

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 23.09.2017****CRA-S 2337-SB of 2004**

Joginder @ Bachi

...Appellant

Vs.

State of Haryana

...Respondent

CRA-S 625-SB of 2005

Sunil

...Appellant

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Gaurav Sharma, Advocate,
for the appellant in CRA-S 2337-SB of 2004.

None for the appellant in CRA-S 625-SB of 2005.

Dr. Sushil Gautam, DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

This judgment shall dispose of the aforesaid two criminal appeals, one filed by the appellant Joginder @ Bachi and the other filed by the appellant Sunil seeking reversal of the judgment of conviction dated 12.10.2004 and order of sentence dated 15.10.2004 of the Additional Sessions Judge, Sonipat rendered in Sessions case No.104 of 2004, whereby the appellants were convicted for the offence under Section 392 read with Section 34 IPC and under Section 397 IPC and were sentenced to undergo R.I. for seven years for an offence under Section 397 and further to undergo

R.I. for five years and to pay a fine of ₹1000/- each under Section 392 read with Section 34 IPC and in default of payment of fine to further undergo R.I. for six months. The substantive sentences were ordered to run concurrently.

During the pendency of the appeals, appellants Joginder @ Bachi and Sunil filed separate applications i.e. CRM No.38855 of 2006 and CRM No.10216 of 2008 respectively under Section 389 of Cr.P.C and the sentence awarded to appellants was suspended vide orders dated 27.04.2006 and 23.07.2008 respectively. Out of the total substantive sentence, appellant Joginder @ Bachi has already undergone 03 years, 03 months & 10 days of sentence, whereas appellant Sunil has undergone 04 years & 06 months.

Briefly stating the case of the prosecution was that an FIR was registered against the appellants on a complaint made by one Zile Singh alleging commission of a robbery on 01.07.2002 at about 4.00 PM, when he was going from Gohana to his own village Chhapra on his motor-cycle. It was also alleged that his motor cycle was stopped by three young men armed with *lathis*. They snatched his motor-cycle and sped away towards village Kehlpa. One of the assailants was armed with a pistol and they robbed on pistol point.

Later on, both the appellants along with Om Parkash, who were already in custody in some other case punishable under Sections 399 & 402 IPC, were arrested pursuant to their disclosure statements Ex.PC, Ex.PD and Ex.PE. The Motor-cycle was also got recovered pursuant to the disclosure statement of Joginder. After completing the investigation challan was filed and the appellants were sent for trial. Charges were framed against them for the offences punishable under Sections 392 and 397 IPC to which the appellants pleaded not guilty. It may be mentioned that during the pendency

of trial, Om Parkash died and trial qua him stands abated. Number of witnesses were examined by the prosecution and based upon the evidence so recorded and after recording statement of the appellants under Section 313 Cr.P.C., the appellants were held guilty and convicted for the offences punishable under Section 392 read with Section 34 IPC and under Section 397 IPC vide judgment dated 12.10.2004 and have been sentenced to undergo various punishments vide order dated 15.10.2004, as stated above.

As per the judgment delivered by the learned Additional Sessions Judge, Sonipat impugned before this Court, the role assigned to the appellants is that by fear of deadly weapons i.e. lathis and country made pistol, they committed robbery of the motor-cycle of the complainant and, thus, the trial Court finding no mitigating circumstance punished them.

Having heard Mr. Gaurav Sharma, learned counsel for the appellant Joginder @ Bachi and Dr. Sushil Gautam, learned State counsel and going through the record of the case, I find that the findings recorded by the learned Additional Sessions Judge on conviction are valid and there is ample evidence to base conviction. Thus, the conviction of the appellants for the aforesaid offences stands affirmed.

However, Mr. Sharma prayed for reduction of the punishment awarded to the appellants to the period already undergone because appellant Joginder @ Bachi has already undergone 03 years, 03 months & 10 days of sentence, whereas appellant Sunil has undergone 04 years & 06 months.

Upon this, learned State counsel raised an issue pointing out that the appellant Joginder @ Bachi has been convicted in several other cases i.e. FIR No.60 dated 04.07.2002 registered under Sections 399/402/307 IPC & Section 25 of the Arms Act, P.S. Baroda; FIR No.42

dated 13.02.2002 registered under Sections 457/380 IPC, P.S. Gharaunda; FIR No.40 dated 11.02.2002 under Section 379 IPC, P.S. Gharaunda. He points out that appellant Joginder @ Bachi was also involved in FIR No.377 dated 05.11.2001 under Sections 457/380 IPC, P.S.Model Town, Panipat; FIR No.119 dated 27.08.2000 under Sections 379 IPC, P.S. Narwana and FIR No.47 dated 16.02.2002 under Section 25 of the Arms Act, but stands acquitted. The Law Officer has supported this contention by producing the custody certificate of Joginder, which is retained on record.

Keeping in view the facts and circumstances of the present case and the fact that appellant Joginder @ Bachi has already undergone 03 years, 03 months & 10 days of sentence, whereas appellant Sunil has undergone 04 years & 06 months, by adopting reformatory approach, I find it a fit case to reduce the sentence awarded to the appellants to the period already undergone while maintaining their conviction. However, in view of the track record of the appellants and in order to prove “good behaviour”, both the appellants are required to report at the concerned Police Station every two months to and till the satisfaction of the Police Authorities and would also do community service for 6 months as the elders of their native village/s or Panchayats prescribe.

Consequently, both the appeals are disposed of.

A copy of this order be sent to the concerned Police Station.

23.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>