

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

Criminal Appeal S-3926-SB of 2013

Date of Decision : September 14, 2016

Ram Phal @ Kala and others	Appellants
Versus	
State of Haryana	 Respondent

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

Present : Mr. Rishav Jain, Advocate
as Legal Aid Counsel for the appellants.

Mr. Ashok S. Chaudhary, Addl. Advocate General, Haryana.

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

The instant appeal has been filed by Ram Phal @ Kala, Jasbir Singh @ Kallu and Sheru @ Sher Singh for challenging the judgment and order dated 23/25.9.2013 passed by learned Additional Sessions Judge, Kurukshetra. Vide impugned judgment and order, the trial Court convicted the appellants under Section 394 IPC and sentenced them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo imprisonment for a period of six months. They were also convicted under Section 397 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo imprisonment for a period of six months. Sheru @ Sher

Singh was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo imprisonment for a period of five months. All the sentences were ordered to run concurrently. The period already undergone by the appellants during the investigation and trial of the case was ordered to be set off against the substantive sentences imposed upon them. Out of the fine of Rs.65,000/-, an amount of Rs.25,000/- was ordered to be paid to injured Rajesh.

The case of the prosecution, in nutshell, is that on 31.7.2011, complainant Pawan Kumar and his brother Rajesh had purchased a buffalo from Hansi. At about 11.00 p.m., the driver in whose vehicle the buffalo was being taken, informed them that it was about to deliver a calf. Accordingly, the complainant and his brother Rajesh started on a motorcycle, which was being driven by Rajesh. At about 11.15 p.m., when they were near the soap factory on Ladwa road, a motor-cycle came from behind and overtook their motor-cycle. Three boys were there on that motor-cycle. Two of them got down and came near them. The complainant and his brother threw their mobiles in the grass. One of the boys held the complainant from his throat. The complainant's brother Rajesh overpowered the other boy. The third accused, who was sitting on the motor-cycle asked Rajesh to leave the boy or else he would be shot dead. When Rajesh refused to

leave the assailant, the one, who was sitting on the motor-cycle fired at him, which hit him on his right arm. The complainant and his brother raised an alarm and all the three assailants escaped from the spot on their motor-cycle.

Learned counsel for the appellants submits that he does not challenge the conviction of the appellants, as recorded by the learned trial Court. He, however, submits that the appellants are facing the agony of criminal prosecution for the last about five years. When they were heard by the learned trial Court on the quantum of sentence, they had pleaded that they were poor persons and sole bread winners of their respective families. Jasbir @ Kala appellant had also stated that his father was blind whereas his mother was old and infirm. It is also submitted that each of the three appellants has already served a period of about five and half years out of the sentence of ten years imposed upon them. Prayer has, accordingly, been made for reducing their substantive sentences of imprisonment to the one already undergone by them.

Learned State counsel has vehemently opposed the prayer by submitting that all the three appellants had taken active part in the commission of the crime. He has also submitted that apart from the present case, all the three appellants are involved in number of other criminal cases. Further, for the offence under Section 397 IPC, the law requires imposition of minimum sentence of seven years and,

therefore, the substantive sentences of imprisonment of the appellants cannot be reduced to the one already undergone by them. It is also submitted that the sentences of imprisonment awarded to the appellants are commensurate with the crime committed by them.

Custody certificates are already available on the record, from which, it is made out that each of the three appellants has undergone a period of about five and half years, which includes the remissions earned by them for maintaining good conduct while in jail. It has also been mentioned therein that all the three appellants were involved in a number of criminal cases but since stood acquitted in majority of those cases.

Having heard learned counsel for the parties, this Court finds that the sentence of imprisonment for ten years awarded to the appellants for the offence under Section 394 IPC is on the higher side. Ends of justice shall be suitably met, if the said sentence of imprisonment is reduced to seven years.

Resultantly, the conviction of all the appellants for the offences under Sections 394 and 397 IPC and of Sheru @ Sher Singh appellant under Section 25 of the Arms Act is upheld. The substantive sentence of imprisonment of all the appellants under Section 394 IPC is, however, reduced from ten years to rigorous imprisonment for seven years each. The sentence of imprisonment for seven years imposed upon all the appellants for the offence under Section 397 IPC

and of Sheru @ Sher Singh appellant under Section 25 of the Arms Act are maintained. The sentences of fine, along with their default clauses on all the counts are also maintained. All the substantive sentences of imprisonment shall run concurrently. The appellants shall also be entitled to the benefit under Section 428 Cr.P.C. Out of fine of Rs.65,000/-, an amount of Rs.50,000/-, when recovered from the appellants, be disbursed to injured Rajesh, as compensation.

The appeal is, accordingly, disposed of.

September 14, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No