Surinder Singh vs The Union Territory Of Chandigarh on 26 November, 2021

Author: Surya Kant

Bench: A.S. Bopanna, Surya Kant, N.V. Ramana

REPORTABL

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2373 OF 2010

SURINDER SINGH ..... APPELLA

VERSUS

STATE (UNION TERRITORY OF CHANDIGARH) ..... RESPONDENT

JUDGMENT

SURYA KANT, J.

Appellant–Surinder Singh has laid challenge to the judgement dated 19th May 2010 of the High Court of Punjab & Haryana, whereby, the order of his conviction and sentence dated 25 th July 2006 passed by Learned Additional Sessions Judge, Chandigarh was confirmed. The Appellant has been convicted under Section 307 of the Indian Penal Code, 1860 (hereinafter 'IPC') and Section 27 of the Arms Act, 1959 (hereinafter, 'Arms Act'), and sentenced to rigorous imprisonment of 3 years for both the offences, with a direction that sentences will run concurrently.

FACTS:

> 2. The prosecution case in brief is that, on 10 th July 1999, Mansur Page | 1 Ali, Advocate (Complainant) was sitting at his residential office along with his clerk Maler Singh (PW□3), giving dictation to his steno, R.K. Sood (PW□4). At about 5:30 PM, the Appellant, who was then a Head Constable in Chandigarh Police, entered the residential office of the Complainant in an inebriated condition and stating that he was a beat officer of the lane, asked for a glass of water. He thereafter sat across the Complainant and after consuming the water served to him by Balbir Singh (PW□5), pulled out his service pistol and threatened the Complainant by pointing the pistol at him and stated that "there are 10 bullets in this gun and I will kill 10 people today". Appellant also asked the Complainant to stand and raise his hands. At the same time, he directed Maler Singh and R.K. Sood to step outside the office, to which they complied. In the meantime, the Appellant moved around the table, towards the

> Complainant, pulled the lever and made himself ready to fire. Sensing the seriousness of the situation, Complainant lunged at the Appellant and pushed his hand towards the ceiling, which resulted in the bullet, fired from the pistol, hitting the ceiling of the office.
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> 3. The Appellant then attempted to fire a second time, however, he was unable to and in the said exercise a bullet fell from his pistol. By that time, the ladies of the house had entered the office and raised a holler. Panic-stricken, Appellant rushed out of the office, leaving Page | 2 behind his wireless set on the table of the Complainant and his scooter outside the house. No injury was caused to the Complainant.

The incident was then reported to the police. Upon receiving the information, about 10-15 minutes later, police officials arrived at the house of the Complainant and F.I.R. was lodged against the Appellant, whereafter, the police officials sprang into action and the Appellant was arrested by SI Ramesh Chand (PW-6), who found the Appellant near the Masjid of Sector 20-A, with the pistol still in his hand. Appellant was then taken for medical examination where he refused to give his urine or blood samples.

4. The investigation ensued in light of the above-stated facts, and upon collection of substantial evidence, the charge sheet was filed against the Appellant. The case was committed to the Additional Sessions Judge, Chandigarh, and charges under Section 307 IPC and Section 27 of the Arms Act were framed. The Appellant abjured his culpability and claimed trial.

5. In the eventual trial, a total of 14 witnesses were examined by the Prosecution and 3 witnesses were led by the Defense. The case of the Prosecution relied heavily on the testimonies of the eye-witnesses present at the site of the incidence, including the Complainant (PW-2) who in his deposition stood by the version of events as stated by him Page | 3 in the F.I.R. The Complainant deposed candidly and admitted that had the Appellant not come near him and shot while being seated, he would not have been able to stop the Appellant. Complainant also categorically stated that while moving towards him the Appellant brought the pistol in firing mode by pulling the lever and aiming at his face, which made him realize the gravity of the situation. Likewise, R.K. Sood (PW-4) corroborated the deposition of the Complainant and stated that he witnessed the shot being fired by the Appellant through the mesh wired door, while standing in the veranda, right outside the office. Maler Singh (PW-3), though denied having seen the shot being fired, attested to the presence of the Appellant in a drunk state and to have heard the shot having been fired while he was in the veranda along with PW-4.

6. Dr. Bidhi Chand (PW-7), examined the Appellant at 7:20 PM on the day of the incident, after his arrest by S.I. Ramesh Chand (PW-6). This witness acknowledged the Medico-Legal Report dated 10 th July 1999 (Ex J MLR), and deposed that upon medical examination, the Appellant was found under the influence of Alcohol.

7. The Statement of Mr. B. Badaniya (PW-13) also bears some importance. This witness in his examination before the Court, relying on the Central Forensic Science Laboratory (in short 'CFSL')

Report Page | 4 (Ex. PW-13/A), deposed that the empty cartridge found at the residential office of the Complainant, upon forensic examination, was proved to have been fired from the pistol used by the Appellant. In his cross-examination, PW-13 testified as to the manner in which semi-automatic or semi-loader guns, such as the weapon used by the Appellant, function.

8. On the contrary, the Appellant raised a plea claiming an alternate version of events under his Section 313 Cr.P.C. statement. He claimed that he was on visiting terms with the Complainant and on the day of the incidence, he was routinely visiting the house of the Complainant. He kept the gun along with his wireless set on the table and unbeknownst to him, the Complainant picked up the weapon and accidentally fired. He further asserted that the Complainant had lodged a false version of events to save himself of any criminal liability. Mukesh Mittal (DW-1) also supported the case of the Appellant, claiming that the Complainant had himself told DW-1 right after the occurrence that he had accidentally fired from the weapon. The Trial Court found the version of events contended by the Appellant dubious. As far as DW-1 is concerned, during his cross-examination, he was unable to substantiate how or why he was present near the house of the Appellant at the time of the event, and thereby failed to inspire confidence.

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9. Since there is no dispute regarding the presence of the Appellant at the residential office of the Complainant at the time of the incidence, or that the bullet was fired from his service pistol, the pivotal question before the Trial Court was, whether the Appellant fired the pistol, and, if so, was the weapon used with the intent to kill the Complainant. The Trial Court observed that the prosecution witnesses had, by and large, supported the prosecution version and that no reason was adduced to depict why the Complainant would want to falsely implicate the Appellant. Although the Trial Court noted that there were some inconsistencies in the statements put forth by the prosecution witnesses, however, the same were held to be minor contradictions brought about naturally due to the passage of time. The Court found version of the Defense to be “a patch of lies and figment of imagination”, and rejected the same in its entirety.

10. As far as the charge under Section 27 of the Arms Act was concerned, the Trial Court observed that the Appellant had used his service pistol without any prior permission and for an illegal purpose. The act of firing by the Appellant was thus held to be in contravention of Section 27 of the Arms Act. The Trial Court therefore convicted the Appellant under Section 307 IPC and Section 27 of the Arms Act and awarded a sentence of rigorous imprisonment for 3 years.

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11. Discontented with his conviction, the Appellant preferred an appeal before the High Court of Punjab & Haryana. The High Court upon reappraisal of the evidence, sustained conviction and the consequential sentence imposed by the Trial Court and dismissed the appeal.

12. Aggrieved, the Appellant is now before this Court. CONTENTIONS:

13. We have heard learned counsel(s) for the Appellant and the Respondent-State at a considerable length and perused the record in-depth. There are four principal contentions raised on behalf of the Appellant. First, that there was an absence of 'motive' on behalf of the Appellant to kill the Complainant. It is urged that, if either of the versions are believed, at best, there were good relations between the parties and at worst they were strangers, thus, the Appellant could have no motive or desire to kill the Complainant. Second, there was an absence of intent, which could not be imputed from the conduct of the Appellant.

14. Third, doubts were sought to be created through re-appreciation of evidence once again, including, by depicting that the statements of the eye-witnesses suffered from material contradictions, fatal to the case of the prosecution and also that PW-3 to PW-5 were interested Page | 7 witnesses, they being employees of the Complainant. And, that as against it, the version of the Appellant in his statement under Section 313 Cr.P.C. was the correct chronicle of events and was more probable than the narrative of the prosecution. Fourth and finally, it was argued that the conviction under Section 27 of the Arms Act was not sustainable as the weapon used by the Appellant was licensed and misuse of a licensed weapon is not a mischief under Section 5 of the Arms Act.

15. Learned State Counsel, on the other hand, reminded us of the scope of interference by this Court in a case of concurrent finding of fact and canvassed that no substantial question of law is involved in this appeal.

ANALYSIS:

16. Having given our thoughtful consideration to the rival contentions, we find that the following two questions fall for our consideration:

> A. Whether the High Court erred in maintaining the conviction of the Appellant under Section 307 IPC?
>
> B. Whether conviction of the Appellant under Section 27 of the Arms Act is sustainable?

17. It may be highlighted at the outset that although there are Page | 8 spacious powers vested under Article 136 of the Constitution, nevertheless, while imploring such powers in a criminal appeal by special leave, this Court would ordinarily abstain from entering into a fresh re-appraisement of evidence and doubt the credibility of witnesses when there is a concurrent finding of fact, save for certain exceptional circumstances. Notwithstanding thereto and in the interest of justice, we have endeavoured to peruse and discuss the entire evidence on record to ascertain whether or not the concurrent finding of conviction suffers from any perversity and/or whether the conviction of the Appellant is legally and factually sustainable. A. Whether the guilt of the Appellant under Section 307 IPC has been proved beyond reasonable doubt?

18. Before we advert to the factual matrix or gauge the trustworthiness of the witnesses, it will be beneficial to brace ourselves of the case-law qua the essential conditions, requisite for bringing home a conviction under Section 307 IPC. In State of Madhya Pradesh vs. Saleem @ Chamaru & Anr. 1, this Court, while re-appreciating the true import of Section 307 IPC held as follows:

> "12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to (2005) 5 SCC 554 Page | 9 the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt." (Emphasis Applied)

19. These very ingredients have been accentuated in some of the later decisions, including in State of M.P. vs. Kashiram & Ors. 2, Jage Ram & Ors. vs. State of Haryana 3 and State of M.P. vs. Kanha @ Om Prakash4.

(2009) 4 SCC 26 (2015) 11 SCC 366 (2019) 3 SCC 605 Page | 10

20. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The Courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

21. It would also be fruitful at this stage, to appraise whether the requirement of 'motive' is indispensable for proving the charge of attempt to murder under Section 307 IPC.

22. It is significant to note that 'motive' is distinct from 'object and means' which innervates or provokes an action. Unlike 'intention', 'motive' is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing 'motive' Page | 11 is akin to an exercise of manual brain□ mapping. At times, it becomes herculean task to ascertain the traces of a 'motive'.

23. This Court has time and again ruled:

> "that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy." [See: Shivaji Genu Mohite v. State of Maharashtra5 and Bipin Kumar Mondal vs. State of West Bengal6]

24. We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eye□ witnesses to the occurrence of a malfeasance are on record.

25. Applying these broad parameters to the facts and circumstances (1973) 3 SCC 219 (2010) 12 SCC 91 Page | 12 of the case in hand, we find the plea raised by the Appellant devoid of any merit. The prosecution no doubt has failed to attribute any motive to the Appellant for yearning to kill the Complainant, however, as noted above, the absence of motive alone cannot abjure the guilt of the Appellant. We are one with the concurrent findings of the two Courts that the conduct of the Appellant is sufficient to surmise that his action was intended to eliminate the Complainant, and that his conviction under Section 307 IPC is fully justified.

26. We say so for the following reasons:

> Firstly, neither the presence of the Appellant at the site of the episode, nor the fact that the bullet was fired through his service pistol is disputed by the Appellant. Even otherwise, the CFSL Report dated 15th September 1999 (Ex□PW 13/A), prepared by Mr. B. Badaniya (PW□

> 13) proves that the cartridge recovered from the office of the Complainant was fired from the service pistol recovered from the possession of the Appellant;

Secondly, the Medico-Legal Report (Ex. J MLR) and the testimony of Dr. Bidhi Chand (PW-7) corroborate with the ocular versions of the Complainant (PW-2), Maler Singh (PW-3) and R.K. Sood (PW-4), all of whom have sworn in their respective depositions that the Appellant was in an inebriated condition when he entered the residential office of Page | 13 the Complainant;

Thirdly, both the Complainant and R.K. Sood (PW-4) have categorically testified to the effect that after consuming water, the Appellant pulled out his pistol and aimed the same at the Complainant, whereafter, he directed Maler Singh and R.K. Sood to get out of the room;

Fourthly, we also bear in mind that the offending weapon was a semi-loader/semi-automatic pistol which was specifically pulled out of the cover and aimed at the Complainant. Mr. B. Badaniya (PW-13) in his cross-examination has categorically stated that a semi-automatic pistol must be brought into firing mode by pulling back the frame of the weapon manually for the first time, to enable a bullet to be fired. Further, both the Complainant and R.K. Sood (PW-4) have unequivocally asserted that the bullet was fired by the Appellant. Fifthly, the version of the Complainant, that had he not interfered and caught hold of the hand of the Appellant, the gun, which was aimed onto his face would have unloaded the bullet, resulting in unfortunate consequences carries weight; and Sixthly and finally, the alternate version set up by the Appellant looks to be incredulous that he took his loaded pistol out of the cover, placed it on the table of the Complainant, and let him toy around with Page | 14 it as the Complainant pleased. There is also nothing on record to support that the Appellant made any attempt at all to bring his version to the notice of his Superiors, as claimed by him in his statement under Section 313 Cr.P.C.

27. Consequently, and for the reasons afore-stated, we find that the Trial Court and the High Court have unerringly convicted the Appellant for the charge under Section 307 IPC. B. Whether the Conviction of the Appellant under Section 27 of the Arms Act is sustainable?

28. Adverting to the conviction of the Appellant under Section 27 of the Arms Act, it appears to us that the Trial Court has erred in arriving at his culpability. There is no gainsay that in order to prove a charge under Section 27 of the Arms Act, the prosecution must necessarily demonstrate contravention of either Section 5 or Section 7 of the Act. In the instant case, although not explicitly stated, it appears that the Trial Court has held it to be a case of breach of Section 5 of the Arms Act, which stipulates that no person shall use, possess, manufacture, etc. any firearms, unless such person holds a license in this behalf, and prescribes a minimum punishment of 3 years of imprisonment. The relevant extracts of unamended Sections 5 and 27 of the Arms Act which were in force at the relevant time, read Page | 15 as follows:

> "5. Licence for manufacture, sale, etc., of arms and ammunition.-[(1)] No person shall—
>
> (a) use, manufacture, sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearm or any other arms of such class or description as may be prescribed or any ammunition, unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

[(2)] xxxx

27. Punishment for using arms, etc.—(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine. (3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death."

29. True it is that prior to the amendment of Section 27 of the Arms Act, vide Arms (Amendment) Act 1988, the said provision penalized the use of any arms and ammunitions for any 'unlawful purpose'. However, post its amendment, Section 27 of the Arms Act is strictly Page | 16 confined to violation of conditions mentioned either under Section 5 or 7 of the Arms Act and the 'unlawful purpose' of using arms and ammunitions is no longer an inseparable component of the delinquency.

30. The Appellant was admittedly a police official at the time of the incidence and the arms and ammunitions used for the commission of the offence, were placed in his possession under the sanction accorded by the Competent Authority. The Appellant being in authorised possession of the weapon, cannot be said to have used an unlicensed weapon, as prohibited under Section 5 of the Arms Act. It appears that the Trial Court was swayed by irrelevant considerations such as illegal use of the weapon, and lost track of the objective of the Statute, which has been enacted to provide a licensing/regulatory regime, to enable law-abiding citizens to carry arms, and also to prohibit the possession, acquisition, manufacture, etc. of certain categories of firearms, unless authorized by the Central Government. In other words, illegal use of a licensed or sanctioned weapon per se does not constitute an offence under Section 27, without proving the misdemeanour under Section 5 or 7 of the Arms Act. At best, it could be a 'misconduct' under the service rules, the determination of which was not the subject of the trial.

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31. In light of the afore-stated discussion, we find that the order of the Trial Court in convicting the Appellant or of the High Court in maintaining such conviction under Section 27 of the Arms Act, is unwarranted and unjust. Accordingly, the Appellant is acquitted of the charge under Section 27 of the Arms Act.

Quantum of Sentence under Section 307 IPC

32. The equality of ratio between two sets of variables is now well known as the doctrine of proportionality. The bedrock of sentencing policy in our criminal justice system is also based on the axiom of proportionality. This principle of commensurate sentencing treats offenders as agents capable of evaluating their own illegal conduct and the social censure associated with it, which is communicated to them by imposing a proportionate sentence. 7 The exercise for assessing 'proportionality' is thus dependent upon the gravity of the offence which is determined according to □(a) mischief caused or risk involved in the offense; (b) the overall conduct of the offender and; (c) motives ascribed to the felon. Further, the equality of treatment so as to eliminate discriminatory practices in the award of sentencing, is integral to the canons of proportionality. Needless to say, the guarantee of even□handedness before the law(s), as enshrined in Andrew Ashworth, Sentencing and Criminal Justice (5th edition, Cambridge University Press 2010) Page | 18 Article 14 of our Constitution, encompasses the administration of criminal justice system as well.

33. Having said that, we cannot be incognizant of the fact that there are practical difficulties in achieving absolute consistency in regards to sentencing. It must be candidly acknowledged that there is an element of discretion present while adjudicating the issue of sentence, however, the same cannot be exercised in an unprincipled manner. This Court has explicitly ruled out the practice of awarding disproportionate sentences, especially those that showcase undue leniency, for it would undermine the public confidence in efficacy of law.

34. The sentencing policy, therefore, keeps pace with changing time. Undoubtedly, the primary emphasis while deciding the quantum of sentence should lie on the gravity or penal value of the offense. However, other guiding elements of rehabilitative justice model, including, appreciation of grounds for mitigation of sentence also deserve to be duly considered within the permissible limits of judicial discretion. The awarding of just and proportionate sentence remains the solemn duty of the Courts and they should not be swayed by non□relevant factors while deciding the quantum of sentence. Naturally, what factors should be considered as 'relevant' or 'non□relevant' will Page | 19 depend on the facts and circumstances of each case, and no straight jacket formula can be laid down for the same.

35. Adverting to the facts of the case, in hand, we are of the considered view that at this stage, the sentence awarded to the appellant is no longer in degree to the crime which he has committed. Remitting the Appellant to the rigors of imprisonment at this juncture of his life would not serve the ends of justice due to following mitigating factors:

> a. No motive or element of planning has been proved by the Prosecution in the present case which indicates the possibility that the offense could have been committed on impulse by the Appellant. Hence, the culpability of the offender in such situations is less than that which is ascribed in premeditated offenses as the commission of planned illegal acts denotes an attack on societal values with greater commitment and continuity in comparison to spontaneous illegal acts.

b. Even though the factum of injury may not have a direct bearing on a conviction under Section 307 IPC, the same may be considered by a Court at the time of sentencing. No doubt, the offence committed by the Appellant squarely falls within the four corners of Section 307 IPC, but fortunately neither the complainant nor any other Page | 20 person was hurt by the untoward act of the Appellant.

c. Appellant has already undergone a sentence of 3 months and 19 days. Additionally, despite the occurrence taking place in 1999, there is no indication that Appellant has been involved in any untoward activity before or after the incident. This highlights the Appellant's good character and indicates that the incident can be interpreted as an isolated lapse of judgment. Further, the Appellant's clean post□incident behaviour suggests that he is rational individual who is capable of responding to the social censure associated with the offence. Hence, the passage of a long time period coupled with a clean record, both before and after the incident is definitely a factor that calls for mitigation of sentence. d. Barring this particular incident wherein he was under the influence of alcohol, the Appellant had an unblemished service record with sixteen good citations in his favour. This indicates that he was a valuable member of society than the present criminal incident might lead one to assume. This is not to say that courts should draw up a social balance sheet when sentencing, but only to take these positive social contributions as a factor for mitigation of sentence. e. Lastly, it is to be noted that the Appellant was suspended in the year 1999 and has also been subsequently dismissed from service Page | 21 in the year 2007. Hence, this should also be considered as a reasonable factor for mitigation because the dismissal and the consequent loss of social security benefits such as pension, also construes as a form of social sanction.

CONCLUSION:

36. Consequently and for the afore□stated reasons, the criminal appeal is partly allowed. While the conviction and sentence awarded to the Appellant under Section 27 of the Arms Act is set aside, his conviction under Section 307 IPC is maintained. The sentence under Section 307 IPC is however reduced to the period already undergone. Since, Appellant is on bail, his bail bonds are discharged.

..... CJI.

(N.V. RAMANA) ..... J.

(SURYA KANT) ..... J.

(A.S. BOPANNA) NEW DELHI DATED: 26.11.2021 Page | 22