REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1145 OF 2016
(ARISING OUT OF S.L.P (CRIMINAL) NO.4877 OF 2012)

GURPAL SINGH ....APPELLANT

VERSUS

STATE OF PUNJAB ....RESPONDENT

J U D G M E N T

AMITAVA ROY, J.

The subject matter of scrutiny is the judgment and order dated 01.10.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 378-DB of 2004 concurring with the verdict of the Trial Court in convicting the appellant for the offence under Sections 302 and 307 IPC while acquitting the co-accused Harpartap Singh, his son. Following his conviction, the appellant had been awarded sentence of life imprisonment and fine of Rs.5,000/- with default sentence under Section 302 IPC and five years rigorous imprisonment and fine of

Rs.2,000/- with default sentence under Section 307 IPC. Both the sentences have been ordered to run concurrently. The High Court has concurred with the sentence as well.

2. We have heard Mr. Yatindra Singh, Senior Advocate, learned Amicus Curiae for the appellant and Mr. Saurabh Ajay Gupta, learned counsel for the respondent.

3. The incident witnessing the death of Jatinder Singh and the injuries sustained by Lakhwinder has the genesis in a trifle. On a statement rendered with regard thereto by Gurdial Singh(PW1), the First Information Report was registered against the appellant and his son Harpartap. It was alleged that over a lingering land dispute between the informant and the appellant, who are brothers, on 06.07.2002, while Jugraj, the son of the informant was in his fields, the appellant had hurled abuses to him. Jugraj having felt humiliated and anguished, on returning home, complained about the same to his father Gurdial, the informant. The houses of the brothers were adjacent to each other. When the appellant returned home from his fields, the informant went to the terrace of the roof of his house and summoned the former to that of his. The appellant and his son Harpartap responded to the call

whereafter informant enquired of Gurpal as to why he had abused his son. This enraged the appellant and while arrogantly proclaiming that he was not only justified to do so but that he would continue to conduct himself as done, rushed downstairs of his house and brought his DBBL gun. His son Harpartap, the acquitted co-accused was also with him. It is alleged by the prosecution that on the exhortation of Harpartap, the appellant opened fire, which hit the informant on the side of his head. Meanwhile drawn by the commotion, Paramjit Kaur, the wife of the informant, Jatinder Singh and Lakhwinder Singh, friends of Jugraj rushed to the terrace. On seeing them, the appellant fired from his gun towards them, which hit Paramjit and Jatinder on their abdomen and Lakhwinder on his mouth and head. On hue and cry being raised, the appellant and the accused fled the scene.

4. The injured were rushed to the Guru Nanak Dev Hospital, Amritsar where they were treated. However, Jatinder succumbed to the injuries sustained. After completing the investigation, charge-sheet was laid against both the accused persons under Sections 302 and 307 IPC.

5. The accused persons denied the charge and, therefore were tried. The prosecution examined several witnesses including the informant, the injured and the doctor who had performed the post-mortem examination and had attended the injuries of others involved. The accused persons were examined under Section 313 Cr.P.C. and on the completion of the trial, the Trial Court convicted the appellant under Sections 302, 307 IPC but acquitted the co-accused Harpartap. To reiterate, the High Court has affirmed the conviction and the sentence recorded by the Trial Court.

6. The learned Amicus Curiae has persuasively argued that the prosecution has utterly failed to prove the charge against the appellant which is patently deducible amongst others from the exoneration of the co-accused Harpartap, who allegedly had instigated the former to open fire on the deceased and the injured. Apart from contending that all the purported eye-witnesses are relatives inter se, and therefore inherently partisan and thus are wanting in creditability, the learned senior counsel in the alternative has urged without prejudice that even if the prosecution case, as projected, is accepted in its entirety, no case for murder or attempt therefor has been proved and, therefore in any view of the

matter, the sentence needs to be reduced appropriately.

7. The learned counsel for the respondent, as against this, has urged that in the face of telltale testimony of the injured eye-witnesses, supported on all fours by the medical evidence, the charge levelled against the appellant stands proved beyond reasonable doubt and thus the concurrent determinations of the courts below do not warrant any interference in the appeal.

8. We have examined the evidence pertaining to the incident as available on records. The eye-witnesses including the informant have offered a consistent, coherent and convincing narration thereof which does not admit of any doubt of their trustworthiness. The plea of their family relationship to discredit them does not commend for acceptance in the attendant facts and circumstances. Noticeably, in course of the investigation, amongst others, the 12 bore DBBL gun loaded with two live cartridges used for the offence had been recovered from the appellant. The site plan prepared by the investigating officer also pins the place of occurrence as deposed by the witnesses. Further four cartridge shells have also been recovered from the said spot.

9. The medical evidence reveals injuries on the deceased and the injured compatible with the weapon used. The charges levelled against the appellant thus have been proved beyond doubt. The co-accused Harpartap has been acquitted in view of absence of any incriminating evidence against him. His acquittal, having regard to the state of evidence has no bearing on the inculpatory involvement of the appellant somuch so, that his conviction in isolation is sustainable.

10. However, in the singular facts of the case and noticing in particular, the progression of events culminating in the tragic incident, we are inclined to reduce the sentence awarded to him. Incidentally, the occurrence is of the year 2004 and meanwhile twelve years have elapsed. Further, having regard to the root cause of the incident and the events that sequentially unfolded thereafter, we are of the comprehension that the appellant was overpowered by an uncontrollable fit of anger somuch so that he was deprived of his power of self-control and being drawn in a web of action reflexes, fired at the deceased and the injured, who were within his sight. The facts do not commend to conclude that the appellant had the intention of eliminating any one of those fired at,

though he had the knowledge of the likely fatal consequences thereof. Be that as it may, on an overall consideration of the fact situation and also the time lag in between, we are of the view that the conviction of the appellant ought to be moderated to one under Section 304 Part 1 IPC and 307 IPC. Further, considering the facts of the case in particular, according to us, it would meet the ends of justice, if the sentence for the offences is reduced to the period already undergone. We order accordingly.

11. Ex-consequenti, the appeal is partly allowed. The conviction of the appellant is converted to one under Section 304 Part 1 and 307 IPC and the sentence is reduced to the period already undergone. In this view of the matter, as a corollary, the appellant is hereby ordered to be set at liberty forthwith, if he is not required to be detained in connection with any other case.

.....J.
(DIPAK MISRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
DECEMBER 2, 2016.