

KULWANT SINGH

A

v.

AMARJIT SINGH AND TWO ORS. ETC.

MARCH 7, 2000

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

B

*Penal Code, 1860—Section 307—Sentence of imprisonment and fine—Interference with—Respondent sentence to five five years rigorous imprisonment and fine of Rs. 500 High Court reduced the sentence to three-and-half years already undergone—Held, High Court should not have interfered with the sentence of imprisonment—Further, in the circumstances of the case sentence of imprisonment as reduced by the High Court need not be interfered with—Instead the sentence of fine be enhanced to Rs. 25,000.*

C

*Criminal appeal—Disposal of—By the High Court—Two appeals arising out of the same accident resulting in cross sessions cases heard together—Non-application of mind to the facts of the case—Did not consider evidence led in the case—Merely appreciated the evidence and the reasoning recorded by the trial court—Lost sight of relevant considerations which weigh with the court while hearing criminal appeal against conviction and sentence—Thus, judgment of High Court is not legal judgment in the eyes of law.*

D

E

**Cross firing between the two groups resulted in the death of one 'SK' and injuries to others. First Information Report was lodged by one 'S' of one group and another FIR was lodged by the appellant who belongs to the other group. Respondent was convicted under section 307 IPC and section 27 of the Arms Act. 'J' was convicted under the Arms Act. The other nine accused were acquitted. Respondent and 'J' filed an appeal against their conviction and sentence. State filed an appeal against acquittal of nine other accused. High Court maintained conviction of the respondent but reduced his sentence to the period already undergone. It acquitted J. Appeal filed by the State was dismissed. Hence this appeal.**

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G

**Partly allowing the appeal, the Court**

**HELD : 1.1. Once the High Court has held the respondent guilty of an offence under section 307 Indian Penal Code it should not have interfered with the sentence of imprisonment. High Court reduced the sentence**

H

A of imprisonment to the period of three-and-half years already undergone. In the circumstances of the case though the sentence of imprisonment as reduced by the High Court cannot be interfered with yet the sentence of fine can be enhanced to Rs. 25,000 and in default of payment of fine to undergo rigorous imprisonment for a period of six months. [147-E]

B 2.1. The two appeals, which arose out of the same incident and resulted in cross sessions cases, could not have been heard together. High Court did not consider the evidence led in the case and merely appreciated the evidence and the reasoning recorded by the trial court. It was expected of the High Court to apply its mind to the facts of the case and to find out who was the aggressor; whether there was right of private defence and if so was it exceeded in the circumstances of the case. High Court unfortunately lost sight of the relevant considerations which weigh with the court while hearing criminal appeal against conviction and sentence. Thus, the impugned judgment of the High Court is not legal judgment in the eyes of law. [145-E; 146-G]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 258 of 2000 Etc.

E From the Judgment and Order dated 3.2.98 of the Rajasthan High Court in S.B. CrI.A. Nos. 258 and 489 of 1996.

Harinder Mohan Singh and A.P. Chhabra for the Appellant.

Pallav Shishodia, A.P. Medh and Ms. Sandhya Goswami for the Respondents.

F The Judgment of the Court was delivered by

D.P. WADHWA, J. We condone the delay and grant leave to appeal in Special Leave Petition (Criminal) No. 510 of 1999. Special Leave Appeal (Criminal) No. 511 of 1999 is, however, dismissed.

G By judgment dated April 4, 1996 District and Sessions Judge, Sri Ganganagar convicted Amarjit Singh and Jagsir Singh. Amarjit Singh was convicted under Section 307 of the Indian Penal Code (IPC) and sentenced to rigorous imprisonment for 5 years and also fine of Rs.500 and in default of payment of fine, he was to undergo rigorous imprisonment for one month.

H Amarjit Singh was also convicted for an offence under Section 27 of the Arms

Act and sentenced to undergo rigorous imprisonment for a period of 2 years and fine of Rs.200 and in default of payment of fine he was to undergo rigorous imprisonment for a period of another one month. Jagsir Singh was convicted under Section 27 of the Arms Act and sentenced to rigorous imprisonment for two years and also to fine of Rs.200 and in default of payment of fine, to undergo rigorous imprisonment for a further period of one month. Nine other accused (Jitender Singh, Surender Singh, Rajinder Singh, Kewal Singh, Bhola Singh, Gurmail Singh, Paramjit Singh, Richpal Singh and Mani Ram), also tried along with Amarjit Singh and Jagsir Singh, were, however, acquitted.

Against the judgment of District and Sessions Judge two appeals were filed in the High Court of Judicature for Rajasthan at Jodhpur - one by Amarjit Singh and Jagsir Singh against their conviction and sentence and other by the State of Rajasthan against acquittal of nine other accused. By the impugned judgment dated February 3, 1998 learned Single Judge of the High Court dismissed the appeal filed by the State of Rajasthan holding that the acquittal of the accused was by a well reasoned order. In the other appeal High Court maintained the conviction of Amarjit Singh but reduced his sentence to already undergone. Jagsir Singh was, however, acquitted of the offence under Section 27 of the Arms Act. Aggrieved complainant has sought leave to appeal against the judgment of the High Court.

When both the special leave petitions came up for admission this Court on February 2, 1999 directed issue of notice and on July 19, 1999 passed the following order : -

“Issue notice to the respondents for enhancement of the sentence. Since the respondents have put in appearance through counsel these matters shall be listed after six weeks with the clear understanding that the sentence awarded by the High Court may ultimately be interfered with by this Court.”

An incident took place on September 23, 1989 outside the court of Munsif, Sadul Shahar. Two groups were involved. There was firing from both the sides resulting in the death of one Sukhmander Singh and injuries to others. One group of which the two respondents are before us comprised of eleven persons (Group-1) and the other group of which one of the accused (also the complainant in FIR against Group-1) is the appellant before us comprised nine persons (Group-2). Five persons of Group-1 were accused in

A a case before the Munsif, which included Sukhmander Singh and two of the Group-2 were complainants in that case. It is stated that parties had entered into a compromise and that compromise was to be recorded by the Munsif on that day. The accused were present in the court premises and so also the two complainants. Amarjit Singh, Respondent No.1, who was having a 12 bore gun and belonged to Group-1, had also come there and so were other members of Group-1. Respondent Jagsir Singh of this group was also having a 12 bore gun.

B Appellant Kulwant Singh along with other members of Group-2 also came there. Appellant was having a pistol in his hand. Jagjit Singh was having a 315 bore rifle and two or three of Group-2 had 12 bore guns.

C In the FIR lodged on the same day at about 2.15 p.m. Surinder Singh of Group-1 alleged that on the arrival of Group-2 persons they surrounded Group-1 and fired with the result Sukhmander Singh, Jagsir Singh, Paramjit Singh and Amarjit Singh received bullet injuries. A case under Sections 307, 147, 148, 149 IPC and under Section 27 of the Arms Act was registered against persons comprising in Group-2. Sukhmander Singh, however, died on his way to the hospital and Section 302 IPC was added.

D At the same time another FIR was lodged by Kulwant Singh, the appellant. According to him when he was entering the court premises, persons belonging to Group-1 came there with guns. Out of them one Kewal Singh was having a 315 bore gun and others had 12 bore guns. They started abusing the appellant who ran away. After an hour or so other persons of Group-2 arrived and when Jagjit Singh and Radha Krishan of Group-2 were going to the room of the Tehsildar in the court premises they were fired upon by Amarjit Singh and Jagsir Singh (respondents). Amarjit Singh fired at Radha Krishan of Group-2, which hit him on the face and he fell down. While falling down Radha Krishan also returned fire on the persons of Group-1. In his firing other members of Group-2 also suffered bullet injuries. On the basis of the FIR a case under Sections 307, 147, 148, 149 IPC and Section 27 of the Arms Act was registered against persons belonging to Group-1.

E Two sessions cases - one arising out of FIR lodged by Surinder Singh of Group-1 (Sessions Case No. 123/94) and the other lodged by Kulwant Singh of Group-2 (Sessions Case No. 65/94) - were tried in the Court of Sessions Judge, Sri Ganganagar. Eye witnesses from both the groups appeared against the accused in the opposite groups, other evidence was recorded by

the learned Sessions Judge. He delivered judgments in both the Sessions Cases on April 4, 1996. In Sessions Case No. 123/94, which pertained to Group-1, learned Sessions Judge acquitted all the accused persons except the respondents 1 and 2. As noted above, Respondent 1, Amarjit Singh was convicted under Section 307 IPC and Section 27 of the Arms Act. Jagsir Singh was convicted under Section 27 of the Arms Act. In Sessions Case No. 65/94 where Kulwant Singh, the appellant before us, was one of the accused, learned Sessions Judge convicted Jagjit Singh under Section 302 IPC for causing death of Sukhmander Singh. Seven others were convicted under Sections 302/149 IPC. Jagraj Singh, accused, was however, acquitted. It is stated that Radha Krishan and Saheb Ram accused in Group-2 have since died. Both the groups filed their respective appeals in the High Court of Judicature at Rajasthan. While appeal filed by Group-2 is still pending in the High Court, that filed by Group-1 was decided by learned Single Judge of the High Court by the judgment dated February 3, 1998, which is impugned before us.

We are quite amazed as to why the two appeals, which arose out of the same incident and in fact resulted in cross sessions cases, could not have been heard together. This is apart from the fact that the impugned judgment of the High Court is not legal judgment in the eyes of law. High Court did not at all consider the evidence led in the case and merely said that it was adopting the appreciation of the evidence and the reasoning recorded by the trial court. This is how the High Court disposed of the appeal in one paragraph: -

“With the assistance of the learned counsel for the accused as also the learned Public Prosecutor, I have re-scrutinised the evidence on record and re-appreciated the same in light of contentions raised by the rival sides. A careful scrutiny of the evidence leads me to a conclusion that no error either of law or of fact in appreciation of evidence is committed by the learned Judge. His approach to the case is correct, his reasoning for convicting the accused persons as also for acquitting some others is faultless and I entirely agree with the reasons given by the learned Judge for reaching the conviction and acquittal. I, therefore, see no reason to reiterate the entire case and give my findings on the same all over again. I am concurring with the observations of the findings of the learned Judge. I, therefore, accept the same and dismiss both the appeals.”

On the question of sentence High Court said as under:-

A "It has then contended by the learned counsel for the appellant  
B Amar Jeet Singh that he was sentenced to rigorous imprisonment for  
C a period of 5 years under Sec.307 of the Indian Penal Code and he  
has already undergone three and half years of that sentence. Taking  
into consideration the fact that the violence occurred due to pre-  
existing enmity, interest of justice would be met, if he is allowed to  
be released on the sentence already undergone. It was then contended  
that Jagsir Singh is convicted under Sec.27 of the Arms Act for two  
years rigorous imprisonment. Only evidence that occurs against him  
is that Jagsir Singh instigates Amar Jeet Singh to fire from the gun.  
Even if this allegation of instigating accepted as true, he cannot be  
guilty of offence under Sec.27 of the Arms Act."

Finally, High Court disposed of two appeals as under: -

D "In the result, accepting these reasons, I partially accept the  
appeal No. 258/96, maintain the conviction of Amar Jeet Singh and  
he be released on sentence already undergone and acquit Jagsir Singh  
for the offence under Section 27 of the Arms Act as his actions are  
not culpable under Section 27 of the Arms Act. The appeal against  
acquittal is also liable to be dismissed as the acquittal is well  
reasoned."

E It may be noticed that while the trial court judgment runs into as many  
as 109 pages High Court thought it fit to dispose of the appeal in four pages.  
Though number of pages may not be apposite but this does indicate the  
sloppy manner in which the High Court dealt with the criminal appeal.

F It was expected by the High Court to apply its mind to the facts of the  
case and to find out who was the aggressor; whether there was right of private  
defence and if so was it exceeded in the circumstances of the case. High Court  
unfortunately lost sight of the relevant considerations which weigh with the  
court while hearing criminal appeal against conviction and sentence. How-  
G ever, the respondent Amarjit Singh does not feel aggrieved.

H In the present case we had issued notice for enhancement of sentence.  
Acquittal of Jagsir Singh by the High Court cannot be interfered. The incident  
was a serious one occurring in the court complex. Our consideration of the  
case against Amarjit Singh may affect the criminal appeal filed by Group-2  
and still pending in the High Court. It has been contended before us by Mr.

H.M. Singh, learned advocate for the appellant, that it were the accused of Group-1, who were responsible and aggressors in the violence. It is not disputed that there was cross firing between the two groups but he submitted that it was Amarjit Singh who first fired the shot and injured Radha Krishan, while Amarjit Singh and Jagsir Singh had only simple injuries on them. It was the further submission of Mr. Singh that the manner in which the occurrence took place clearly showed that whatever accused of Group-2 did was in right to private defence and since they were fired upon they had to resort to firing to protect themselves from the onslaught of Group-1.

As stated above it is difficult for us to comment on the exact role played by Amarjit Singh as whatever we say might affect the appreciation of the evidence by the High Court in the appeal filed by Group-2 and pending before it. However, what we find is that once High Court held Amarjit Singh guilty of an offence under Section 307 IPC it should not have interfered with the sentence of imprisonment. High Court noticed that Amarjit Singh had already undergone imprisonment for three and a half years. In the circumstances of the present case though we do not wish to interfere with the sentence of imprisonment as reduced by the High Court we will, however, enhance the sentence of fine on Amarjit Singh to Rs.25,000 and in default of payment of fine to undergo rigorous imprisonment for a period of six months. The fine shall be payable within one month and when realized shall be paid over to the legal representatives of deceased Radha Krishan as it was he who suffered bullet injuries from gun fired by Amarjit Singh. In the end we express our anguish in the way High Court disposed of the criminal appeal. It has certainly led to miscarriage of justice.

The appeal is thus partially allowed.

N.J.

Appeal partly allowed and  
petition dismissed.