

State Of Punjab vs Navjot Singh Sidhu And Anr. on 6 December, 2006

Author: Mehtab S. Gill

Bench: Mehtab S. Gill, Baldev Singh

JUDGMENT

1. We will be deciding Criminal Appeal No. 645-DBA of 2000 and Criminal Miscellaneous No.
2. The case of the prosecution is unfolded by the statement of Jaswinder Singh son of Pr
3. Learned counsel for the complainant Shri R.S. Ghai, Senior Advocate and the learned S
4. The learned trial Court has overlooked this fact that no suggestion or allegation has
5. A lot of emphasis has been laid by the learned trial Court that the rickshaw puller w
6. The learned trial Court has wrongly dwelt on the point that both Tejinder Singh and G
7. The learned trial Court has taken a perverse view of the medical evidence and the ocu
8. Learned counsel for the complainant has vehemently argued that all along accused/appe
9. Shri Uday U. Lalit, Senior Advocate has assailed the case of the prosecution on sever
10. Learned counsel has argued that the learned trial Judge was conscious of all the pos
11. Learned counsel has further argued that the eye-witnesses Jaswinder Singh PW-3 and A
12. The learned Counsel has lastly argued assailed the case of the prosecution on the gr
13. The only possible and plausible view especially taking the medical evidence into con
14. We have heard the learned Counsel for the parties and perused the record with their

15. We are conscious of the fact that the Hon'ble Supreme Court in a number of judgments While deciding an appeal against acquittal, the power of the Appellate Court is no less
16. After taking these authorities into consideration, we find that judgment of the learned
17. The power of the Court to interfere in an appeal against acquittal has been given in
18. The first and foremost lacuna in the judgment of the learned trial Court is that it
- (1) An abrasion 0.75 cm x 0.5 cm over the left temporal region at the junction of upper
- (2) 0.5 cm x 0.5 cm an abrasion over the front of left knee.
19. The lungs, heart and part of the liver, spleen and kidneys were sent for pathological
1. The patient complained of pain over the left side of the forehead and slight giddiness
- (2) Patient complained of pain over the right and left flanks. He was advised to be kept
20. The medico-legal report of Jaswinder Singh PW-3 was prepared which is Ex.PM. This witness
21. Dr. Krishan Vij PW-1, Professor and Head of the Department of Forensic Medicines, Government Death in this case is attributed to the effects of head injury and cardiac condition. He
22. To a question put to Dr. Krishan Vij PW-1 by the Court, as to whether it is correct
23. It is clear from the statements of both Dr. Krishan Vij PW-1 and Dr. Jatinder Kumar
24. Taking the medical evidence into consideration and the evidence of both the eye-witnesses
25. Learned counsel for the accused has vehemently argued that it was the cardiac condition
26. The ocular account as spelt out by both the eye-witnesses i.e. Jaswinder Singh PW-3
27. Going through the evidence of both these witnesses, no suggestion or allegation has

28. Learned counsel has laid much stress that the rickshaw puller who had taken the dece
29. The learned Counsel for the accused has laid much stress that the two eye-witnesses
30. In his statement under Section 313 Cr.P.C., respondent Navjot Singh Sidhu in answer
I am innocent. I have been falsely involved in this case by the complainant party. On 2
31. It is conceded by Navjot Singh Sidhu in his statement under Section 313 Cr.P.C. that
32. We cannot overlook this fact that Navjot Singh Sidhu has conceded that he came to th
33. Learned counsel for the respondents has relied upon a number of judgments of the Hon
34. In Sethu Madhavan Nair and Ors. v. The State of Kerala the Hon'ble Supreme Court ha
In an appeal under Section 417 of the Code of Criminal Procedure against an order of ac
35. As discussed above in our judgment these principles have been taken into considerati
36. Taking into consideration all the circumstances of the case in totality and all the

ORDER

Mehtab S. Gill, J.

37. Shri Uday U. Lalit, counsel for accused Navjot Singh Sidhu and Shri T.S. Sangha, counsel for accused Rupinder Singh Sandhu have argued that the mitigating circumstances as spelt out by this Court's judgment convicting the accused be taken into consideration. The incident occurred without premeditation, without intention and all that happened as per this Court's order, was at the spur of the moment. Both Navjot Singh Sidhu and Rupinder Singh Sandhu have faced trial for the last 18 years and the sword of conviction has been hanging on their head. There was no previous animosity and the quarrel erupted suddenly. Both the accused were young at the time of occurrence and their age was about 25 years at that time. The character of both the accused is unblemished and nothing has come on record apart from the present occurrence. They have not committed any offence till date.

38. As per Section 304 Part-II I.P.C., the sentence which can be awarded to the accused is

imprisonment for either description for a term which may extend to 10 years, or with fine or with both. Similarly, under Section 323 and Section 324 I.P.C., the accused can be set off by imposing only a fine. It is under Sections 325/326/307/302 I.P.C. that sentence and also fine can be imposed. It is clear from Section 304 Part-II I.P.C. that accused can be let off by imposing a fine only, which the Court feels adequate.

39. Learned counsels have relied upon a number of judgments of the Hon'ble Supreme Court. In Bhojappa Hanamanthappa Choudannavar and Ors. v. State of Karnataka (2004) 10 S.C.C.177, wherein the conviction was under Section 304 Part-II I.P.C., the appellant was let off by imposing a fine of Rs. 25,000/-.

40. Similarly, in Khanjanpal v. State of U.P. (1990) 4 S.C.C. 53, the appellant was convicted under Section 304 Part-II I.P.C. and let off after a fine of Rs. 50,000/- was imposed upon him.

41. In Yogendra Morarji v. State of Gujarat , conviction was under Section 304 Part-II I.P.C. the appellant was set free after a fine of Rs. 10,000/- was imposed upon him.

42. Learned counsels have further argued that it is not only that this Court has the power to set the accused free by imposition of fine only, but can also invoke Section 4 of the Probation of Offenders Act, 1958.

43. They have relied upon judgments of the Hon'ble Supreme Court in State of Karnataka v. Mudappa and Mohammad alias Biliya v. State of Rajasthan .

44. Finally, the learned Counsels have argued that if the plea of imposition of fine and the plea that the accused be set free under the Probation of Offenders Act, 1958 is not accepted, and if the accused are sentenced for less than 3 years, then their sentences be suspended under Section 389(3) of the Criminal Procedure Code, enabling them to file an appeal under Article 134 of the Constitution of India in the Hon'ble Supreme Court of India. Learned counsel for the complainant Shri R.S. Ghai, Senior Advocate and the learned Counsel for the State Shri S.S. Randhawa, Senior D.A.G. Punjab have argued that there is no mitigating circumstance in this case. Deceased Gurnam Singh was pulled out of his car and a fist blow was given on his left temporal region by accused Navjot Singh Sidhu, who at that time was a young and physically fit man of 25 years of age. Deceased Gurnam Singh was an old man of 65 years. Though this Court has held that there was no intention, but both the accused had the knowledge that hitting an old man of 65 years on the head can result in his death. If the keys of the car of Gurnam Singh had not been taken away, probably the life of Gurnam Singh could have been saved.

45. Learned counsels have relied upon the judgments of the Hon'ble Supreme Court in Mayuram Subramanian Srinivasan v. C.B.I. (2006) 3 S.C.C. (Cri.) 83, State of U.P. v. Kishan 2005 Criminal Law Journal 333, State of Punjab v. Joginder Singh and Anr. 2004(1) R.C.R. (Criminal) 42 and State of Karnataka v. Puttaraja 2004 A.I.R. (S.C.) 433.

46. We have heard the learned Counsel for the parties and perused all the judgments cited.

47. The authorities cited by the learned Counsel for the accused on setting them free by imposing a fine or under the Probation of Offenders Act, 1958 do not apply to the case in hand.

48. In *Khanjan Pal v. State of U.P.* (supra), the appellant had undergone one year of sentence and the Hon'ble Supreme Court converted the sentence to already undergone and further, directed the appellant to pay a fine of Rs. 50,000/- to be paid to the father of deceased. In the case in hand, both the accused i.e. Navjot Singh Sidhu and Rupinder Singh Sandhu have not undergone even a single day of sentence as before the learned trial Court, they obtained anticipatory bail and after that, they were acquitted by the learned trial Court. In *Bhojappa Hanamanthappa Choudannavar and Ors. v. State of Karnataka* (supra), the girl who lost her life was an intervener who rushed to the scene to rescue her father. In the case in hand, it is not that the accused were the interveners, but as per the conviction order, they pulled out deceased Gurnam Singh from his car and then accused Navjot Singh Sidhu gave a blow on the left temporal region of the deceased.

49. In *Yogendra Morarji v. State of Gujarat* (supra), accused were convicted under Section 304 Part-II I.P.C. Appellants were released on paying a fine of Rs. 10,000/-. This citation also would not apply to the case in hand, as the plea of right of private defence of body was taken which was upheld by the Hon'ble Supreme Court. Learned counsels have relied upon a judgment of the Hon'ble Supreme Court in *Mohammad alias Biliya State of Rajasthan* (2000) 10 S.C.C. 486, where probation was granted to the appellant after he had been convicted under Section 304 Part-II I.P.C. In this case, probation had been granted because the appellant was less than 21 years of age at the time of occurrence.

50. Similarly, in *State of Karnataka v. Mudappa* (supra), appellant was convicted under Section 304 Part-II I.P.C., but was released on probation where the Hon'ble Supreme Court had observed that in the impugned judgment, the High Court had considered the relevant material and then granted probation under Section 4 of the Probation of Offenders Act, 1958. In the case cited i.e. *State of Karnataka v. Mudappa* (supra), facts of the case have not been given, so it is difficult for us to apply this judgment to the case in hand. Now coming to the judgments cited by the learned Public Prosecutor and Shri R.S. Ghai, learned Counsel for the complainant.

51. In *Deo Narain Mandal v. State of U.P.* , the Hon'ble Supreme Court in para-6 of the judgment held as under:

This brings us to the next question in regard to the reduction of sentence made by the High Court. In criminal cases awarding of sentence is not a mere formality. Where the statute has given the Court a choice of sentence with maximum and minimum limit presented then an element of discretion is vested with the Court. This discretion can not be exercised arbitrarily or whimsically. It will have to be exercised taking into consideration the gravity of offence, the manner in which it is committed, the age, the sex of the accused, in other words the sentence to be awarded will have to be considered in the background of the facts of each case and the Court while doing so should bear in mind the principle of proportionality. The sentence awarded should be neither excessively harsh nor ridiculously low.

52. Similarly, in *State of Karnataka v. Puttaraja* (supra), the Hon'ble Supreme Court held in paras 6 and 8 of the judgment as under:

6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in *Sevaka Perumal etc. v. State of Tamil Nadu* .

...

8. Probation between crime and punishment is a goal respected in principle, and inspite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times on account of misplaced sympathies to the perpetrator of crime leaving the victim or his family into oblivion. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greater severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the gravity of the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

53. In *State of U.P. V. Kishan* (supra), the Hon'ble Supreme Court in para-6 of the judgment has held as under:

6. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle MCG Dautha v. State of Callifornia* 402 US 183 : 28 ld. 2D 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

54. After taking all the relevant factors and the judgments cited into consideration, we are of the considered opinion that both the accused Navjot Singh Sidhu and Rupinder Singh Sandhu be sentenced to undergo RI for 3 years. Accused Navjot Singh Sidhu is directed to pay a fine of Rs. 1 lac to be paid to the widow of the deceased. Accused Rupinder Singh Sandhu is also directed to pay a

fine of Rs. 1 lac out of which Rs. 90,000/- shall go to the widow of the deceased and Rs. 10,000/- shall be paid to injured Jaswinder Singh. In default of payment of fine, both the accused shall further undergo RI for 6 months. Accused Rupinder Singh Sandhu is also sentenced to undergo RI for 3 months under Section 323 I.P.C. Both the sentences of Rupinder Singh Sandhu shall run concurrently.

55. Learned counsel for both the accused have stated that they intend to file an appeal in the Hon'ble Supreme Court of India. Taking the language and spirit of Section 389(3) of the Cr.P.C. into consideration, we suspend the sentence of both Navjot Singh Sidhu and Rupinder Singh Sandhu till 31.1.2007. They are directed to furnish bail bonds of Rs. 10,000/- each with a surety of the like amount to the satisfaction of C.J.M., Chandigarh on or before 8.12.2006, who after accepting the bonds would transmit them to this Court.