

Jagdev Singh and Another

Vs

State of Punjab

Criminal Appeal No. 22 of 1973

(I.D. Dua, K.K. Mathew JJ)

4.04.1973

JUDGMENT

DUA, J. –

1. In this appeal, special leave was granted by this Court limited to the question whether the Probation of Offenders Act (No. XX of 1958), hereinafter called the Act, applies to this case. The appeal was directed on April 3, 1973 to be heard on special leave paper book with such additional document as the parties may wish to file from the record.
2. The two appellants, Jagdev Singh and Jagrup Singh, who are real brothers, along with Mohinder Singh and Karnail Singh were tried in the Court of the Additional Sessions Judge, Sangrur for an offence under Section 307, read with Section 34, I.P.C., for a murderous assault on Nand Singh, (P.W. 6), in furtherance of the common intention of all of them, in village Lehal Khurd. Jagdev Singh and Mohinder Singh accused were convicted under Section 307, I.P.C. and sentenced to rigorous imprisonment for 7 years each, whereas Jagrup and Karnail Singh were convicted under Section 307, read with Section 34, I.P.C and sentenced to imprisonment for 4 years each.
3. The High Court of Punjab and Haryana on appeal converted Mohinder Singh's conviction into one under Section 326, I.P.C. and reduced his sentence of imprisonment to a period of two years rigorous imprisonment and also imposed a fine of Rs. 300/-. In default of payment of fine, he was direct to undergo further rigorous imprisonment for three months. Jagrup Singh's conviction was also converted into one under Section 326/34. I.P.C. and his sentence of imprisonment was also reduced to rigorous imprisonment for one year along with a fine of Rs. 300/-. In default of payment of fine, he was also ordered to serve further rigorous imprisonment for three months. The sentence imposed on Karnail Singh was reduced to that already undergone. Jagdev Singh, who gave his age as 18 years, but whom the learned Additional Sessions Judge considered for appearance to be 21/22 years old, had in the opinion of the High Court, been, perhaps, persuaded by his elder brother Jagrup Singh to participate in the crime. His Conviction was also in the circumstances converted into one under Section 326, I.P.C. and the sentence reduced to rigorous imprisonment for six months.
4. Now, both Sections 4 and 6 of the Act clearly provide that the benefit of these sections is not available to persons found guilty of an offence punishable with imprisonment for life. This Act is intended to carry out the object of keeping away form the unhealthy atmosphere of jail life where normally one has to mix with hardened criminals, those found guilty of the commission of comparatively less serious offences by providing for dealing with them more leniently with a view to their reformation, under Sections 3, 4, and 6 of the Act as the case may be. An offence punishable

under Section 326, I.P.C. or under Section 326/34, I.P.C. is indisputably punishable with imprisonment for life. The benefit of the Act on the plain language of Sections 4 and 6 is thus not available to the present appellants.

5. Mr. Mahajan has, however, contended that the nature of the injuries proved to have been inflicted by the two appellants does not attract Section 326, I.P.C. This in our opinion, is not open to the learned counsel to contend because special leave was granted by this Court limited only to the question whether the Act could be applied to this case. The merits of the appellants' conviction are not, therefore, open to argument. The counsel has, however, contended that the whole case should be considered to be open for consideration by this Court, the restricted special leave notwithstanding, because the discretionary power of this Court under Article 135 of the Constitution is intended to be exercised to set right grave injustice and if a case for such interference is made out even at this stage, the limitation imposed while granting special leave should not be held as a bar to the power of this Court to set right such grave injustice. This submission, however attractive prima facie as an appeal to this Court to set right grave injustice, is misconceived and difficult to accept. While granting special leave this Court considered the whole case and came to the conclusion that in the interest of justice only the applicability of the Act required examination. On no sound principle can this Court now ignore the limited scope of the special leave as granted. The scope of the appeal must be confined within the limitation specified in the order granting special leave.

6. Mr. Mahajan, in order to get over this hurdle, prayed that he may be permitted to apply for review of the order, dated April 3, 1973 so as to have the limitation placed on the scope of this appeal removed. According to him the evidence on the record does not make out a case punishable under Section 326 or Sections 326/34, I.P.C. The evidence in the case, according to the learned counsel, has been misread. Assuming this submission is correct, in our view the order dated April 3, 1973 must be considered to be final and not open to re-consideration on a point which was open at the time of the argument on the special leave application. There is no new discovery of any fact which would justify re-examination of the order passed on April 3, 1973. The appellants' conviction as held by the High Court on an appraisal of the evidence must be considered to be conclusive and binding on this Court in the present appeal. Once that conclusion is held final and not open to challenge, no other question arises and the appeal must fail.

7. On the view that we have taken, it is unnecessary to decide whether, on the facts and circumstances of this case, the appellant should be permitted to raise the question of the benefit of the Act for the first time in this Court. No doubt, in special circumstances where the relevant material relating to the circumstances in which an offence is committed is on the record, this Court may justifiably grant such benefit while finding him guilty but in the absence of such material, this Court may well disallow such a prayer to be made for the first time on appeal by special leave. More so when the question of the appellants' guilt is not open for consideration.

8. The Act being not applicable to this case, this appeal fails and is dismissed.

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