SUBHASH CHANDER BANSAL

v.

GIAN CHAND AND ORS

(Criminal Appeal No. 1676 of 2009)

JANUARY 25, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860 – s.325/34 – Prosecution case was that respondents-accused caused injuries to two persons with hockey – Trial court acquitted all the five accused persons – High Court allowed the State's appeal in part and convicted the four accused persons under s.325 r/w s.34, imposing the sentence that was already undergone by them and fine of Rs.50,000 to be paid equally by the four convicted accused persons – Acquittal of one accused was upheld by giving him benefit of doubt – Held: The finding of the High Court regarding conviction of respondents under s.325 was based on proper appreciation of entire prosecution evidence – As regards the sentence, High Court was of the opinion that the respondents have already undergone some reasonable length of jail sentence as under-trials and the same was sufficient, more so since in addition, a fine of Rs.50,000/- was also awarded – No reason to take a different view from that of the High Court – The injured were duly compensated with the fine of Rs.50,000/- – Interference with impugned order not called for.

Dismissing the appeal, the Court

HELD: 1. In the first place, the High Court convicted four accused persons under Section 325 read with section 34 IPC and not under Section 307 IPC. This finding of the High Court is based on proper appreciation of entire prosecution evidence and there is no find any reason to disturb it for convicting the respondents under Section 325 IPC instead of Section 307 IPC. [Paras 10, 11][270-C, D]

2. So far as the awarding of sentence for an offence punishable under Section 325 read with Section 34 IPC is concerned, the High Court was of the opinion that the respondents

have already undergone some reasonable length of jail sentence as under-trials and the same appears to be sufficient. The incident in question occurred as far back as in 1988. 30 years have elapsed. Secondly, in the meantime, one injured also expired. Thirdly, the injured were duly compensated with the amount of fine of Rs.50,000/-. The quantum of fine awarded in 1988 or so appears to be just and reasonable. Moreover, it is the sole discretion of the Trial Court and, in this case, the High Court to decide the quantum of fine amount. There is no reason to take a different view from that of the High Court, which does not call for any interference in this appeal. [Paras 12-15][270-E-H; 271-A]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1676 of 2009.

From the impugned Judgment and final Order dated 04.05.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Crl. Revision No.174 of 1999.

Ms. Shalu Sharma, Adv. for the Appellant.

Benant Noor Singh Marok, Satish Goel, Mushtaq Ahmad, Dr. Kailash Chand, Kuldip Singh, Ms. Jaspreet Gogia, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the Complainant against the final judgment and order dated 04.05.2007 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Revision No. 174 of 1999 by which the High Court dismissed the criminal revision filed by the appellant herein.

2. In order to dispose of the appeal, few relevant facts need mention hereinbelow.

3. Respondent Nos. 1 to 5 (five accused persons) were prosecuted under Sections 307/325/148/149 of the Indian Penal Code,1908 (hereinafter referred to as 'IPC') for causing injuries to two persons namely, Om Prakash and Ravinder Kumar, with Hockey at around 7.15 p.m. on 29.07.1988. The prosecution was initiated against the respondents on the basis of FIR No. 128 dated 03.08.1988 lodged by the appellant herein, who is the son of Om Prakash (since dead).

4. The Trial Court, by order dated 14.11.1998 acquitted all the five accused persons (respondent Nos. 1 to 5 herein). A

5. The State, being aggrieved by the order of acquitting the respondents, filed criminal appeal being Criminal Appeal No.494-DB of 1999 before the High Court of Punjab & Haryana whereas the complainant filed a Criminal Revision No. 174 of 1999 against the order of the acquittal. B

6. The High Court, by the impugned judgment, allowed the State's appeal in part and convicted the four accused persons namely, Gian Chand, Krishan Kumar, Lachhman Dass and Bhagwan Dass (respondent Nos. 1, 2, 3 and 5) under Section 325 read with Section 34 IPC and upheld the acquittal of one accused person, namely, Suresh Kumar - respondent No. 4 by giving him benefit of doubt. The operative part of judgment of the High Court reads as under: C

> **"In the above circumstances, acquittal of the respondents cannot be justified. However, having regard to the submission made on behalf of Suresh Kumar, we consider it safe to give him benefit of doubt and acquit him but we do not find any valid ground to uphold acquittal of other accused.** D
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> **Accordingly we convict accused Gian Chand, Krishan Kumar, Lachhman Dass and Bhagwan Dass under sections 325/34 IPC but having regard to long lapse of time since the date of occurrence, we award sentence for the period of imprisonment already undergone by them, apart from awarding compensation of Rs.50,000/- to be shared equally by PW3 Subhash Chander and PW4 Virender Kumar. It has been noticed that Om Parkash, injured has already died. The four convicted accused will pay Rs.12,500/- each. ……."** E F

7. The complainant, being aggrieved by the judgment of the High Court, has filed this appeal by way of special leave in this Court. The State has not filed any appeal. G

8. Therefore, the short question that arises for consideration in this appeal is whether the High Court having convicted the four accused persons under Section 325 read with Section 34 IPC was justified in H

A imposing the sentence that was already undergone by them and by imposing a fine of Rs.50,000/- to be paid equally by the four convicted accused persons.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal. In our opinion, B the High Court was right and hence the impugned judgment does not call for any interference.

10. In the first place, the High Court convicted four accused persons under Section 325 read with section 34 IPC and not under Section 307 IPC. In other words, in the opinion of the High Court, no case was made C out under Section 307 IPC, but it was essentially a case of a "grievous hurt" falling under Section 325 IPC.

11. This finding of the High Court, in our opinion, is based on proper appreciation of entire prosecution evidence and we do not find any reason to disturb it for convicting the respondents under Section 325 D IPC instead of Section 307 IPC.

12. So far as the awarding of sentence for an offence punishable under Section 325 read with Section 34 IPC is concerned, the High Court was of the opinion that the respondents have already undergone some reasonable length of jail sentence as under-trials and the same, in E our opinion, appears to be sufficient. It is more so because, in addition, a fine of Rs.50,000/- was also awarded. This would meet the ends of justice.

13. Having examined this issue, we find no reason to interfere on this issue too for the following reasons.

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14. Firstly, the incident in question occurred as far back as in 1988, whereas we are now in 2018. In between this period, 30 years have elapsed. Secondly, in the meantime, one injured also expired. Thirdly, the injured were duly compensated with the amount of fine of Rs.50,000/-. The quantum of fine awarded in 1988 or so appears to be just and G reasonable. Moreover, it is the sole discretion of the Trial Court and, in this case, the High Court to decide the quantum of fine amount.

15. Taking into account all these facts, which have emerged from the facts of the case, we find no reason to take a different view from

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that of the High Court, which does not call for any interference in this appeal. A

16. The appeal thus fails and is accordingly dismissed.

Devika Gujral Appeal dismissed.