

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

Criminal Revision 1163 of 2008

Date of Decision : December 6, 2016

Pawan Kumar and another		Petitioners
	Versus	
The State of Haryana		 Respondent

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

Present : Mr. B.S.Saroha, Advocate
for the petitioners.

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

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

The petitioners were tried for committing offence punishable under Section 394 IPC. Vide judgment and order dated 7/8.3.2006, learned Sub-Divisional Judicial Magistrate, Gohana, convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo simple imprisonment for two months each. The fine imposed was deposited by them there and then.

Aggrieved of their conviction and sentence, the petitioners preferred an appeal which was dismissed by learned Sessions Judge, Sonapat vide judgment dated 17.1.2008. Still not satisfied, the petitioners preferred the present revision, which was admitted on 1.4.2009 and, their sentences of imprisonment

were also suspended.

The case of the prosecution has been stated by the learned lower appellate Court in para 2 of its judgment, which reads as under:-

“Shorn of unnecessary details, the facts leading to the case are that on the night of 23.4.1999 at about 10.00 p.m., Partap Singh complainant took a lift from Hindu College Chowk for going to his village Niyat in truck No. HR-16/4087, on which, one of the accused was a driver and the other was a cleaner. On reaching in the area of village Jauli-Lath near the canals, the truck driver stopped his truck on the pretext that the engine had got heated up. The complainant alighted from the truck and started moving on foot along the road towards his village. When he reached near village Kheri Damkan, the same truck reached there and he again boarded that truck. He then smoked a cigarette and offered one cigarette each to the driver and cleaner. The driver asked the complainant as to what he was carrying in the bag. The complainant told him that he was carrying money. He also gave his card to the driver and asked him to bring stones for him as he was carrying on the business of supply of building material. After sometime, a tyre of the truck was punctured. The driver, cleaner as well as the complainant got down from the truck and the complainant again started walking on foot. However, he was caught hold of from the back side by the driver, who took out a knife from his pocket and gave a blow on the head of the complainant. Then the driver and the complainant

grappled with each other upon which the cleaner snatched the bag of the complainant containing the cash and other articles. The driver attempted a second blow with knife which was caught hold of by the complainant with his right hand. Then the driver threw his knife towards the cleaner and instigated him to give knife blows to the complainant. However, the complainant took the driver in his grip from the back side and when the cleaner attacked him with his knife, the complainant brought the driver in between and the knife blow fell upon the driver. The cleaner gave a second blow which fell upon the head of the complainant. The driver and the complainant went on grappling with each other and in that process one more blow of knife given by the cleaner fell upon the driver. On account of the injuries suffered in the process, the complainant fell down and then both the driver and cleaner of the truck i.e. the accused, went away from the spot with their truck. After sometime, another truck arrived at the spot, in which, the complainant went to Civil Hospital, Gohana, where he was medically examined and admitted. A memo was sent from the hospital to Police Station Gohana, from where Assistant Sub-Inspector Raj Singh went to the hospital and recorded the statement of Partap Singh complainant, on the basis of which, the FIR was registered under Section 394 IPC.

Pawan Kumar accused, who was the cleaner on the truck, and Ram Phal accused, who was the driver on the truck No. 4087, were arrested by the police on 29.4.1999. In pursuance of their disclosure statements, Pawan Kumar accused got recovered currency notes of Rs.24,000/-, a ladies suit of light green colour, a T-shirt, a

small underwear, a book of English of 8th Class and a vegetable cutting knife from a garden near drain No.8 on Gohana-Rohtak Road, which were taken into possession. Similarly, Ram Phal accused in pursuance of his disclosure statement got recovered currency notes of Rs.18,000/-, a receipt of supply of sand and a card of the complainant from the house of his relative Ramesh, situated in Gohana, which were also taken into possession. After completion of investigation, the police submitted a charge-sheet against both the accused”.

Learned counsel for the petitioners submits that he does not challenge the conviction of the petitioners for the offence under Section 394 IPC. It is submitted that Pawan Kumar petitioner has already undergone the entire sentence of imprisonment imposed upon him and, therefore, the revision qua said Pawan Kumar may be disposed of as having become infructuous. As regards Ram Phal petitioner, it is submitted that he is facing the agony of criminal prosecution for the last more than seventeen years. When he was heard by the learned trial Court on the quantum of sentence, he had stated that he was having old parents and he was the sole bread winner of his family. Further, he was a first offender.

As per the custody certificate produced by the learned State counsel, Ram Phal petitioner has undergone an actual sentence of one year, four months and eighteen days. He is also not shown to be involved or convicted in any other case.

As per the custody certificate in respect of Pawan Kumar petitioner, it stands mentioned therein that he was released on 28.5.2010 after the expiry of the sentence of imprisonment imposed upon him.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending Ram Phal petitioner behind the bars, once again, for undergoing his remaining substantive sentence of imprisonment. Ends of justice shall be suitably met, if the same is reduced to the one already undergone by him.

Resultantly, the revision filed by Pawan Kumar petitioner is disposed of as having become infructuous. The conviction of Ram Phal petitioner under Section 394 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The revision qua him is, accordingly, disposed of.

December 6, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No