

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-232-SB-2003

Date of decision: 23.09.2016

Jarnail Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ivan Singh Khosa, Advocate for
Mr. RS Ghuman, Advocate for the appellant.

Mr. A.S. Klar, AAG, Punjab.

RAMENDRA JAIN, J.

1. Appellant-Jarnail Singh along with his co-accused Gurmej Singh (declared as Proclaimed Offender) was booked and tried for offences punishable under Sections 306 and 420 read with Section 34 of the Indian Penal Code (IPC). Vide judgment of conviction and order of sentence dated 23.12.2002, rendered by the learned Additional Sessions Judge, Nawanshahr, the appellant was convicted under Section 420 IPC and sentenced to undergo rigorous imprisonment for a period of 2½ years and to pay a fine of ₹ 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 5 months whereas he was acquitted of the charge under Section 306 IPC, by giving the benefit of doubt.

2. Aggrieved against his conviction and sentence, the appellant
has preferred the instant appeal.

3. Put pithily, on 20.10.2000, Satya Devi-complainant had suffered a statement before ASI Lakhvir Singh (PW-8) to the effect that her husband was living abroad for the last seven years. She had two issues i.e. one daughter-Poonam and one son-Sanjiv Kumar (since deceased). After doing 10+2, Sanjiv Kumar used to do household work. The complainant was on visiting terms with one Piari W/o Bhagu Ram resident of village Naura. Gurmej Singh (Proclaimed Offender) who was the relative of Piari aforesaid often used to visit the house of Piari and the complainant became acquainted with him. She disclosed to him that her son Sanjiv Kumar wanted to go abroad either to Canada or America. Gurmej Singh, told the complainant that his friend Jarnail Singh (appellant herein) is engaged in the business of sending people abroad and he agreed to arrange a meeting between the complainant and the appellant at her house. In December, 1999, Gurmej Singh and the appellant visited the house of the complainant and it was agreed that the appellant would send Sanjiv Kumar to America on payment of ₹ 7 lacs. They took a sum of ₹ 10,000/- and the passport of Sanjiv Kumar and went away by saying that they would come back after few days with VISA and asked the complainant to arrange the remaining amount. After 20 days, the appellant and Gurmej Singh (Proclaimed Offender) again visited the house of the complainant and showed her a photocopy of VISA and took a sum of ₹ 3,50,000/- from her. Thereafter, they went to Delhi and Sanjiv Kumar son of the complainant also accompanied them. After 3-4 days, the appellant had made a telephonic call to the complainant and demanded the remaining amount. On the next day, the complainant along with Balwinder Pal (brother of her husband) went to

the house of the appellant situated at Gulab Bagh, Uttam Nagar, Delhi. Gurmej Singh, aforesaid was also present there. She paid the remaining amount of ₹ 3,40,000/- to the appellant and came back. However, Sanjiv Kumar stayed at Delhi for about 6-7 months. The period of VISA of Sanjiv Kumar expired and he was not sent to abroad by the appellant. In July, 2000, the complainant went to Delhi to meet her son. On enquiry, Sanjiv Kumar disclosed to her that he was disturbed as it seems that he would not be able to go abroad. The complainant met the appellant and demanded her money back. The appellant returned ₹ 1 lac to the complainant and executed an agreement Ex. PJ with an undertaking to repay ₹ 3 lacs by 01.08.2000 and the remaining amount of ₹ 3 lacs by 30.08.2000. Then the complainant came back to her village along with her son. Sanjiv Kumar, started remaining depressed and on enquiry he disclosed that both the appellant and Gurmej Singh, aforesaid have spoiled his entire life. They also did not return the money. On 20.10.2000, Sanjiv Kumar was found lying dead in this room.

4. After making endorsement, the statement was sent to the police station on the basis of which formal FIR Ex. PF was registered against Gurmej Singh (Proclaimed Offender) and Jarnail Singh-appellant. The Investigating Officer along with other police officials had visited the place of occurrence and found the dead body of Sanjiv Kumar lying on a cot. On the personal search of the dead body suicide note Ex. PH was recovered from the pocket of the shirt worn by the deceased which was taken into police possession vide memo Ex. PM. The clothes worn by the deceased at the time of his death were also taken into police possession after converting

the same into a sealed parcel. Site plan of the place of occurrence was also prepared. Statements of the relevant witnesses were recorded. Inquest proceedings and post-mortem on the dead body of Sanjiv Kumar were got conducted. As per post-mortem report Ex. PA, the cause of death was due to consumption of aluminium phosphide which was sufficient to cause death in ordinary course of nature. The appellant was arrested on 25.01.2001 from Delhi. During investigation, agreement Ex. PJ was also taken into police possession vide memo Ex. PL. Co-accused Gurmej Singh was declared proclaimed offender vide order dated 03.02.2001. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the appellant.

5. On commitment of the case, the appellant was charge-sheeted under Sections 420 and 306 IPC, to which he pleaded not guilty and claimed trial.

6. The prosecution in support of its case examined as many as 10 witnesses.

7. In his statement under Section 313 Cr.P.C., the appellant denied the entire incriminating evidence brought on record against him and pleaded his false implication. In defence, he examined Dhiraj Malik as DW-1.

8. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court convicted and sentenced the appellant as indicated in the earlier part of this judgment.

9. After arguing for sometime when learned counsel for the

appellant has failed to point out any infirmity or illegality in the impugned judgment then stated that the impugned judgment is not challenged on the point of conviction. While praying for leniency in the order of sentence, learned counsel for the appellant submitted that occurrence took place in month of October, 2000. The appellant had faced the protracted trial of more than 16 years. While referring to the custody certificate of the appellant placed on record by learned State counsel, learned counsel for the appellant submitted that the appellant has undergone 1 year, 10 months and 26 days as on 03.08.2016, out of the actual sentence of 2 years and 6 months.

10. On the other hand, learned State counsel very fairly submitted that he has no objection, if the period of sentence awarded to the appellant is reduced to the period already undergone.

11. In the instant case, the alleged occurrence is more than 16 years old and the appellant has been facing the agony of trial since 2000. The appellant has already undergone 1 year, 10 months and 26 days as on 03.08.2016, out of the actual sentence of 2 years and 6 months. The fine imposed by the learned trial Court is stated to have already been paid by the appellant. Except the present case, there is no other case registered against the appellant. Appellant is the first offender. Ends of justice would be fully met if a lenient view is taken otherwise the appellant would become hardcore criminal, if again sent to jail to undergo imprisonment as ordered by the trial Court.

12. Taking into consideration the peculiarity of the facts and circumstances of the case, the impugned judgment of conviction dated

23.12.2002 is upheld and the order of sentence dated 23.12.2002 passed by the trial Court is modified to the extent that the period of sentence is reduced to the one already undergone by the appellant (1 year 10 months and 26 days).

13. Accordingly, the appeal being without merits is dismissed, with modification on the point of sentence.

September 23, 2016

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No