

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

Criminal Appeal S-1679-SB of 2004

Date of Decision: December 19, 2016

Jitender and another		Appellants
	Versus	
State of Haryana		Respondent

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

Present: Mr. Vikram Punia, Advocate
for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

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

The appellants, namely, Jitender son of Ram Dass and Jitender son of Lakhi Ram, residents of village Saveli, Tehsil and District Sonapat have filed the present appeal for challenging the judgment and order dated 16/20.8.20004 passed by the learned Additional Sessions Judge, Sonapat, whereby, they were convicted and sentenced as follows:-

- (i) Rigorous imprisonment for four years and to pay a fine of Rs.2,000/- each under Section 307 read with Section 34 IPC and in default of payment of fine, to further undergo imprisonment for a period of one year;

- (ii) Rigorous imprisonment for one year and six months and to pay a fine of Rs.1,000/- each under Section 332 read with Section 34 IPC and in default of payment of fine, to further undergo imprisonment for a period of six months;
- (iii) Rigorous imprisonment for one year and to pay a fine of Rs.500/- each under Section 353 read with Section 34 IPC and in default of payment of fine, to further undergo imprisonment for a period of three months; and
- (iv) Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each under Section 25(1B)(a) of the Arms Act and in default of payment of fine, to further undergo imprisonment for a period of six months.

The substantive sentences awarded to them were ordered to run concurrently. The period, during which the accused had remained in custody was ordered to be set off against the period of their substantive sentences.

According to the prosecution, on 1.7.1994, Head Constable Jai Bhagwan alongwith Constable Suresh was on patrolling duty at Drain No. 8. They saw two young boys sitting on the embankment of drain. Head Constable Jai Bhagwan enquired from them as to for what purpose they were sitting there. The accused replied that they were waiting for a friend of theirs. At this, accused Jitender son of Ram Dass asked accused Jitender son of Lakhi Ram to fire a shot. The shot was fired

towards Head Constable Jai Bhagwan, but somehow it missed the target. Head Constable Jai Bhagwan started grappling with accused Jitender son of Lakhi Ram. The boy caught hold of by Constable Suresh was Jitender son of Lakhi Ram, who tried to snatch the gun from Constable Suresh. In the process, he hit him with his leg. During search, one country made pistol alongwith missed cartridge was recovered from the possession of accused Jitender son of Ram Dass. The search of accused Jitender son of Lakhi Ram also led to recovery of a country made pistol and one live cartridge.

Learned counsel for the appellants submits that he does not challenge the conviction of the appellants for the various offences, for which, they stand convicted. However, it is submitted that appellant Jitender son of Lakhi Ram had already served the entire sentence of imprisonment including the default period on account of non-payment fine, and for that reason, the appeal qua him has been rendered infructuous. He has further submitted that even appellant Jitender son of Ram Dass has already undergone an actual period of about one year out of the sentence of four years imposed upon him. He is facing the agony of criminal prosecution for the last more than twenty three years. He is not a previous convict. Therefore, his remaining substantive sentence of imprisonment be set-aside.

Learned State counsel has vehemently opposed the

prayer by submitting that appellant Jitender son of Ram Dass has criminal propensities. Apart from the present case, he is involved in three more criminal cases, though on bail in all of them. Apart from the same, he stood convicted in another case under Section 392 IPC.

As per the custody certificate produced by the learned State counsel, appellant Jitender son of Ram Dass has undergone an actual sentence of eleven months and twenty six days inclusive of remission of five days. It has also been mentioned therein that the said appellant is facing trial in three other criminal cases. He stands convicted in one more case under Section 392 IPC. There was another case under Section 392 IPC, Police Station City, Sonapat, in which, he stands acquitted.

Similarly as per the custody certificate dated 14.12.2016 already brought on record by the State counsel, appellant Jitender son of Lakhi Ram has undergone total period of six years and three months which includes four years of substantive sentence and two years and three months as the period in default of payment of fine.

After hearing learned counsel for the parties, this Court is of the view that no useful purpose will be served by sending appellant Jitender son of Ram Dass, behind the bars, once again, for undergoing his remaining sentences of

imprisonment in the present case. Ends of justice shall be suitably met, if the same are reduced to the one already undergone by him.

Resultantly, the appeal of appellant Jitender son of Lakhi Ram is dismissed as having become infructuous. The conviction of appellant Jitender son of Ram Dass, as recorded by the learned trial Court is upheld. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine alongwith the default clause on all the counts is maintained. The appeal of appellant Jitender son of Ram Dass is, accordingly, disposed of.

December 19, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No