

GAGAN KUMAR

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v.

THE STATE OF PUNJAB

(Criminal Appeal No. 266 of 2019)

FEBRUARY 14, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Code of Criminal Procedure, 1973: s.31 – Sentences in cases of conviction of several offences at one trial – Compliance of s. 31, by the Magistrate – Held: Magistrate should specify in the order by taking recourse to s. 31 as to whether the punishment of sentence of imprisonment so awarded for each offence would run concurrently or consecutively – On facts, Magistrate while passing the order of sentence erred in not mentioning as to whether the two punishments awarded to convict u/s. 279 and 304-A IPC would run concurrently or consecutively – In view of the facts and circumstances of the case, both the sentences awarded by Magistrate to run ‘concurrently’.

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Partly allowing the appeal, the Court

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HELD: 1.1 It was necessary for the Magistrate to have ensured compliance of Section 31 of the Code of Criminal Procedure, 1973 when she convicted and sentenced the appellant for two offences in a trial and inflicted two punishments for each offence, namely, Section 279 and Section 304-A IPC. In such a situation, it was necessary for the Magistrate to have specified in the order by taking recourse to Section 31 of the Code as to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively. Indeed, it being a legal requirement contemplated under Section 31 of the Code, the Magistrate erred in not ensuring its compliance while inflicting the two punishments to the appellant. [Paras 16-18] [370-F-H; 371-A]

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1.2 If the Magistrate failed in her duty, the Additional Sessions Judge and the High Court should have noticed this error committed by the Magistrate and accordingly should have

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- A corrected it. It was, however, not done and hence interference is called for to that extent. [Para 19] [371-B]

- 1.3 The appellant was convicted and accordingly punished with a sentence to undergo two years rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount
- B to further undergo one month simple imprisonment under Section 304-A and 6 months rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo 15 days simple imprisonment under Section 279 IPC. Having regard to the facts and circumstances of the case and keeping in view the nature of controversy involved in the case, both the sentences awarded by the Magistrate to the appellant would run “concurrently”. [Paras 20, 21] [371-C-D]

- 1.4 So far as the merits of the case is concerned, when three Courts have, on appreciation of evidence, found that the prosecution was able to make out a case against the appellant, there is no good ground to interfere in such finding. The finding of conviction and sentence under both the Sections, awarded by the Magistrate is upheld. [Paras 22, 23] [371-E, F]

- CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 266 of 2019.
- E From the Judgment and Order dated 26.11.2018 of the High Court of Punjab and Haryana at Chandigarh in CRR No. 42 of 2018 (O&M).
- Devesh Kumar Tripathi, Adv. for the Appellant.
- Ms. Jaspreet Gogia, Ms. Mandakini Singh, Advs. for the
- F Respondent.

- The Judgment of the Court was delivered by
- ABHAY MANOHAR SAPRE, J.** 1. Leave granted.
2. This appeal is directed against the final judgment and order
- G dated 26.11.2018 passed by the High Court of Punjab & Haryana at Chandigarh in CRR No.42 of 2018 whereby the Single Judge of the High Court dismissed the revision petition filed by the appellant herein and affirmed the judgment and order of the Courts below.

3. The appeal involves a short controversy as would be clear A from the facts set out hereinbelow.

4. The appellant was prosecuted and eventually convicted for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) in CHI 88530 of 2013 by the Judicial Magistrate 1st Class, Jalandhar by order dated 12.05.2017. B On the quantum of sentence, the Judicial Magistrate passed the following order:

Under Section 279 of IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- and in default of payment of fine to undergo simple imprisonment for fifteen days.
Under Section 304-A of IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- and in default of payment of fine to undergo simple imprisonment for one month.

5. Felt aggrieved by the said order, the appellant(accused) filed CRA/324/2017 before the Additional Sessions Judge, Jalander. By order dated 08.12.2017, the Additional Sessions Judge dismissed the appeal and affirmed the order passed by the Judicial Magistrate. E

6. The appellant (accused) felt aggrieved by the aforementioned order and filed revision in the High Court of Punjab & Haryana at Chandigarh. The High Court, by impugned order, dismissed the revision and upheld the conviction and sentence awarded by the Courts below. F

7. The appellant(accused) felt aggrieved and filed the present appeal by way of special leave in this Court.

8. So, the short question, which arises for consideration in this appeal, is whether the Courts below were justified in convicting the appellant. G

9. Heard learned counsel for the parties.

- A 10. Learned counsel for the appellant (accused) while assailing the legality and correctness of the impugned order argued only one point.
11. The only submission made by the learned counsel for the appellant was that the Judicial Magistrate while passing the order of sentence erred in not mentioning therein as to whether the two punishments awarded to the appellant under Section 279 and Section 304-A IPC would run concurrently or consecutively.
- B 12. Learned counsel pointed out that under Section 31 of Code of Criminal Procedure, 1973(hereinafter referred to as "Code"), it is mandatory for the Magistrate to specify as to whether the sentences awarded to the accused would run concurrently or consecutively when the accused is convicted for more than one offence in a trial.
- C 13. Learned counsel urged that since in this case the appellant was awarded two years rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount, to further undergo simple imprisonment for one month under Section 304-A IPC and six months rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount, to further undergo simple imprisonment for 15 days under Section 279 IPC, these two punishments should have been directed to run concurrently as provided under Section 31(1) of the Code.
- D 14. Learned counsel for the State, however, could not find fault in the legal position, which governs the issue, and, in our view, rightly.
- E 15. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and modify the order of the Magistrate dated 12.05.2017, as indicated under.
- F 16. In our considered opinion, it was necessary for the Magistrate to have ensured compliance of Section 31 of the Code when she convicted and sentenced the appellant for two offences in a trial and inflicted two punishments for each offence, namely, Section 279 and Section 304-A IPC.
- G 17. In such a situation, it was necessary for the Magistrate to have specified in the order by taking recourse to Section 31 of the Code as to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively.
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18. Indeed, it being a legal requirement contemplated under Section 31 of the Code, the Magistrate erred in not ensuring its compliance while inflicting the two punishments to the appellant. A

19. If the Magistrate failed in her duty, the Additional Sessions Judge and the High Court should have noticed this error committed by the Magistrate and accordingly should have corrected it. It was, however, B not done and hence interference is called for to that extent.

20. As mentioned above, the appellant was convicted and accordingly punished with a sentence to undergo two years rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo one month simple imprisonment under Section 304-A and 6 months rigorous imprisonment with a fine amount of Rs.1000/- and in default of payment of fine amount to further undergo 15 days simple imprisonment under Section 279 IPC. C

21. In our view, having regard to the facts and circumstances of the case and keeping in view the nature of controversy involved in the case, both the aforementioned sentences awarded by the Magistrate to the appellant would run “concurrently”. D

22. So far as the merits of the case is concerned, when three Courts have, on appreciation of evidence, found that the prosecution was able to make out a case against the appellant, we find no good ground to interfere in such finding. E

23. Even otherwise, the learned counsel for the appellant though made attempt to question the finding on merits but not with that seriousness and, in our view, rightly. We, therefore, confirm the finding of conviction and sentence under both the Sections, which is awarded by the Magistrate. F

24. The appeal thus succeeds and is allowed in part. The impugned order is modified only to the extent mentioned in para 21 above.