

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

Crl. Appeal S-2171-SB of 2003
Date of Decision :September 29, 2017

Om ParkashAppellant

VERSUS

State of HaryanaRespondent

Crl. Appeal S-2346-SB of 2003

Gurjit SinghAppellant

VERSUS

State of HaryanaRespondent

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

Present : Mr. D.N. Ganeriwala, Advocate
with Ms. Mehak Sharda, Advocate,
for appellant-Om Parkash.

Mr. Manvinder Sidhu, Advocate
for appellant-Gurjit Singh.

Mr. Pramjeet Singh, Assistant Advocate General,
Haryana.

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

The appellants, namely, Om Parkash and Gurjit Singh,
were tried for committing offences punishable under Sections

392/307/34 of the Indian Penal Code and Section 25 of the Arms Act. Vide impugned judgment and order dated 05.11.2003, learned Additional Sessions Judge, Sirsa, convicted them under Section 307 IPC and sentenced them to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 20,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for two years. They were also convicted under Section 392 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 20,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for two years. They were further convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. All the sentences were ordered to run concurrently. The period of imprisonment already undergone by them during investigation and the trial was ordered to be set off against their substantive sentences.

Aggrieved of his conviction and sentence, Om Parkash filed the present appeal i.e. CRA-S-2171-SB-2003 whereas Gurjit Singh filed CRA-S-2346-SB-2003. Both the appeals were admitted and vide order dated 12.08.2004, this Court had suspended the sentences of imprisonment of the two appellants and directed their release on bail.

As both the appeals arise out of the same judgment of

conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, complainant-Harpal was employed as a Salesman at a liquor vend in Village Jamal. Udami Ram also worked with him as a Salesman at the said liquor vend. On 20.03.2002 at about 7/8.00 p.m., two persons came on a scooter at the liquor vend. After parking their scooter outside, they entered the liquor vend. All of a sudden, they whipped out pistols and directed complainant-Harpal and Udami Ram to hand over the entire cash to them. Due to fear, the complainant and Udami Ram got towards one side of the room. Both the accused stepped forward and collected Rs. 4,500/- lying in the cash box. Before departing, they threatened the complainant and Udami Ram with dire consequences if they raised any alarm. Both the accused fled along the nearby canal. The complainant contacted a police party, which was stationed near the saw-mill, where his statement was recorded and on its basis, FIR No.40 dated 20.03.2002, under Sections 392/307/34 of the Indian Penal Code was registered.

During the investigation of the case, the accused were arrested when they were seen riding the scooter. One of them i.e. Om Parkash fired at the police party. Dharambir Singh, Station House Officer fired in defence. The police jeep dashed against the scooter of the accused. As a result, the scooter fell on the ground and both the accused were arrested. Accused Om Parkash was

found in possession of one countrymade pistol with two live cartridges whereas Gurjit Singh was also found in possession of a countrymade pistol with one live cartridge. The accused were arrested as they did not possess any license or permit for possessing the pistols. They were, accordingly, booked under Section 25 of the Arms Act.

At the trial of the case, the prosecution examined PW-1 Dilbag Singh, Assistant Sub Inspector; PW-2 Nand Lal, Welfare Inspector, office of Superintendent of Police, Sirsa; PW-3 Bijander Singh, Head Constable; PW-4 Subhash Chander, Constable, PW-5 Radhey Shyam, Draftsman; PW-6 Krishan Kumar, Reader to District Magistrate, Sirsa; PW-7 Harpal-complainant, PW-8 Udami Ram, an eye-witness and PW-9 Dharambir Singh, Sub-Inspector.

When examined under Section 313 Cr.P.C., both the accused denied the allegations levelled against them. According to them, they had been falsely implicated in this case by the police.

In their defence, the accused examined DW1 Ram Dev, Head Constable and DW2 Kulveer Singh, Constable. They also tendered in evidence copy of report under Section 173 Cr. P.C. Ex. D1 and certified copy of judgment dated 14.09.1999 Ex.D2 and thereafter closed their defence evidence.

After hearing learned counsel for the parties and on examining the evidence, the trial Court accepted the prosecution case and accordingly, convicted and sentenced the appellants, as

mentioned above.

In their respective appeals, the appellants have prayed for setting aside the impugned judgment of conviction and sentence and for acquitting them of the charges against them.

After hearing learned counsel for the parties and on going through the evidence available on the record besides perusing the impugned judgment of conviction, this Court finds that the prosecution has led cogent and convincing evidence to sustain the charges framed against the appellants. Merely because the record of liquor vend was not produced before the Court is no ground to hold that no such occurrence as alleged by the prosecution, had taken place. While committing the crime both the appellants had collected cash amounting to Rs.4,500/- from the cash box and during the investigation of the case, the said amount was recovered from the persons of the appellants. Further, at the time of occurrence, the appellants had whipped out pistols and pointed the same at Harpal and Udami Ram. Both PW-7 Harpal and PW-8 Udami Ram were thoroughly cross-examined by the defence, but no material could be brought on record which could establish that they had been falsely implicated in this case. Merely because while committing robbery they had not opened fire is no ground to reject the prosecution case in its entirety. The fact remains that they were armed with countrymade pistols at the time of the occurrence, which they had pointed towards PW-7 Harpal and PW-8 Udami

Ram. Further, before the appellants were apprehended by the police, they had fired towards the police party with an intention to commit murder. Upon their apprehension by the police and, that too, during the same night of the occurrence, one countrymade pistol alongwith two live cartridges were recovered from the person of Om Parkash-appellant whereas one countrymade pistol alongwith one live cartridge was recovered from the person of Gurjit Singh-appellant.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the question of sentence, it may be noticed that the appellants have been facing the agony of criminal prosecution for the last more than fifteen years. They are on bail pursuant to the order passed by this Court on 12.08.2004.

As per the custody certificates, produced by the learned State counsel, Om Parkash-appellant has already undergone an actual period of two years, ten months and twenty two days which includes post conviction period of one year, six months and two days whereas Gurjit Singh-appellant has undergone an actual period of two years, three months and eight days which includes post conviction period of nine months and thirteen days. When they were heard by the learned trial Court on the quantum of sentence, they had pleaded that they were poor persons and their families

would suffer in case they were sent behind the bars for a long period.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellants need not be sent behind the bars, once again, so as to undergo their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants under Sections 307 and 392 IPC and Section 25 of the Arms Act, is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentences of fine alongwith their default clauses are maintained.

Criminal Appeal S-2171-SB of 2003 titled “Om Parkash Versus State of Haryana” and Criminal S-2346-SB of 2003 titled Gurjit Singh Versus State of Haryana” are, accordingly, disposed of.

September 29, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No