

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-1926-SB of 2003
Date of Decision : January 28, 2015

Om Parkash alias Oma

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Rajesh Bansal, Advocate
for the appellant.

Mr. Randhir Singh, Additional A.G., Haryana.

Mr. Ashok Tyagi, Advocate
for the complainant.

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

Alongwith the present appeal filed by convict Om Parkash @ Oma against his conviction and sentence, this Court intends to dispose of Criminal Appeal No.S-2015-SB of 2003 preferred by complainant Balwan.

The facts giving rise to the two appeals are that the complainant had agreed to sell his house to accused Om Parkash @ Oma for Rs.84,000/-, out of which he had received a sum of Rs.50,000/-. The remaining amount of Rs.34,000/- was payable at the time of execution of the sale deed. On 19.12.2001, the complainant executed the sale deed in favour of the accused. One Pale Ram had undertaken to pay the amount of Rs.34,000/- to the complainant. At

about 4.30 p.m., the complainant, alongwith Pale Ram and the accused, left for his house. The accused requested the complainant to join him for taking drinks. All of them then went to Shehnai Hotel, Panipat where they had drinks. Pale Ram handed over the amount of Rs.34,000/- to the complainant. After receiving the same, the complainant put the currency notes in a cloth bag. All of them, thereafter, left for Khattik Basti. Pale Ram left them as he was to meet one of his friends. At about 7.30 p.m., the complainant and the accused reached near the police lines. The latter picked up a brick and gave injuries on the head of the complainant, who fell down. The accused also snatched the bag containing Rs.34,000/-, besides throwing the complainant in the water. Later on, the statement of the complainant was recorded, on the basis of which FIR No.423 dated 20.12.2001 under Sections 392/397 IPC was registered at Police Station Chandni Bagh, Panipat.

Upon completion of the investigation, the challan was presented against the appellant. The same was committed to the Court of Sessions, where the appellant was charged for committing the offence under Section 392 read with Section 397 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Shiv Dhan Singh, PW2 HC Devi Singh, PW3 Dr. Arun Sehgal, PW4 Balwan, PW5 ASI Ashok Kumar and PW6 Constable Ram Kishan.

When examined under Section 313 Cr.P.C., the accused

pleaded that the complainant had sold his house for Rs.76,000/-, out of which he had paid a sum of Rs.50,000/-. The remaining amount of Rs.26,000/- was paid at the time of execution of the sale deed on 19.12.2001. The complainant then refused to deliver the possession of the house to him. The house was still in the possession of the complainant. He was falsely implicated by the complainant and Pale Ram. He had not caused any injury to the complainant. In defence, he examined DW1 Jai Bhagwan Goel, DW2 Ram Mehar Bhardwaj, DW3 Vinod Kumar and DW4 Dharambir Singh.

The trial Court, after hearing learned counsel for the parties and going through the evidence brought on the record, believed the prosecution version and, accordingly, held accused Om Parkash @ Oma guilty under Section 392 read with Section 397 IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.7,000/- and in default of payment of fine, to undergo simple imprisonment for one month. The amount of fine, on its recovery, was ordered to be paid to complainant Balwan as compensation.

Aggrieved of his conviction and sentence, Om Parkash @ Oma has filed the present appeal. At the same time, complainant Balwan has filed the connected appeal to challenge the order passed by the trial Judge, while considering the quantum of sentence, whereby accused Om Parkash @ Oma was held entitled to receive the amount of Rs.34,000/- lying in the Court, which was recovered from his possession at the time of his arrest by the police.

The short question involved in the present appeal is as to whether the allegations of the prosecution, if accepted as such, amount to commission of offence under Section 397 IPC. It is the case of the prosecution that both complainant Balwan and accused Om Parkash @ Oma were proceeding to the house of the appellant after executing the sale deed. On the way, they had liquor at Shehnai Hotel, Panipat. At that time, Pale Ram had handed over the remaining sale consideration of Rs.34,000/- to complainant Balwan. Pale Ram left them as he was to meet one of his friends. Both, the appellant and the complainant, then reached near the police lines, where the appellant picked up a brick and gave injuries with the same on the head of the complainant. The appellant also snatched the bag containing Rs.34,000/- from the complainant. It is, thus, clear that the appellant was not armed with any weapon what to talk of deadly weapon, at the time of the occurrence. He is shown to have picked up a brick lying on the road on which he and the complainant were travelling to go to his house. The said brick was used by the appellant in inflicting injuries on the head of the complainant. By no stretch of imagination, it can be said that the brick used by the appellant in causing the injuries was a deadly weapon. Further, from the testimony of PW3 Dr. Arun Sehgal, it is established that there were seven injuries found on the head of the complainant. For those injuries, x-ray was advised. PW3 Dr. Arun Sehgal, in his cross-examination, categorically stated that during the investigation of the case, he did not receive any report regarding the x-ray of the various injuries noticed on the person of the complainant. Apart from

PW3 Dr. Arun Sehgal, the prosecution had not examined any doctor to show that the injuries caused by the appellant could have caused death or were grievous in nature. In this view of the matter, the conviction of the appellant under Section 397 IPC cannot be sustained. At the most, the appellant had committed the offence of robbery for which he can be convicted and sentenced under Section 392 IPC only.

As per the custody certificate produced by the State counsel, the appellant had undergone an actual sentence of 1 year, 11 months and 26 days before he was released on bail. During the period spent by him as a convict in jail, he had earned remissions of 3 months and 27 days. Thus, in all, the appellant has undergone a period of 2 years, 3 months and 23 days. The appellant is not shown to be involved in any other case. He has been facing the agony of criminal prosecution for the last more than 13 years. Before the trial Court he had taken the plea that he was a poor person and required to look after his three children and aged parents, who were also dependent upon him.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the remaining sentence of imprisonment of the appellant under Section 392 IPC can be reduced to the one already undergone by him.

It is not in dispute that the amount of Rs.34,000/- was snatched by the appellant from complainant Balwan at the time of the occurrence. The said amount of Rs.34,000/- belonged to the

complainant. At the instance of the appellant, Pale Ram had handed over the same to the complainant towards the remaining amount of sale consideration. At the time of arrest of the appellant, the said amount of Rs.34,000/- was recovered. As the said amount belonged to the complainant it is liable to be released in his favour and not in favour of the appellant.

Resultantly, the conviction of the appellant for the offence under Section 397 IPC is set aside. At the same time, his conviction for the offence under Section 392 IPC is upheld. However, his sentence of imprisonment for seven years on the said charge is reduced to the one already undergone by him. The sentence of fine of Rs.7,000/-, alongwith its default clause as well as the payment of the same on its recovery to the complainant, is maintained. Further, the amount of Rs.34,000/-, which belonged to the complainant and was recovered from the appellant at the time of his arrest, is ordered to be released in favour of the complainant against proper receipt and identification.

Criminal Appeal No.S-1926-SB of 2003 filed by Om Parkash @ Oma appellant is partly allowed to the extent indicated above, whereas Criminal Appeal No.S-2015-SB of 2013 is allowed.

January 28, 2015
satish

(T.P.S. MANN)
JUDGE