

In the High Court of Punjab & Haryana at Chandigarh.

Date of Decision: 02.12.2015

CRA-S-1372-SB-2012

Sarfraj Appellant
Vs.
State of Haryana Respondent

CRA-S-3601-SB-2012

Sajid Appellant
Vs.
State of Haryana Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mohammad Arshad, Advocate
for the appellant in CRA-S-1372-SB-2012.

Mr. Vipin Kumar Sharma, Advocate for
Mr. S.M.Sharma, Advocate
for the appellant in CRA-S-3601-SB-2012.

Mr. Sandeep Vashisht Deputy Advocate General, Haryana.

RAJ RAHUL GARG,J.

The aforementioned two appeals have been directed against the judgment dated 07.04.2012 rendered by learned Additional Sessions Judge, Palwal, whereby both the aforementioned appellants along with co-accused Mubarik and Jafru have been held guilty for offence punishable under Section 395 of Indian Penal Code (for short 'IPC') and vide order of sentence dated 09.04.2012, each one of them were sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹10,000/- with default clause.

Briefly, prosecution case is like this; that on 07.07.2009, complainant Hamid lodged a report (Ex.P6) with the police of Police Post, village Utawad to the effect that he was working as a driver on Truck No. RJ-02-GA-6915 for the last four months. Farukh was working as a

conductor on the aforesaid truck. At about, 1:00 A.M., he loaded crusher in the aforesaid truck and left for village Bahin, Tehsil Hathin, District Palwal. At about, 5:00 A.M., he unloaded the truck and was going to village Kot for taking money from the contractor. The labourers, namely, Assar, Mubin residents of village Alkhara, District Alwar (Rajasthan) and Umar Mohammad, resident of village Ahmadwas were also in the truck. When they reached near the culvert of village Kot, a vehicle make Marshal (Max) came from behind and was parked in front of their truck. As a result, he had to bring his truck to a halt. 10-12 persons with muffled faces alighted from the aforesaid Martial (Max) vehicle. Three of them were armed with country made pistol. Six of them boarded the truck and forced him, conductor Farukh and the labourers to get down from the truck. As per complainant, he, conductor Fraukh and labourers were put in Marshal vehicle whereas the truck was taken away by 6 assailants. As per complainant, their hands were tied and, thereafter, they were left in the fields. After about 20 minutes, they managed to untie their hands and then had gone to village Gurawali to the house of relative of Farukh. On this report, case was registered under Sections 395, 397 of IPC and under Section 25 of the Arms Act.

On 08.07.2009, accused Sajid, Sarafraj, Jafru and Mubarik Khan were arrested in another case bearing FIR No. 212 of 2009, under Sections 399/402 IPC. In that case, all the aforesaid 4 accused suffered disclosure statements wherein they admitted that they had looted the truck No. RJ-02-GA-6915 on 07.07.2009 and further that the aforesaid truck was taken away by Jafru and Shamsheer Singh for the purpose of selling it. These disclosure statements are Ex.P13 to Ex.P16.

Thereafter, accused were arrested in the present case with the

permission of the Court. On 10.07.2009, on interrogation, they suffered disclosure statements Ex.P17 to Ex. P20. Accused Sajid disclosed vide disclosure statement Ex.P17 that the truck in question was taken away by him and he had kept concealed the same in the hill-locks of village Bhond. He alone knows about it and can get the same recovered by giving *nishandehi*. The remaining accused vide disclosure statements Ex.P18 to Ex.P20, disclosed that the truck in question was taken away by accused Sajid and he alone can tell about the same and they can give *nishandehi* of the place from where they had looted the truck in question. Thereafter, accused led the police party to the place of occurrence and gave demarcation of that place vide memo Ex.P21 to Ex.P24. Accused Sajid led the police party to village Bhond from where he got recovered the truck in question which was taken into police possession vide memo. Ex.P25. Rough site plan of the place of recovery of the truck was prepared as Ex.P26. The truck in question was deposited with the MHC of the police Station. After completion of necessary investigations, the challan was put in the Court against the accused.

Finding a prima-facie case against the accused, they were charge-sheeted for committing offence punishable under Section 395 read with Section 397 of IPC to which they did not plead guilty but claimed trial. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their false implication.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the learned trial Court, vide impugned judgement, held all the accused guilty for committing offence

punishable under Section 395 of IPC and, thereafter, vide order of sentence dated 09.04.2012 passed the order of sentence, as mentioned in the earlier part of this judgment.

I have heard learned counsel for the appellants and learned State counsel besides appraising the entire material and evidence coming on record.

At the very outset, the learned counsel for the appellants-accused contended that they do not assail the findings of learned trial Court recorded on merits of the case. They would feel satisfied if some leniency is shown in the matter of sentence as they have already undergone sufficient period of sentence.

Learned State counsel has drawn my attention to the custody certificate placed on file. Custody certificate of Sajid shows that he has already undergone the sentence for the period of 03 years and 10 days whereas accused Sarfraj has already undergone the sentence for a period of 3 years, 7 months and 17 days. He also did not object if accused be given benefit in the matter of sentence by way of reducing their sentence to the one already undergone by each one of them.

Under the above circumstances and after taking into consideration the facts of the present case and the evidence available on the file, I am of the considered view that the ends of justice would be met if leniency is shown to the appellants-accused in the matter of sentence and further if their sentences is reduced to the one already undergone. As such, maintaining the judgement of conviction dated 07.04.2012 the order of sentence dated 09.04.2015 is reduced to the one already undergone.

Accused Sarfraj who is in custody is ordered to be released, if

not required in any other case.

Disposed of.

02.12.2015
smriti

(RAJ RAHUL GARG)
JUDGE