

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 228

Criminal Revision No.3556 of 2015 (O & M)

Date of Decision: March 21, 2016

Sanjeev Kumar

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. Harish Goyal, Advocate, for the petitioner.

Mr. Rajpreet Singh Sidhu, Assistant Advocate General, Punjab.

. . .

Jaspal Singh, J

1. The instant revision petition has been preferred by Sanjeev Kumar, accused – petitioner, challenging his conviction and sentence vide judgment/order dated November 14, 2011 passed by the Judicial Magistrate Ist Class, Khanna as well as judgment dated August 4, 2015 passed by the Additional Sessions Judge, Ludhiana, rendered in case bearing FIR No.73 dated April 27, 2005 under Section 382/34 IPC, registered at Police Station, Khanna.

2. Briefly stated, on April 27, 2005 at G.T. Road, Khanna, Rajiv Sabharwal (complainant) got recorded his statement with the police wherein he

stated that he is doing a shop of spare parts at Friends Colony, Khanna. At 9.00 PM, he was present at his shop and received a telephone call (Phone No.224756) installed in his shop, from a person. The said person disclosed that he is speaking from Amloh and his car is met with an accident and he has to purchase spare parts. The complainant replied that he is going to market and asked the caller to contact him after 10 minutes on his mobile phone (No.9815237758). Thereafter, he counted the entire sale consideration and put the same in the safe of the shop and went to market in his car No.CHK – 1515. When he was returning, at about 9.15 PM, he received a telephone call from phone bearing No.01628-502509 and the said person asked the complainant he is coming to his shop for taking spare parts. Complainant reached at his shop at 9.30 PM and car was parked. When he was opening his shop, two persons came there. One person was aged about 26 years, black complexion, wearing a white shirt and other person was 23 years, wearing shirt of red colour. They disclosed him that their car met with an accident and they asked for spare parts of Indica Car. When he opened the shop, one person of black complexion entered into it. The other person remained outside. The person who entered the shop, took an iron rod from his shop and inflicted rod blow on the back side of head of complainant. Complainant grappled with said person. He gave another blow on his forehead. Complainant came out from his shop and raised alarm. The said person called another person with the name of Sanjeev and asked him to bring gun and the said person sat in the car of complainant and took his car towards back side. The alarm raised by the complainant attracted Onkar Singh who pelted a brick towards the car which broke its window pane, but he ran away in the car. His companion also escaped. The complainant checked his safe and found that an amount of ` 20,000/- was taken by the person of black complexion.

3. After registration of car, the place of occurrence was inspected by the police. A ring and a mobile phone (blood stained) were recovered. From the mobile phone, it was found that it belongs to accused Sanjeev Kumar. It was further found that he was admitted in Civil Hospital, Gobindgarh. The co-accused was also present there. They were arrested. Accused Sanjeev Kumar suffered a disclosure statement and got recovered Maruti Car No.CHK – 1515. Another accused, Lakhbir Singh, was found juvenile.

4. After completion of investigation, challan against accused – Sanjeev Kumar and Lalit Kumar Sharma, was presented in the court of jurisdictional Magistrate. They were supplied the copies of police report and other documents appended therewith as required under Section 207 Cr.P.C., free of costs.

5. Finding a prima facie case against the accused, they were charge-sheeted for offences under Section 382 IPC read with Section 34 IPC, to which, they pleaded not guilty and claimed trial.

6. In order to prove the charges, prosecution examined as many as 9 witnesses including complainant – Rajiv Sabharwal.

7. Incriminating circumstances appearing in the prosecution evidence were put to accused in their statement under Section 313 Cr.P.C. who denied the same, pleaded innocence and complained of false implication. No evidence in defence was led.

8. After hearing learned counsel for the parties and having gone through the material available on record, the Trial Court vide judgment dated November 14, 2011, held both the accused guilty, convicted under Section 382 IPC read with Section 34 IPC and sentenced them under Section 382 IPC to undergo RI

for a period of 2 years alongwith fine to the tune of ₹ 5,000/- each and in default of payment of fine, to further undergo RI for one month.

9. Two separate appeals were preferred by the accused and decided vide a common judgment dated August 4, 2015 passed by the lower appellate court. Appeal filed by accused Lalit Kumar was accepted and he was acquitted. Appeal filed by petitioner – Sanjeev Kumar failed and judgment of conviction qua the petitioner was upheld. However, keeping in view the fact that he was also injured and was found admitted in Civil Hospital, Mandi Gobindgarh; and that he was facing trial for the last 10 years, sentence imposed upon him was reduced from 2 years to 1 ½ years.

10. Now, accused – petitioner Sanjeev Kumar has approached this Court by way of instant revision petition challenging his conviction and sentence imposed by the courts below vide judgments/orders referred to above.

11. On September 22, 2015, the following order was passed by this Court:-

“Challenge in this criminal revision petition is to the judgment dated 4.8.2015, passed by learned Additional Sessions Judge, Ludhiana, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offence punishable under Section 382, IPC, recorded by learned Judicial Magistrate First Class, Khanna, was partly allowed. Learned Appellate Court modified order of sentence by reducing the sentence from rigorous imprisonment for two years to rigorous imprisonment for one year and six months.

At the very outset, learned counsel for the petitioner submits that in view of concurrent findings of both the Courts below, he does not propose to challenge the conviction of petitioner. However, he submits that there are arguable points to far as the quantum of sentence is concerned.

Notice of motion for 6.11.2015 with regard to quantum of sentence only.”

12. A glance at the aforesaid order transpires that learned counsel for the petitioner did not press the conviction of petitioner and therefore, notice of motion was issued with regard to quantum of sentence only. This Court has also scrutinized the impugned judgments as well as the relevant documents/ evidence

and is of the considered view that there is no scope for any interference in impugned judgment(s) as far as the conviction of the petitioner under the aforesaid provisions of Indian Penal Code is concerned. As such, the conviction of the petitioner is upheld.

13. As far as quantum of sentence is concerned, learned counsel for the petitioner has submitted that the petitioner is a first offender. No other case of similar nature is either pending or disposed of against the petitioner. He is the only bread winner in the family. He never misused the concession of bail during trial. He has already undergone a period of more than one year, out of the substantive sentence of 1 ½ year. Accordingly, learned counsel for the petitioner prays that sentence imposed upon the petitioner be reduced to the period already undergone.

14. This Court has given an anxious thought to the submissions made by learned counsel and has gone through the record available on file.

15. As per the custody certificate dated January 18, 2016, by now, the petitioner has already undergone approximately 12 months and 12 days out of total sentence of 1 ½ year.

16. In similar circumstances, the Hon'ble Apex Court in case Harjit Singh v. State of Haryana, (2002) 10 SCC 695 had reduced the sentence of 7 years under Section 25 of the Arms act as already undergone (more than 5 years). To the same effect is the judgment in case Kirpal Singh v. State of Punjab, 2009(1) AICLR 5 of 7 whereby this Court had reduced the sentence of petitioner to already undergone, taking into consideration the fact that petitioner has three children – there is no one to look after his family – petitioner has already undergone sentence of more than 5 months out of total sentence of one year. In cases Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) Law Herald 1849; Surjit Singh v. State of Punjab, 2003(2) RCR (Criminal) 429, Sudhir v. State of Haryana, 2001(2) RCR

(*Criminal*) 336; and Chhotu Ram v. State of Haryana, 2013(4) RCR (Criminal) 630, similar view has been adopted.

17. Taking into consideration the totality of facts and circumstances, though, conviction of the petitioner is upheld but the sentence imposed upon him under Section 382 IPC is reduced to the period already undergone by him with no change in fine clause. The petitioner is ordered to be released forthwith in this case.

18. With the above modification in the sentence, the revision petition is dismissed.

Crl. Misc. No.31168 of 2015

In view of the aforesaid judgment rendered in the main case itself, application under Section 397 Cr.P.C. for suspension of sentence has rendered infructuous and is disposed of as such.

March 21, 2016
avin

(Jaspal Singh)
Judge