

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-2091-SB of 2004

Date of Decision : October 12, 2017

Jagbir

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Arshvinder Singh, Advocate
for the appellant.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

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

The appellant, alongwith Bijender, was tried for committing offences punishable under Sections 392, 394, 397 and 120-B IPC and Section 25 of the Arms Act. Vide judgment and order dated 12.10.2004, learned Additional Sessions Judge, Panipat exonerated Bijender accused of all the charges against him. The appellant was convicted under Section 392 read with Section 397 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for one year. He was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for six months. Both the substantive sentences were ordered to run concurrently. The period of detention already undergone by him during the investigation as well as the trial was ordered to be set off against the sentence awarded to them.

Aggrieved of his conviction and sentence, the appellant filed the instant appeal which was admitted on 29.10.2004. Subsequently, vide order

dated 29.9.2005, a Co-ordinate Bench of this Court suspended his sentence of imprisonment and ordered his release on bail.

As per the prosecution, on 21.5.2001 at about 1.30 p.m., complainant Ram Pal, who was Secretary of the Co-operative Society, Village Seenk, alongwith Partap Singh, Watchman left the office of the Society on motorcycle bearing registration No.HR-33-8943 for depositing the amount of Rs.3,40,000/- with the Co-operative Society, Village Urlana Kalan. While the complainant was driving the motorcycle, Partap Singh, Watchman was occupying the pillion seat. When they reached Gangeshar Rajbaha, Gohana-Safidon Road, there came motorcycle bearing registration No.HR-06-4310 make Yahama, which was driven by Inderjit, whereas the appellant and Sunil were occupying the pillion seat. The complainant knew all of them. The accused overtook their motorcycle and intercepted the same. The appellant took out a pistol and at pistol-point threatened him to stop the motorcycle. The complainant and Partap Singh got frightened and fell from the motorcycle. Inderjeet accused parked his motorcycle and also gave danda blow in the stomach of the complainant and asked Partap Singh to hand over the bag containing the money to him at pistol point. Inderjeet accused took out a knife from his pocket and put the same at his neck. The appellant snatched the bag containing the money from Partap Singh. All the three assailants, after snatching the money, left towards Gohana on their motorcycle.

On the basis of the statement made by complainant Ram Pal on the above mentioned lines, FIR No.127 dated 21.5.2001 was registered at Police Station Madlauda. During the investigation, the appellant and Inderjeet were intercepted while they were coming on motorcycle bearing registration No. HR-06-4310 and carrying the amount which they had robbed. Both of

them were arrested and suffered disclosure statements that they, alongwith Sunil and Bijender, had hatched a conspiracy to commit the offence. Accordingly, Bijender accused was arrested. However, Sunil accused could not be arrested and was declared a proclaimed offender. During the trial, Sunil was arrested and was produced before the Court. However, Sunil and Inderjeet again absented themselves and were declared proclaimed offenders.

The trial of the case ended with the acquittal of Bijender of all the charges against him and conviction and sentence of the appellant, as mentioned above.

After hearing learned counsel for the parties and on going through the record, this Court finds that PW5 Ram Pal and PW4 Partap Singh had testified in unequivocal terms that it was the appellant, who was carrying a pistol with him at the time of the occurrence which he had pointed at them and, thereafter snatched the bag containing the amount of Rs.3,40,000/-. During the investigation of the case, the appellant was arrested and the bag containing the amount of Rs.3,40,000/- was recovered. Learned defence counsel has not been able to point out any discrepancy or contradiction in the testimonies of PW5 Ram Pal and PW4 Partap Singh. Merely because both Ram Pal and Partap Singh did not identify the appellant in the Court is no ground to reject their testimonies as PW5 Ram Pal admitted his signatures on ruqa Ex.PD and also the various documents prepared by the police during the investigation of the case. The act of PW4 Partap Singh and PW5 Ram Pal in not identifying the appellant was apparently on account of both of them joining hands with the accused and not coming with the truth. Fact remains that the bag containing the amount of Rs.3,40,000/- snatched from PW4 Partap Singh was recovered from the appellant after his apprehension.

Under these circumstances, no fault can be found with the findings arrived at by the learned trial Court in convicting the appellant under Section 392 read with Section 397 IPC and Section 25 of the Arms Act.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than sixteen years. When he was heard by the learned trial Court in terms of the provisions of Section 234 Cr.P.C, he had pleaded that he was a first offender and got aged parents. Being the eldest in the family, he was required to look after his parents. As per the custody certificate already brought on record by the learned State counsel, the appellant has since undergone an actual period of three years, eight months and twenty two days, besides earning remissions of one month and twenty four days. It has also been mentioned therein that apart from the present case, the appellant was involved in four other criminal cases but he stood acquitted/discharged in all of them.

Having heard learned counsel for the appellant and taking into consideration the totality of the circumstances, this Court is of the view that the sentence of imprisonment of ten years imposed upon the appellant for the offence under Section 392 read with Section 297 IPC is on the higher side. Ends of justice shall be suitably met if the same is reduced from ten years to seven years.

Resultantly, the conviction of the appellant under Section 392 read with Section 397 IPC and Section 25 of the Arms Act is upheld. His substantive sentence of imprisonment of ten years imposed upon him for the offence under Section 392 read with Section 397 IPC is reduced to rigorous imprisonment for seven years. The sentence of fine for the said offence

alongwith its default clause is maintained. The sentence of imprisonment and fine alongwith its default clause imposed upon the appellant for the offence under Section 25 of the Arms Act are also maintained. Both the substantive sentences of imprisonment shall run concurrently.

The appeal is, accordingly, disposed of.

October 12, 2017
satish

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO