

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-No. 1566-SB of 2002.

Date of Decision: 07.01.2015.

Mangaljit Singh alias Raju Appellant

Versus

State of Punjab

..... RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Gurpal Singh Sandhu, Advocate,
for the appellant.

Mr. K.S.Sidhu, DAG, Punjab.

LISA GILL, J.(Oral)

Learned counsel for the appellant, at the very outset, submits that he does not want to challenge the conviction of the appellant Mangaljit Singh alias Raju and confines his prayer for the reduction of sentence imposed upon him. His prayer is for grant of probation or for reducing the period of sentence to that of already undergone.

Appellant Mangaljit Singh alias Raju along with co-accused Kuldip Singh alias Pappu and Parkash Singh alias Ashi were convicted by the Additional Sessions Judge, Ferozepur vide judgment dated 21.09.2002 for the offences

punishable under Section 307 read with Section 34, IPC. Co-accused Parkash Singh alias Ashi was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹4000/- and in default thereof to further undergo rigorous imprisonment for six months for the offence punishable under Section 307, IPC; Co-accused Kuldip Singh alias Pappu and the present appellant Mangaljit Singh alias Raju were sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹1500/- each and in default thereof to further undergo rigorous imprisonment for three months each for the offences punishable under Section 307 read with Section 34, IPC.

As per the prosecution version, co-accused Parkash Singh alias Ashi allegedly inflicted two knife blows on the chest and right shoulder of the complainant- Joginder Singh (PW3). Co-accused Kuldip Singh alias Pappu is alleged to have caught hold of Joginder Singh and the present appellant exhorted the co-accused to teach the complainant a lesson for talking roughly with them. The injuries were opined to be dangerous to life as per Ex.P-5.

Learned counsel for the appellant while not challenging the conviction of the appellant submits that there is a good case for reducing the sentence imposed upon the appellant to that of already having undergone by

the appellant.

It is relevant to note that Criminal Appeal No. 1973-SB of 2002 filed by co-accused Parkash Singh alias Ashi was dismissed as withdrawn on 10.07.2014 as Parkash Singh alias Ashi had undergone the sentence of four years imposed upon him. It is informed that co-accused Kuldip Singh alias Pappu did not prefer an appeal against the judgment and order dated 21.09.2002.

It is contended that the appellant is a first offender. Till date, there is no other case registered against him. He is a poor truck driver and sole bread-winner of the family. Furthermore, it is urged that initially he is alleged to have exhorted the other accused to teach complainant-Joginder Singh a lesson, but complainant-Joginder Singh in his testimony before the learned trial court has deposed that it was co-accused Kuldip Singh alias Pappu who had exhorted the others. No role what-so-ever has been attributed to the present appellant except that he was present at the place of occurrence along with others.

It is submitted that the appellant has been suffering the agony of trial since 1998 and during the interregnum no other case has been registered against him. The appellant is not related either to the complainant or co-accused Parkash alias Ashi who has been attributed with the

infliction of injuries upon Joginder Singh. He has undergone the sentence imposed upon him. Co-accused Kuldip Singh alias Pappu has also undergone the sentence imposed upon him.

In view of the above said facts and circumstances, it is prayed that the benefit of probation be extended to the appellant or in the alternate the sentence imposed upon him be reduced to that of already undergone.

Learned counsel for the State has vehemently opposed the extension of the benefit of probation or reduction of sentence of two years to that of already undergone by the appellant. Learned counsel for the State on the basis of affidavit dated 30.01.2014 filed by Sucha Singh, Deputy Superintendent, Sub Jail, Fazilka submits that the appellant has undergone an actual sentence of merely 03 months and 28 days out of the sentence of two years imposed upon him. It is, however, informed that there is no other case pending against the appellant and neither is he convicted in any other case.

I have heard learned counsel for the parties and gone through the available record.

It is settled position of law that the benefit of probation cannot be extended to a person convicted for the offence punishable under Section 307, IPC. Contention of

learned counsel for the appellant that this benefit would be available to the appellant as he has been convicted under Section 307 IPC only with the aid of Section 34, IPC is rejected.

Appellant has not challenged his conviction as has been mentioned at the very outset by the learned counsel for the appellant. Therefore, presence of the appellant at the time of occurrence stands proved. Doubtlessly, the appellant is attributed to have exhorted the other co-accused to teach the complainant a lesson, though, Joginder Singh complainant in his testimony before the trial court does attribute this role to co-accused Kuldip Singh alias Pappu. It is also admitted that the appellant is a first offender. There is no other case pending against him. He has indeed been suffering the agony of trial since 1998. He is a poor truck driver having an onerous burden of maintaining the entire family being the sole bread-winner.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to reduce the sentence of two years imposed upon the appellant to that of one year. His presence on the spot, active participation in the occurrence and common intention with the other co-accused has been recorded by the learned trial court, and this finding has not been impugned by the appellant.

In view of the above, this appeal is dismissed with modification in the sentence to the effect that instead of rigorous imprisonment of two years, the appellant shall undergo sentence of rigorous imprisonment of one year. The amount of fine as well as rigorous imprisonment for three months in default thereof shall remain the same.

07.01.2015.

Anoop

(LISA GILL)**JUDGE**