

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA -S No. 2089-SB of 2003 (O&M)

Date of decision : 04.03.2015

Rakesh and anotherAppellants

Versus

State of HaryanaRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Vats, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana.

LISA GILL, J.

Learned counsel for the appellants at the outset submits that without addressing on merits, he would pray for reduction of sentence imposed upon the appellants.

In the present case, appellants - Rakesh and Dalbir sons of Rajinder are convicted and sentenced to undergo rigorous imprisonment for 7 years besides pay a fine of ₹ 2000/- for the offence punishable under Section 307 IPC read with Section 34 IPC and further rigorous imprisonment for six months in default thereof; to undergo rigorous imprisonment for 3 years besides pay a fine of ₹ 1000/- for the offence punishable under Section 324 IPC and further rigorous imprisonment for four months in default of payment of fine; to further undergo rigorous imprisonment for one year for the offence punishable under Section 323 IPC. Appellant – Dalbir is additionally convicted and sentenced to undergo rigorous

imprisonment for two years for the offence punishable under Section 25 of Arms Act vide impugned judgment and order dated 29.10.2003.

Rakesh – appellant No. 1 has been convicted for inflicting *farsa* blow on the head of the injured Raj Kishan. Dalbir – appellant No. 2 is attributed with a gun shot injury on the neck of Raj Kishan. As per the prosecution version, the complainant – Rameshwar, father of the injured, had stated that there was an allegation against his other son to the effect that he had abducted Dhauli daughter of Rajinder about 10/11 months ago from the village. On 12.04.2000 at about 5.30/5.45 a.m., the complainant had gone to answer the call of nature. His son Raj Kishan had also gone and when he was getting up to wash his hands, appellants – Rakesh, Dalbir and co-accused Krishan (since deceased) came to the spot. Dalbir exhorted Rakesh to take care of Raj Kishan as he was alone and no better occasion would be available to them. Rakesh armed with dang inflicted injury on Raj Kishan's head. Krishan – accused (non-appellant) also inflicted an injury with dang on the left arm of the complainant. Dalbir – appellant No. 2 armed with a country made pistol fired at Raj Kishan with an intent to kill him and the bullet hit Raj Kishan in the throat. They attacked Raj Kishan as they nursed a grudge in respect to the girl i.e. sister of the accused persons.

Learned trial Court after going through the evidence on record found the appellants guilty of the charges against them. They were convicted and sentenced as above.

Learned counsel for the appellants vehemently argues that the sentence imposed upon the appellants is not commensurate

with the offence. He submits that the appellants are not involved in any other case and they have been facing the agony of trial since the year 2000. They are the only bread earners of the family. Rakesh was only 26 years of age at the time of occurrence and Dalbir was merely 24 years of age. In view of the facts and circumstances of the case, sentence imposed upon them should be reduced.

Learned counsel for the State opposes the reduction of sentence as prayed for.

I have heard learned counsel for the parties.

It is a matter of record that the appellants alongwith the co-accused Krishan (since deceased) had come with a common intention, armed with weapons and inflicted serious injuries upon Raj Kishan.

Contention of learned counsel for the appellants that a strong case is made out for reduction of sentence imposed on Rakesh on the ground that the injury attributed to him is simple in nature, is not tenable, keeping in view the facts and circumstances of the case. The appellants have inflicted serious injuries on Raj Kishan with a clear intention to kill him. Rakesh hit Raj Kishan on his head and Dalbir fired on him. The bullet hit him on the throat. He was fortunate to have escaped death, but the appellants' intention has been duly proved on record. The learned trial Court while imposing the sentence has observed that a lenient view is being taken.

It has been held by the Hon'ble Supreme Court in **Sumer**

Singh v. Surajbhan and others, 2014(7) SCC 323 that Court

should not be moved by misplaced sympathetic considerations which may be unwarranted in the facts and circumstances of the case. The sentence should reflect the conscience of the society. It has specifically been held in Sumer Singh's case (supra) that:

“It is seemly to state here that though the question of sentence is a matter of discretion, yet the said discretion cannot be used by a court of law in a fanciful and whimsical manner. Very strong reasons on consideration of the relevant factors have to form the fulcrum for lenient use of the said discretion.”

Learned counsel is unable to point out any mitigating or extenuating circumstance which would justify the reduction of 7 years of sentence imposed upon the appellants. Infact learned trial Court has already taken a sympathetic and lenient view. Chief Judicial Magistrate, Sonapat is directed to take necessary steps for taking the appellants in custody to serve rest of the sentence.

Consequently, this appeal is dismissed.

March 04, 2015
rts

(LISA GILL)
JUDGE