

*Before Mehtab S. Gill, J*

SAWINDER SINGH @ PAPOO,—Appellant

*versus*

THE STATE OF PUNJAB,—Respondent

CRIMINAL APPEAL NO. 652/SB OF 1987

27th August, 1999

*Indian Penal Code, 1860—S. 304, Part II—Constitution of India, 1950—Art. 21—Sessions Judge convicting the accused u/s 304-II—Appeal against conviction remained pending in the High Court for about 12 years causing mental agony to the accused—Right to speedy trial—Violation of Art. 21—Appeal accepted, sentence reduced to the one already undergone directing the accused to pay a compensation of Rs. 10,000 to the legal heirs of the deceased.*

*Held that*, the accused did not delay the proceedings and adopt tactics in this regard. The occurrence in this case is alleged to have taken place on 15th April, 1987. He thereafter filed present appeal on 10th December, 1987 challenging his conviction and sentence. The appeal remained pending in this Court for about 12 years for no fault of the appellant. Nothing has been brought on the record to show that during the period the appellant remained on bail, any such incident has taken place which may prompt this court to take a serious view. The appellant must have incurred considerable expenditure on this litigation during the last 12 years. This litigation must also caused mental agony to the appellant and his family members who could only look upon him for their maintenance. Keeping in view all these factors, I feel that condign punishment as awarded by the learned trial Court would not meet the ends of justice. The only recompense to the appellant for the mental agony suffered by him during the last about 12 years, in violation of Article 21 of the Constitution would be to reduce the sentence awarded to him to the one already undergone by him as it would be too harsh to send him to jail after such a long period.

(Para 6)

*Further held*, that due to the relentless act of the appellant, there is a loss of valuable human life for which there is no fault of the legal heirs of deceased. The legal heirs of the deceased are entitled to some compensation. The appellant is, therefore, directed to pay a

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compensation of Rs. 10,000 to the legal heirs of the deceased over and above the fine imposed by the learned trial Court. If the appellant fails to deposit the compensation amount of Rs. 10,000 to be paid to the legal heirs of the deceased within a period of two months from the date of receipt of a copy of this order, the judgment/order of the trial Court shall stand restored and the appeal shall be deemed to have been dismissed. In that eventuality, the appellant shall undergo the remaining period of his sentence.

(Para 10 & 11)

Amrik Singh Kalra, Advocate, with Ramesh Sharma, Advocate,  
*for the appellant.*

H.S. Sran, Deputy Advocate General Punjab, *for respondent.*

### ORDER

*Mehtab S. Gill, J*

(1) This appeal and the connected Criminal Revision No. 346 of 1998 arise out of same judgment of Sessions judge, Amritsar, and common questions of fact and law are involved therein. Therefore, I propose to dispose of both these cases by this common order. However, the facts have been extracted from the present appeal.

(2) The conviction of the appellant having not been seriously challenged, the pivotal question that arises for consideration is whether when there is violation of provisions of Article 21 of the Constitution of India, compassion can be shown to an accused in the matter of sentence.

(3) The appellant was convicted under Section 304, Part II, of the Indian Penal Code and sentenced to under five years rigorous imprisonment and to pay a fine of Rs. 2,000 and in default of payment of fine, to undergo further one year rigorous imprisonment. Feeling aggrieved, the appellant has filed this appeal whereas Suba Singh complainant filed Criminal Revision No. 346 of 1988 for enhancing the sentence awarded to the appellant and for compensating him for the death of Dilbagh Singh at the hands of the appellant.

(4) I agree with the trial Court to the effect there was no reason to distrust the evidence of prosecution witnesses and they have deposed in a straight-forward manner. Their evidence contains a ring of truth. Moreover, the counsel for the appellant has also not seriously challenged the conviction of the appellant. Therefore, the conviction of the appellant is confirmed.

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(5) On the question of sentence, the learned counsel has argued that fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the fundamental right of the accused. Speedy trial is also in public interest. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances and violation thereof warrants leniency in the matter of sentence. He has also cited *Chhota Singh versus State of Punjab* (1) in which it was held as under :—

“That right of speedy justice is a fundamental right. It would bring within its sweep even the period spent in appeal. However, if an accused himself is delaying and adopting tactics in this regard, he will not be entitled to take the advantage of his own wrong to play the tune of speedy trial. Otherwise, if there is an inordinate delay, it would be a mitigating circumstance.”

(6) I have gone through the interim orders passed in this case minutely and find that the accused did not delay the proceedings and adopt tactics in this regard. The occurrence in this case is alleged to have taken place on 15th April, 1987. He was tried, convicted and sentenced on 9th November, 1987. He thereafter filed present appeal on 10th December, 1987 challenging his conviction and sentence. The appeal remained pending in this Court for about 12 years for no fault of the appellant. Nothing has been brought on the record to show that during the period the appellant remained on bail, any such incident has taken place which may prompt this court to take a serious view. The appellant must have incurred considerable expenditure on this litigation during the last 12 years. This litigation must have also caused mental agony to the appellant and his family members who could only look upon him for their maintenance. Keeping in view all these factors, I feel that condign punishment as awarded by the learned trial Court would not meet the ends of justice. The only recompense to the appellant for the mental agony suffered by him during the last about 12 years, in violation of Article 21 of the Constitution would be to reduce the sentence awarded to him to the one already undergone by him as it would be too harsh to send him to jail after such a long period.

(7) In the light of above discussion, I reduce the sentence imposed upon the appellant to the one already undergone by him. However, the sentence of fine is maintained.

(8) We also cannot ignore the fact that on a trivial matter, the appellant had inflicted injury on the person of deceased Dilbagh Singh

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with his small Kirpan which proved fatal. P.W.1 Dr. S.P. Singh while appearing in the witness box has described the injury as under :—

1. An incised stab wound 4 cm. X 1—1/2 cm on the front of the chest just left to the mid line, 8 cm from the left nipple and at 7 O' Clock position and was placed obliquely.

(9) The death, in the opinion of the doctor, was due to shock and haemorrhage as a result of injury to the heart which was sufficient to cause death in the ordinary course of nature. The death was immediate and the injury was ante-mortem in nature.

(10) Due to the relentless act of the appellant there is a loss of valuable human life for which there is no fault of the legal heirs of deceased. In my opinion, the legal heirs of the deceased are entitled to some compensation. The appellant is, therefore, directed to pay a compensation of Rs. 10,000 to the legal heirs of the deceased over and above the fine imposed by the learned trial Court.

(11) This order is conditional. If the appellant fails to deposit the compensation amount of Rs. 10,000 to be paid to the legal heirs of the deceased, within a period of two months from the date of receipt of a copy of this order, the judgment/order of the trial Court shall stand restored and the appeal shall be deemed to have been dismissed. In that eventuality, the appellant shall undergo the remaining period of his sentence.

(12) On the deposit of the compensation amount of Rs. 10,000 the learned trial Court will issue notice to the legal representatives of the deceased and pay them the said sum on proper indentification.

(13) This appeal and the connected Criminal Revision are disposed of in the manner indicated above.

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*J.S.T.*

*Before G.S. Singhvi, H.S. Bedi & Iqbal Singh, JJ*

THE DIRECTOR, AGRICULTURE, PUNJAB &  
OTHERS,—*Appellants*

*versus*

NARINDER PATHAK & OTHERS,—*Respondents*

*L.P.A. NO. 273 of 1997*

13th October, 1999

*Constitution of India, 1950—Arts. 19 & 21—Essential  
Commodities Act, 1955—S. 7—Fertilizers Control Order, 1985—C1.*