

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

Criminal Appeal S-530-SB of 2004

Date of Decision: April 19, 2017

Hardeep Singh @ Deepa

.....Appellant

Versus

State of Haryana

..... Respondent

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

Present : Mr. R. S. Mamli, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. Advocate General, Haryana.

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

The appellant alongwith Jakir Hussain and Anil, was tried for committing offences punishable under Section 392 read with Section 397 IPC and Section 25 of the Arms Act. Vide judgment and order dated 11.2.2004, learned Additional Sessions Judge, Panipat, acquitted Anil of all the charges against him. The appellant as well as Jakir Hussain were also acquitted under Section 397 IPC and Section 25 of the Arms Act. However, they were convicted under Section 392 IPC and sentenced to undergo rigorous imprisonment for a period of three years and six months and to pay a fine of Rs.1,000/- each and in default of payment of

fine, to undergo rigorous imprisonment for six months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 8.3.2004. Subsequently, vide order dated 28.5.2004, this Court suspended his sentence of imprisonment and ordered his release on bail.

According to the prosecution, complainant-Vikas Kumar was carrying on the business of sale of shoes at Baba Banda Bahadur Road, Panipat. On 17.2.2002, he opened his shop at 9.30 a.m. At about 1.15 p.m., three young men came there on a Hero Honda motor-cycle. Two of them were Sikhs while third one was a Hindu. They were in the age group of 30 to 32 years, having dark complexion and wearing pants and shirts. They parked their motor-cycle outside his shop and asked him to show them the shoes. They purchased eight pairs of shoes of the value of Rs.9,500/-. When he demanded money from them, two of them went outside his shop whereas the Sikh boy remained in the shop. Said Sikh boy took out a country made pistol from his pocket and threatened the complainant with dire consequences if he raised any alarm. Later on all the three assailants left on their motor-cycle with the shoes.

Having heard learned counsel for the parties and on going through the record of the case, which stands requisitioned, this Court finds that complainant-Vikas Kumar while appearing as

PW1 testified about the manner in which the occurrence had taken place. He specifically averred about the three accused coming to his shop at about 1/1.15 p.m. on 17.2.2002 and when he sold them eight pairs of shoes for a total value of Rs.9,500/-, one of the assailants threatened him with dire consequences and, accordingly, the assailants were successful in leaving the spot on their motor-cycle and taking eight pairs of shoes with them. After their arrest, the appellant got recovered three pairs of shoes, Anil got recovered two pairs of shoes whereas Jakir Hussain got recovered three pairs of shoes. PW1 Vikas Kumar duly identified the said pairs of shoes, which had been taken away by the assailants. During the investigation of the case, sufficient material was collected by the prosecution to sustain the charge under Section 392 IPC against the appellant and his co-accused Jakir Hussain. Under these circumstances, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

Coming to the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than fifteen years. At the time of the occurrence, he was 23 years of age. He claimed himself to be a first offender and eldest son of his aged parents and, thus, sole bread winner of his family. As per the custody certificate produced by the learned State counsel, the appellant has undergone total sentence of one

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year, five months and twenty five days out of the sentence of three years and six months imposed upon him. He is also not shown to be either involved or convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is presently on bail pursuant to the order dated 28.5.2004 passed by this Court, need not be sent behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 392 IPC is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The fine is, however, enhanced to Rs.3,000/-. The fine amount be deposited by the appellant with the learned Chief Judicial Magistrate, Kaithal, within three months from today, failing which, he shall be required to undergo rigorous imprisonment for six months.

The appeal is, accordingly, disposed of.

April 19, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No