

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

**CRA-S-2028-SB of 2002
DATE OF DECISION : February 27, 2015**

Rajesh alias Jokar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Jitender Dhanda, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. The appeal is preferred by accused Rajesh @ Jokar aggrieved by the conviction and sentence passed by the trial Court under Section 404 of the Indian Penal Code.

2. In fact accused Rajesh @ Jokar along with co-accused Anil Kumar faced trial under Sections 302, 201 and 404 of the Indian Penal Code. Co-accused Anil Kumar was acquitted of all the charges. Therefore, there was no occasion for Anil Kumar to prefer

any appeal. But accused Rajesh @ Jokar has challenged the conviction and sentence passed as against him under Section 404 of the Indian Penal Code.

3. The trial Court having found that the subject motorcycle possessed by the deceased Rajesh Patwari was dishonestly misappropriated by accused Rajesh @ Jokar, convicted him under Section 404 IPC and sentenced him to R.I. For three years.

4. The learned counsel appearing for the appellant would vehemently submit that in this case, one Krishan Kumar in fact got the motorcycle released on supardari and the trial Court had relied upon the oral transaction of sale allegedly effected between Krishan Kumar and the deceased. It is his submission that the ownership of the motorcycle was not established and, therefore, the trial Court should not have convicted accused Rajesh @ Jokar under Section 404 of the Indian Penal Code.

5. The learned DAG for the State would submit that Section 404 of the Indian Penal Code contemplates only dishonest misappropriation of property in possession and not in ownership of the deceased. As ample evidence is available on record, it is her submission that the trial Court has rightly convicted accused Rajesh @ Jokar under Section 404 of the Indian Penal Code.

6. The prosecution has established that the subject motorcycle was recovered from accused Rajesh @ Jokar only based on the disclosure statement suffered by him. Of course, as

contended by the learned counsel appearing for accused Rajesh @ Jokar, erstwhile owner Krishan Kumar has got the subject vehicle on superdari but the fact remains that the same was produced only by PW14 Raj Kapoor, the brother of the deceased before the Court during the course of trial. In the above background, the plea of the prosecution that Krishan Kumar had sold the motorcycle without change of name in the R.C. Book to the deceased is found acceptable.

7. Further, the penal provision under Section 404 of the Indian Penal Code contemplates dishonest misappropriation of the property of the deceased which was in his possession. It does not contemplate that the property should have been owned and possessed by the deceased at the time when the murder was committed. As rightly pointed out by learned DAG for the State, there is ample evidence to establish that the accused was in fact found in possession of the vehicle retrieved from the deceased. There was no explanation as to how the motorcycle came into possession of the deceased. Under such circumstances, in my considered view, the trial Court has rightly held that accused Rajesh @ Jokar has dishonestly misappropriated the vehicle which was in possession of the deceased. I do not find any error in the judgment of conviction passed by the trial Court.

8. The learned counsel appearing for the appellant advanced an argument to the effect that the sentence of three years

imposed on the appellant is on the higher side. Of course, the learned DAG for the State would submit that the sentence imposed is proportionate to the offence committed.

9. The offence was allegedly committed way back in the year 1999. Almost 15 years have elapsed from the date of occurrence. The custody certificate would disclose that the appellant has no criminal antecedent. He already undergone 3 months and 22 days as on today. Therefore, in my view, reduction of the sentence to the period already undergone would definitely meet the ends of justice.

10. In the result, confirming the judgment of conviction passed by the trial Court, the sentence imposed on appellant Rajesh @ Jokar is reduced to the period of 3 months and 22 days already undergone by him.

11. The appeal is disposed of accordingly.

**(M. JEYAPPAUL)
JUDGE**

February 27, 2015

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