

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal S-1257-SB of 2004
Date of Decision : October 07, 2015

Chand

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Amaninder Preet, Advocate
as amicus curiae for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S. MANN, J. (Oral)

The appellant has filed the present appeal against the judgment and order dated 17/19.5.2004 passed by learned Additional Sessions Judge, Sonapat vide which he was convicted under Section 399 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. He was also convicted under Section 402 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 300/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. Both the substantive sentences were ordered to run concurrently.

The case of the prosecution, in brief, is that on 3.7.2002 at about 11.00 p.m., SI Yad Ram, alongwith his fellow officials, was on patrolling in a Government jeep near Kapura turning. At that time, he received a secret information that about one kilometer from village Kapura, the appellant, alongwith Om Parkash, Sunil, Joginder and Rajesh, while armed with deadly weapons, was preparing to commit dacoity while sitting in a deserted kotha and in case a raid was conducted, they could be apprehended. SI Yad Ram alongwith others proceeded towards the designated place and after parking the jeep at about one killa, prepared three different raiding parties and surrounded the kotha. All the accused were heard conversing amongst others and planning to commit dacoity at the petrol pump. The police parties stated in a loud voice that the accused had been surrounded and they should surrender themselves. However, one of the accused fired at the police party though none was injured as a result thereof. The said accused escaped from the spot whereas the others including the appellant were apprehended. From the possession of the appellant, an iron rod was recovered. Subsequently, on the basis of ruqa sent by SI Yad Ram, FIR No. 60 dated 4.7.2002 under Sections 399/402/307 IPC and Section 25 of the Arms Act was registered at Police Station Baroda.

The trial of the case ended with the acquittal of the

accused under Sections 307/34 IPC. However, they were convicted and sentenced for the offences under Sections 399 and 402 IPC. Two of them, namely, Sunil and Joginder @ Bachchi were held guilty under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/- each and in default of payment of fine, to further rigorous imprisonment for a period of one month.

Having heard learned counsel for the parties and on going through the record with their able assistance, this Court finds that the prosecution has led cogent and convincing evidence to prove its case against the appellant beyond reasonable doubt. All the witnesses produced by the prosecution were subjected to lengthy cross-examination, but no material could be brought on record from which it could be said that they were not worthy of being relied upon. At the time of his apprehension, the appellant was found in possession of an iron rod and he alongwith others were planning to commit dacoity. Under these circumstances, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court.

The appellant stands convicted under Sections 399 and 402 IPC and sentenced to undergo imprisonment for three years. He has already deposited the fine imposed upon him as is clear from the order passed by the trial Court on the quantum of sentence. From the records, it is made out that the appellant was

arrested on 3.7.2002 and was, thereafter, granted the concession of bail by this Court on 28.3.2003. His bail bonds were accepted on 9.4.2003. Thus, the appellant has already undergone an actual sentence of more than nine months. From the impugned order passed on the question of sentence, it is made out that the appellant was not a habitual offender. He was stated to be the only bread winner of his family. He is facing the agony of criminal prosecution for the last more than thirteen years. There is no allegation that after being released on bail during the trial of the case, the appellant has misused the concession in any manner.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the remaining sentence of imprisonment of the appellant can be set-aside.

Resultantly, the conviction of the appellant under Sections 399 and 402 IPC is maintained. However, his sentences of imprisonment on both the counts are reduced to the one already undergone by him. The sentences of fine alongwith their default clauses are maintained.

The appeal is, accordingly, disposed of.

October 07, 2015
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(T.P.S. MANN)
JUDGE