. Thereafter, Karamjit Singh appellant went to his nearby residence in his Maruti car and came back within five minutes having his licensed .12 bore gun. It is alleged that on instigation by his father Mohinder Singh, Karamjit Singh, appellant fired a shot at Tasbir Singh(PW2). Mohinder Singh also took out his revolver and aimed the same at Tasbir Singh. The shot fired by Karamjit Singh hit Tasbir Singh in his abdomen and nearby area. Thereafter, Karamjit Singh fired another shot hitting Harjinder Singh and Parshotam Singh PWs. In the meantime Pippal Singh son of Mohinder Singh who also reached there was given a 'Chhura' blow by Harjinder Singh. Gurmit Singh intervened and rescued these persons. Injured were then taken to Civil Hospital, Malout where they were medically examined. On the same day, statement of Tasbir Singh(PW2) was recorded by ASI Ram Singh PW.6 in Civil Hospital, Malout on the basis of which the formal FIR was recorded. The I.O. started the investigation and Karamjit Singh appellant was arrested in this case on 2.7.1987. A .12 bore gun and two cartridges of point .12 bore were also taken into possession by the Investigating Officer through separate recovery memos. The Investigating Officer recorded the statements of prosecution witnesses. On completion of the investigation, the present appellant, his brother Pippal Singh and father Mohinder Singh were challaned.

3. After committal proceedings, Karamjit Singh was charged under Section 307 IPC whereas Mohinder Singh and Pippal Singh were charged under Section 307/34 IPC. Karamjit Singh appellant was challaned separately in a case of Arms Act and was charged under Section 27 of the Arms Act in that case.

4. The trial court disbelieved the plea taken by the Karamjit Singh appellant of self-defence and convicted him for the offence punishable under Section 307 IPC and acquitted the other two accused vide judgment and order dated 3.5.1990.

However, Karamjit Singh was awarded three years R.I. and to pay a fine of Rs. 1500/- and in default of payment of fine to further R.I. for one year. It was further directed that after realizing the said fine it may be given to the complainant Tasbir Singh, Parshotam Singh and Harjinder Singh in equal shares. So far as the case against the appellant under Section 27 of the Arms Act was concerned, he was convicted under Section 27 of the Arms Act and awarded the punishment of one year. However, it was held that both the sentences under Section 307 IPC and under Arms Act will run concurrently.

5. Being aggrieved, the appellant preferred two appeals before the High Court which have been disposed of vide impugned judgments and orders dated 26.3.2003 in Criminal Appeal No. 160-SB of 1990 and 161-SB of 1990. The High Court rejected the contentions raised on behalf of the appellant that it was a case of self-defence and concurred with the findings recorded by the trial court and held that the appellant was rightly convicted for the offences punishable under Section 307 IPC. However, the sentence was reduced from three years to one year but the amount of fine was enhanced from Rs. 1500/- to Rs. 15,000/- and in default of payment of fine he would undergo R.I. for one year. So far as the appeal under Section 27 of the Arms Act was concerned, it was dismissed. However, the High Court directed that both the sentences will run concurrently. Hence these appeals.

6. We have heard Mr. Arvind K. Nigam, learned senior counsel for the appellant and Mr. Kuldip Singh, learned Counsel for the State and perused the record.

7. The facts are not in dispute. The first trial incident occurred on 24.6.1987 at about 9.00 A.M. when appellant hit the bicycle of Tasbir Singh PW.2 by his Maruti Car and on being asked, the appellant had told him that he would do it again. In view of the fact that Shri Chhattarpal Singh father- in-law of Tasbir Singh was closely related to Mohinder Singh father of Karamjit Singh, they came to lodge a complaint to Mohinder Singh and it appears that some hot words were exchanged at that time and the appellant went to his house in his Maruti car and came back within five minutes having his licensed .12 bore gun and fired a shot at Tasbir Singh PW.2 which hit Tasbir Singh in his abdomen and nearby area. Thereafter, Karamjit Singh fired another shot hitting Harjinder Singh and Parshotam Singh

PWs.

8. PW.1 is Dr. Lakhbir Singh. He on 24.6.1987 at 11.00 A.M. had examined Parshotam Singh son of Chhattarpal Singh and found the following injuries:

1. Lacerated wounds three in No. placed individually over the front of right thigh in its lower $1/1/3$ measuring 0.2×2 in size. No wound of exit. Blackening, scorching or tattooing. Fresh bleeding present. Advised x- ray.

2. Lacerated wound $0.2 \times .4$ cm. with inverted margins over lateral aspect of right foot in its middle. No wound of exit. No blackening, scorching or tattooing. Fresh bleeding present. Advised x-ray.

3. Lacerated wound $.2 \times .3$ cm. over medial aspect of left thigh in its lower $1/3$ rd. No wound of exit. No blackening, scotching or tattooing. Fresh bleeding was present. No wound of exit. Advised x-ray.

4. Lacerated wound 2 in No. measuring $.2 \times .2$ cm. on front of left chest in its lower part. No blackening, scorching or tattooing present. Fresh bleeding was present. No wound of exit. Advised x-ray.

5. A lacerated wound measuring $.2 \times 1.1/5$ cm. over lateral aspect of chest. No wound of exit. No blackening, scorching, tattooing was present. Fresh bleeding present. Advised x-ray.

6. Lacerated wound $.2$ cm. in diameter on the right side of forehead, $1.1/5$ cm. above the right eye brow. No wound of exit. No blackening, scorching or tattooing present. Fresh bleeding present. Advised x-ray.

7. Lacerated wound $.2$ cm. in diameter on the middle phalanx of right index finger on its lateral aspect. Advised x-ray. No wound of exit. No blackening, scorching or tattooing present.

8. Lacerated wound 0.2 cm. in diameter on the terminal phalanx of left thumb on its medial aspect. No wound of exit. No blackening, scorching or tattooing present. Fresh bleeding present. Advised x-ray.

9. According to this witness injuries on the person of Parshotam Singh were caused by a fire arm within a few hours. However, all the injuries were declared simple after x- ray examination. This witness has further deposed that on the same day at 11.15 A.M. he had also medically examined Tasbir Singh and found the following injuries:

1. Lacerated wound 0.2 x 0.2 cm. with inverted margins over right side of abdomen just below the lowest rib. Fresh bleeding present. Advised x-ray.
2. Lacerated wound 0.2 cm. in diameter with inverted margin in middle of abdomen, 4 cm. above the umbilicus. Advised x-ray.
3. Lacerated wound 0.2 cm. in diameter with inverted margins 5 in No. individually placed on the front of right thigh. Advised X-ray.
4. Lacerated wound 0.2 x 0.3 cm. two in No. with inverted margins individually placed over medial aspect of right thigh, 18 cm. apart. X-ray advised.
5. Lacerated wounds 0.2 cm. in diameter 15 in No. on the anterior-medial aspect of right leg. X-ray advised.
6. Lacerated wounds 0.2 cm. x 0.2 nine in No. on the anterior-medial aspect of right foot with inverted margins.
7. Lacerated wound 0.2 cm. x 0.2 cm., eight in No. individually placed with inverted margins on the anterior- medial aspect of left thigh and left knee joint. Advised X-ray.
8. Lacerated wound 0.2 cm. x 0.2 cm. eleven in No. on the front of left whole leg with inverted margins. Advised x-ray.
9. A lacerated wound 0.2 cm. x 0.3 cm. over lateral aspect of left leg, just below knee joint. Advised x-ray.
10. A lacerated wound 0.2 cm. x 0.4 cm. on the medial aspect of left leg in its upper 1/3rd. Advised x-ray.

11. Lacerated wounds 0.2 cm. x 0.2 cm. 7 in No. with inverted margins individually placed over dorsum of left foot. Advised X-ray.

10. These injuries were also opined as fire arm injuries within a few hours and were declared simple after x-ray examination.

11. In the cross case all the five accused including Tasbir Singh (PW.2) and Harjinder Singh (PW3) were charged under Section 324/34 IPC and different trials were held in all the three cases. In the said case, the trial court came to the conclusion that only Harjinder Singh was guilty of the offence under Section 324 IPC vide judgment and order dated 3.5.1990 in Sessions case No. 28 of 1989. He was found guilty for the offence punishable under Section 324 IPC and was sentenced to undergo R.I. for two years and to pay a fine of Rs. 1000/-. In default of payment of fine, he shall undergo further R.I. for six months. In appeal filed by Harjinder Singh, the High court vide its judgment and Order dated 26.3.2003 in Crl. Appeal No. 166-SB of 1990, maintained the conviction and sentence, but granted benefit under the provisions of the [Probation of Offenders Act, 1958](#).

12. The trial court rejected the theory of private defence taken by the appellant observing that Tasbir Singh had come with his father-in-law Shri Chhattarpal Singh and his brother- in-law Harjinder Singh, Parshotam Singh and his friend Gurmit Singh Brar only to lodge a protest and not as aggressions. The trial court observed as under:

There is no evidence of any previous enmity between them. Consequently, there was no reason for the prosecution side to attack the accused side. The minor incident which took place on the morning of 26.6.87 could not prove a motive for attack by all these five persons on the accused as alleged. Therefore, the prosecution version that the witnesses had come to village Katianwali only to remonstrate with Mohinder Singh accused against the conduct of Karamjit Singh accused appears to be correct. It appears that when these people went to Mohinder Singh and started remonstrating with him against the conduct of Karamjit Singh, he felt ill and in a huff went to his house and brought his gun and started firing on these persons injuring them. It appears that injury to Pippal Singh was given by Harjinder Singh afterwards in anger. Consequently, it cannot be said

that the injuries were caused to these persons by Karamjit Singh accused in the exercise of the right of private defence. Therefore, the defence plea fails and is hereby rejected.

13. The other co-accused had been acquitted by the trial court recording the finding that there could be no intention for them to participate in the incident. More so there had been some serious contradictions in the depositions in respect of their participation in the incident.

14. The High Court also rejected the plea of right of private defence concurring with the findings recorded by the trial court and observing as under:

There is no doubt that the parties are related to each other and there is no previous enmity between them. A minor incident had taken place on 24.6.87 at 9 AM. For this reason, it is not understandable that Harjinder Singh, Parshotam Singh and Tasbir Singh along with other two persons would go to the office of Mohinder Singh (since acquitted) or Karamjit Singh appellant for the purpose of attack. The prosecution version as set-up that Harjinder Singh etc. had gone to village Katianwali only to complain to Mohinder Singh about the conduct of Karamjit Singh appears to be absolutely correct. As is clear from the evidence that Chhattarpal Singh, the father-in-law of Tasbir Singh is nearly related to Mohinder Singh father of the present appellant and this was the reason that Tasbir Singh along with his in-laws went to the office of Mohinder Singh. Karamjit Singh appellant fell ill when the complainant side started remonstrating with Mohinder Singh against his conduct and then he immediately left the spot and brought his double barrel gun from his house and started firing on these persons hitting Tasbir Singh, Harjinder Singh and Parshotam Singh. It is true that Pippal Singh has also received injury in this occurrence and this injury cannot be self-suffered but it appears that this injury was given by Harjinder Singh in anger.

15. The High Court came to the conclusion that Karamjit Singh had fired two shots. The first shot caused injury to Tasbir Singh PW2 while the other shot caused injury to Parshotam Singh and Harjinder Singh PW3 and held that the trial court has rightly convicted the appellant under Section 307 IPC.

16. We have gone through the depositions made by all the witnesses. Each of them had been cross-examined at length but nothing could be elicited from either of them which may shake the prosecution case. In view thereof, we do not find any force in the submissions made by learned Counsel for the appellant and the appeal No. 958 of 2004 is liable to be dismissed.

17. In Criminal Appeal No. 959 of 2004 under the Arms Act, Mr. Arvind K. Nigam, learned Senior Counsel for the appellant has submitted that in view of the provisions of Section 27 of the said Act, conviction of the appellant was totally unwarranted. Mr. Kuldip Singh, learned Standing Counsel for the State has opposed the contention submitting that there has been amendment in the said provisions immediately after the date of occurrence of offence in the instant case. The case is to be decided taking into consideration the unamended provisions.

18. Section 27 at the relevant time i.e. on the date of incident read as under:

27. Whoever has in his possession any arms or ammunition with intent to use the same for any unlawful purpose or to enable any other person to use the same for any unlawful purpose shall, whether such unlawful purpose has been carried into effect or not, be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

19. The said provision simply provided that a person even if was in possession of a licenced gun or a weapon and use it for 'unlawful purpose', he would be liable to punishment. The said provision of Section 27 stood amended subsequent to the date of incident. Therefore, the case is to be examined under the unamended provisions of the Act. Thus, the contentions raised by Shri Nigam in this respect are not worth consideration.

20. In this view of the matter, the criminal appeal No. 959 of 2004 is also liable to be dismissed.

21. At this juncture, Mr. Nigam learned senior counsel has submitted that as it was the first offence of the appellant and he has served part of the sentence and a long period has elapsed since the date of occurrence of the incident, it is desirable that

the appellant may be granted benefit of the provisions of [Probation of Offenders Act, 1958](#) or Sections 360 and 361 of Criminal Procedure Code, 1973 (Cr.P.C.).

22. On the contrary, Mr. Kuldip Singh, learned Counsel for the respondent has opposed the reliefs sought by Shri Nigam.

23. In *Manjappa v. State of Karnataka* : 2007 CriLJ3220 , this Court considered the scope of grant of relief under the provisions of Section 361 Cr.P.C. or under the provisions of [Probation of Offenders Act, 1958](#) reconsidering earlier judgment of this Court in *Om Prakash and Ors. v. State of Haryana* : (2001)10SCC477 and held that such a relief should be granted where the offence had not been of a very grave nature and in certain cases where mens rea remain absent as in a case of rash and negligent driving under Section 279 read with 304A I.P.C. where the High Court itself reduces the sentence substantially, such beneficial provisions should not be given effect to.

24. In the instant case, the High Court reduced the sentence from three years to one year and as the instant case is of very grave nature as there had been large number of injuries, we are not inclined to grant leave sought to by the appellant.

25. In view thereof, both the appeals stand dismissed.

26. The Appellant is on bail. His bail bonds are cancelled. He will be taken into custody to serve the remaining sentence.

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