Sadha Singh and Another

Vs

State of Punjab

Criminal Appeal No. 310 of 1985

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

08.05.1985

ORDER

D. A. DESAI, J. -

1. While granting special leave in the above matter, notice was issued to the petitioners to show cause why the sentence imposed upon them the High Court should not be enhanced. Mr. J. D. Jain, learned counsel appearing for the appellants urged and in our opinion rightly that once a notice to enhance the sentence issued the case is wide open and the appellants are entitled to challenge the correctness of the order of conviction. We accordingly heard submission on the merits of the order of conviction to satisfy us that the prosecution had failed to bring home the charge.

2. Having heard Mr. Jain we are satisfied that the learned Additional Sessions judge was right in convicting the appellants Sadha Singh and Natha Singh for an offence under Section 307/34 IPC for attempting to commit murder of Mohinder Singh and sentencing each of them to suffer rigorous imprisonment for three years and to pay a fine of Rs. 900 in default to suffer further rigorous imprisonment for six months each. Both of them were also convicted under Section 324/34 IPC for causing injury to Ajit Singh for which each of them was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 100 in default to suffer further rigorous imprisonment for one month each. Each of them was convicted for an offence under Section 27 of the Arms Act and was sentenced to suffer rigorous imprisonment for one year. Substantive sentences were directed to run concurrently.

3. Both the accused preferred Criminal Appeal No. 94-SB of 1982 in the High Court of Punjab and Haryana at Chandigarh. The appeal came up for hearing before a learned Single Judge of the High Court. Mr. Harbans Singh, learned counsel appeared for the appellants. It appears that Mr. Harbans Singh did not question the correctness of the order of conviction because the learned Single Judge stated in the first sentence of his judgment that Mr. Harbans Singh, learned counsel for the appellants has not addressed the Court on merits but prayed that the appellants are first offenders and the occurrence took place all of a sudden and that the sentence of imprisonment may be reduced and fine may be enhanced. Therefore, it appears that the correctness of the order of conviction was not questioned before the High Court. It appears, therefore, futile to question the correctness of conviction or credibility of witness. We are of the opinion that the learned Additional Sessions Judge convicted the appellants on credible and reliable evidence for committing the offences under sections 307 read with 34 and 324 read with 24 and under Section 27 of Arms Act.

Even apart from this we have gone through the evidence given by the prosecution witnesses more particularly the evidence of two injured witnesses PW 8 Ajit Singh and PW 9 Mohinder Singh.

Their evidence is fully corroborated by medical evidence. Both the appellants were armed with guns and both of them fired their respective guns. Dr. Paranpal Singh who examined injured Mohinder Singh found six injuries on his person and opined that the injuries Nos. 1 to 5 were caused by a firearm. Similarly, Ajit Singh was examined by him. He had suffered two injures both of which in his opinion could be caused by a firearm. This medical evidence corroborates the testimony of the injured witnesses. Nothing was pointed out to us or to the High Court why this evidence should not be accepted. We accept the same and hold that the appellants were rightly convicted by the learned Sessions Judge.

5. The next question is what should be the adequate sentence. We must confess that what ought to be the proper sentence in a given case is left to the discretion of the trial court, which discretion has to be exercised on sound judicial principles. Various relevant circumstances which have a bearing on the question of sentence have to be kept in view. Before deciding the quantum of sentence the learned Sessions Judge has to hear both the sides as required by the relevant provision of the Code of Criminal Procedure.

6. In an appeal against the conviction, it is open to the High Court to alter or modify or reduce the sentence after confirming conviction. If the High Court is of the opinion that the sentence is heavy or unduly harsh or requires to be modified, the same must be done on well recognised judicial dicta. Therefore, we may first notice the reasons which appealed to the learned Judge to reduce the substantive sentence awarded to the appellants to sentences undergone.

7. The learned judge first noticed that no previous conviction is recorded against either of the two appellants. We may point out that the record of previous conviction is hardly of any relevance when the conviction is for an offence punishable with imprisonment for life except for an offence under Section 303 IPC which has been held to be unconstitutional. The learned Judge next noticed that the occurrence took place all of a sudden. The finding of the Additional Sessions Judge convincingly shows that the occurrence was pre-planned inasmuch as it was at 9.30 p.m. at night that the accused armed with gun attacked the victims. Assault at night is not ordinarily to be expected unless it is pre-planned. Therefore, the necessary inference is that the accused assaulted the victims with malice forethought. They wielded weapons like guns. At the time of occurrence it was not one but four shots were fired. Looking to all these circumstances, the learned Judge was in error in making an observation that the occurrence took place all of a sudden. We find it difficult to agree with him. The weight of the evidence points in the opposite direction. The learned Judge then took notice of the fact that three co-accused of the appellants were given benefit of doubt by the trial court and acquitted them although they were also attributed causing of some injuries. If acquitted of some co-accused casts a cloud of doubt over the entire prosecution case, the whole case may be rejected. But we fail to understand how acquittal of some of the accused can have any relevance to the question of sentence awarded to those who are convicted. In this case the prosecution submitted that these two appellants alone were armed with guns. Then the learned Judge observes that no useful purpose, will be served by sending the appellants to prison again to undergo the unexpired period of their sentence. We repeatedly asked why this indulgence and waited for answering vain. If someone is enlarged on bail during the pendency of appeal and when the appeal is dismissed sending him back to jail is going to rise qualms of conscience in the Judge, granting of bail pending appeal would be counter-productive. One can pre-empt or forestall the decision by obtaining an order of bail.

8. If the learned Judge had in mind the provisions of Section 360 of CrPC so as to extend the benefit of treatment reserved for first offenders, these appellants hardly deserve the same. Admittedly, both the appellants were above the age of 21 years on the date of committing the offence. They have

wielded dangerous weapons like firearms. Four shots were fired. The only fortunate part of the occurrence is that the victim escaped death. The offence committed by the appellants is proved to be one under Section 307 of IPC punishable with imprisonment for life. We were told that the appellants had hardly suffered imprisonment for three months. If the offence is under Section 307 IPC i.e. attempt to commit murder which is punishable with imprisonment for life and the sentence to be awarded is imprisonment for the three months, it is better not to award substantive sentence as it makes mockery of justice. Mr. Jain said that the High Court has enhanced the fine and compensated the injured and, therefore, we should not enhance the sentence. Accepting such a submission would mean that if your pockets can afford, commit serious crime, offer to pay heavy fine and escape tentacles of law. Power of wealth need not extend to overawe court processes. Thus it appears that the High Court wrongly interfered with the order of sentence on wholly untenable and irrelevant grounds some of them not borne out by the record. In order, therefore, to avoid miscarriage of justice we must interfere and set aside the sentence imposed by the High Court and restore the sentence imposed by the learned Sessions Judge which we hereby order. Both the appellants shall be taken into custody forthwith to suffer their sentence.

9. The appeal is allowed to that extent.

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