

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

CRR No.4826 of 2015 (O&M)

Decided on:-May 26, 2016.

Ghansham @ Neelu.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Present:- Mr. J.S. Grewal, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J.

Ghansham @ Neelu, the petitioner, has filed the present revision petition against the judgment dated 17.8.2015 passed by learned Additional Sessions Judge, Fazilka, whereby his appeal filed against the judgment of conviction and order of sentence dated 10.12.2014 passed by learned Chief Judicial Magistrate, Fazilka, was dismissed.

Vide judgment dated 10.12.2014, learned Magistrate held the petitioner guilty for committing offence under Section 394 read with Section 34 IPC as well as Section 25 of the Arms Act, 1959 and vide separate order

of even date, sentenced him as under:

<u>Under Section</u>	<u>Sentence</u>
394 read with Section 34 IPC	Rigorous imprisonment for three years with fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for thirty days.
25 of the Arms Act.	Rigorous imprisonment for three years with fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for thirty days.

However, both the substantive sentences were ordered to run concurrently.

Briefly stated, case of the prosecution is that on 03.03.2013 an MLR No. BJS-42/13 of Raj Kumar son of Harbhagwan Dass, Caste Mahajan, resident of Radha Swami Colony Fazilka was received in the Police Station. In the said medico-legal report, 7 injuries were mentioned. Injuries No.1 and 7 were described as sharp, whereas injuries No.2 to 6 were described as blunt in nature.

On receipt of said MLR, ASI Janak Raj along with other police officials reached at Civil Hospital, Fazilka and recorded the statement of Gurmeet Singh, who was the eye witness of the occurrence. As per his statement, he was working as a driver on the Bolero vehicle No.PB-20E-0085 of M/s Shiv Lal and Company Wine Contractor Fazilka. He further stated that they were collecting the cash from the different contractors of

Fazilka Circle at the main Bazar Theka. The cashier of the company, namely, Raj Kumar @ Raju son of Harbhagwan collected the cash. Complainant and Raj Kumar after collecting the cash from the contractors of the city daily used to drop him along-with the cash in his house.

On 3.3.2013, complainant Gurmeet Singh along-with Raj Kumar collected the cash of Rs.6,00,000/- upto 09:30 PM and put the same in a black bag. He also dropped Raj Kumar near his house on the edge of the street. When Raj Kumar reached near the curve of the street, which was a closed street, and a light of the street was on. Suddenly Raj Kumar raised a huge cry and Raula. After leaving the vehicle, the complainant ran towards Raj Kumar and saw two young persons between the age group of 20-30 years. One of them was wearing a cap of red color on his head and having a pistol in his hand. The second person was also armed with Kapa and he was giving blow of the same on the head of Raj Kumar. The person who was armed with pistol was snatching the cash bag from him. Raj Kumar received multiple injuries and fell down.

The complainant while standing far away raised a noise and then, both the accused, who can be identified by him, after snatching the bag from Raj Kumar ran away along with their weapons. He looked after Raj Kumar and thereafter, Veena Rani and Parteek, wife and son of Raj Kumar came from their house. All of them had taken Raj Kumar to Civil Hospital, Fazilka in Bolero vehicle and got him admitted there.

On the basis of said statement, FIR No.36 dated 3.3.2013 under Section 394 read with Section 34 IPC was registered against the accused. The investigation was conducted by ASI Janak Raj, who prepared the site plan on the identification of complainant Gurmeet Singh. On 04.03.2013, ASI Janak Raj along with other police officials went to Civil Hospital and recorded the statement of Raj Kumar. On the basis of statement of the said Raj Kumar, accused Shingara Singh @ Shingari son of Pritam Singh, resident of Nai Abadi, Fazilka, Ganshan @ Neelu son of Boota Sing, Anoop Singh son of Chand Singh and Kuldeep Singh son of Mann Singh were nominated. From the statement of Raj Kumar and Veena Rani, the offence under Section 25 of the Arms Act was added in the case.

On 09.03.2013, accused Shingara Singh @ Shingari was raided at village Khera District Udham Singh. On 12.03.2013, the information was supplied to ASI Janak Raj by the informer that accused Ghansham @ Neelu, Anoop Singh and Kuldeep Singh were sitting in an Indigo car bearing registration No.PB-01-9448 and were planning to go some where. The police raided the place and all the three accused were apprehended. During investigation, the accused had made their disclosure statements on the basis of which they got recovered the stolen articles and the snatched cash in the presence of witnesses. The pistol of 12 bore and cartridges were also recovered and a sketch was also prepared accordingly.

After completion of investigation, the police submitted report

under Section 173 Cr.P.C. The copies of Challan were supplied to the accused free of costs as envisaged under Section 207 of Cr.P.C.

On finding a prima-facie case against the accused, they were charge-sheeted under Section 394 read with Section 34 IPC and Section 25 of Arms Act to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution has examined as many as 8 witnesses, namely, PW-1 Gurmeet Singh, PW-2 Raj Kumar, PW-3 Surjit Singh, PW-4 ASI Janak Raj, PW-4 Bhajan Singh (Renumbered), PW-5 Sarwan Kumar Dealing Clerk, PW-6 Kamlesh Kukkar and PW-7 Dr. Bhupinderjit Singh.

After the closure of prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded in which all the incriminating evidence appearing against the accused was put to him. They denied all the allegations levelled against them and pleaded false implication. However, no defence evidence was led by the accused.

Considering the evidence so adduced, the trial Court vide its judgment and order dated 10.12.2014 had convicted and sentenced the petitioner in the manner as mentioned above.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 17.8.2015.

It is in the aforesaid circumstances the petitioner has filed the present revision petition.

During the course of arguments, learned counsel for the petitioner has not challenged the present revision petition on merits and restricted his arguments qua the quantum of sentence only. He has further contended that the sentence imposed upon the petitioner is excessive and harsh. The petitioner is a young person having no past criminal record. The motive seems to have been only to make a quick buck.

Learned counsel for the petitioner has further contended that the accused is facing the criminal proceeding since the year 2013. As against the awarded sentence of 3 years, the petitioner is in custody for the last about 1 year and 3 months. During trial, he remained in custody for 5 months and 19 days and then, he is in custody from 17.8.2015 i.e. the date when his appeal was dismissed. He has prayed that the punishment of petitioner may be converted into the one already undergone.

On the other hand, learned State counsel, though has not disputed the custody, but stated that considering the gravity of offence committed by the petitioner, there is no reason for reduction of sentence. He has urged for dismissal of the revision petition.

I have heard learned counsel for the parties.

Sentencing the accused in a criminal case is an important judicial exercise. The quantum of sentence has to commensurate with the

guilt of the accused, gravity of the offence and the circumstances under which the offence was committed. At times, it has been reiterated that the purpose of punishment in a criminal case is two pronged, namely, punitive and reformatory. The reformatory aspect of sentencing requires that sufficient opportunity should be given to the convict for re-moulding himself so as to make him acceptable in the society as one of its important constituents. Whereas the punitive aspect would only deal with the deterrence impact of the sentence.

Therefore, in order to determine the question of quantum of sentence, the Courts of law ought to weigh the degree of the culpability of the accused, its effect on others and the impact on the society. It is also of utmost importance that unnecessary leniency may not be shown while sentencing an accused as it might have a cascading effect on the society as a whole. While sentencing, both sides of the fulcrum have to be maintained at straight line and a balance has to be struck between the interest of the individual and the well being of the society.

No doubt, a harsh punishment may serve as a deterrent, but at the same time, it would not benefit the convict in reforming himself, and thereby divesting the society of one of its constituents. The accused can learn more in society than in the company of criminals who are convicts.

In the case in hand, the petitioner is a young person and the custody certificate received from the jail reveals that he is in custody for

about 1 year and 3 months. No other case has been reported against him. Considering the fact that the incident was of 3.3.2013 and he is a first time offender, this Court is inclined to modify sentence of the petitioner.

Hon'ble Dehli High Court in ***Criminal Appeal No.124 of 2011*** titled as ***Ajay and others Versus State*** decided on 23.7.2015, considering the fact that the accused were first time offenders under Sections 392 and 394 read with Section 34 IPC and Section 25 of the Arms Act, has reduced their sentence from 10 years to the period already undergone in custody. In that case, one accused had served more than 6 ½ years whereas another accused had served more than 5 years of imprisonment.

Similarly, in the case of ***Bhagat Singh Versus State of Himachal Pradesh, through Secretary Home, Government of Himachal Pradesh 2013(1) RCR (Criminal) 705***, Hon'ble Himachal Pradesh High Court has considered the reduction of sentence. In that case, the accused were convicted and sentenced for 7 years under Sections 341/342/458/380/394/395/397/353/332/307 IPC. They were aged about 23 to 29 years having no past criminal record and the motive seemed to have been only to make a quick buck. The nature of the manner in which the offence was committed, pointed out to the desperation of the accused. Hon'ble Himachal Pradesh High Court reduced their sentence from 7 years to 4 years and has observed in para No.30 of the judgment as under:

“The nature of the manner in which the offence has been

committed, points out to the desperation of the accused. True, the sentence imposed should not be an act of vengeance or attribution but at the same time, it would not be appropriate to deal with the accused in the manner which sent the signal to the society that crime pays.”

Looking at the totality of facts and circumstances of the present case, it would be appropriate if the conviction of petitioner Ghansham @ Neelu is upheld and the sentence served by him is reduced from rigorous imprisonment for three years to a period of rigorous imprisonment for one year and nine months, however, with no change in the sentence of fine. Ordered accordingly.

With the aforesaid modification in order of sentence, the present revision petition stands dismissed.

May 26, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE