

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

DATE OF DECISION: 17.04.2017.

1. CRA-S-1268-SB of 2013

Raju	Versus	Appellant.
State of Haryana		...Respondent.

WITH

2. CRA-S-1448-SB of 2012

Sonu alias Ajay and another	Versus	Appellants.
State of Haryana		...Respondent.

AND

3. CRA-S-3521-SB of 2012

Deepak	Versus	Appellant.
State of Haryana		...Respondent.

CORAM: HON'BLE MR. JUSTICE (DR.) SHEKHER DHAWAN

Present: Mr. Rajinder Sorout, Advocate
for the appellant (in CRA-S-1268-SB of 2013).

Mr. Shiva Khurmi, Advocate (Amicus Curiae)
for the appellants (in CRA-S-1448-SB of 2013).

Mr. Saurav Khurana, Advocate
for the appellant (in CRA-S-3521-SB of 2012).

Mr. Vivek Saini, Deputy Advocate General, Haryana.

SHEKHER DHAWAN, J.

These three appeals bearing Nos.CRA-S-1268-SB of 2013;

CRA-S-1448-SB of 2012 and CRA-S-3521-SB of 2012 are directed against

the common judgment of conviction dated 07.08.2012 and order of sentence dated 08.08.2012 passed by learned Additional Sessions Judge, Faridabad, whereby the appellants were convicted and sentenced as under:-

Name	Under Section	Sentence	In default
1. Raju 2. Sonu alias Ajay 3. Sehdev alias Jagdamba 4. Deepak	Section 398 read with Section 34 of Indian Penal Code (for short, “IPC”)	to undergo rigorous imprisonment for a period of seven years.	
Raju	Section 25 of Arms Act.	to undergo rigorous imprisonment for a period of one year and to pay of fine of ₹5,000/-.	To further undergo rigorous imprison- ment for a period of three months.
The substantive sentences in respect of appellant Raju were ordered to run concurrently.			

Therefore, all the above mentioned appeals are being disposed of by this common judgment.

2. Relevant facts for the purpose of decision of these appeals; that on 14.04.2011 on the basis of a secret information, all the appellants, namely, Sonu, Raju, Deepak and Sehdev were apprehended. As per information made available by the informer, the above named four persons were looting passersby on the by-pass road and on this information, police party apprehended all the four appellants/ accused. Initially, they made an unsuccessful effort to make an escape but they were overpowered and a countrymade pistol of .315 bore was recovered from accused Raju and an iron rod was recovered from remaining three accused. The same were taken into police custody. After completion of investigation proceedings, challan was presented in the Court for trial.

3. During trial, learned Court below completed various

proceedings of trial including framing of charges against the accused, recording of evidence of the prosecution witnesses including witnesses in whose presence recovery of weapon used during commission of offence was effected and Investigating Officer of the case as well as examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, the trial Court held the appellants guilty and convicted them for commission of offence under Section 398 read with Section 34 of IPC and Section 25 of the Arms Act on 07.08.2012 and sentenced them on 08.08.2012.

4. Aggrieved by the judgment of conviction and the order of sentence, the appellants are before this Court by way of present appeals.

5. Latest custody certificates in respect of appellants Raju, Sonu alias Ajay, Deepak and Sehdev alias Jagdamba filed by learned State counsel are taken on record.

6. As per custody certificates placed on file, appellants Deepak and Sehdev alias Jagdamba have already undergone substantive sentence awarded to them in the present case, bearing FIR No.84 dated 14.04.2011, and they have since been released from custody. Learned counsel for appellants Deepak and Sehdev alias Jagdamba stated that they do not challenge the judgment of conviction qua both these appellants. As such, the appeals: CRA-S-3521-SB of 2012 filed by appellant Deepak and CRA-S-1448-SB of 2012 qua appellant Sehdev alias Jagdamba have become infructuous and are disposed of as such.

7. As regards appellants Raju and Sonu alias Ajay, learned counsel contended that against the awarded sentence of seven years'

rigorous imprisonment under Section 398 read with Section 34 of IPC both the appellants have already undergone substantial period of sentence while remaining in custody during investigation and trial. There is no other case pending against them and they be released from custody by reducing the sentence to the period which they have already undergone while remaining in custody. However, learned counsel for the appellants did not raise any argument regarding judgment of conviction.

8. While arguing on this point, learned State counsel has not disputed the fact regarding the period of sentence already undergone by appellants Raju and Sonu alias Ajay.

9. Having considered the submissions made by learned counsel for the parties and the fact that the learned trial Judge recorded judgment of conviction on the basis of statement of informer, as well as witnesses in whose presence recovery of countrymade pistol of .315 bore was effected from accused Raju and an iron rod each was recovered from remaining three accused as well as the statement of Investigating Officer who had apprehended the appellants on the spot. This Court is of the considered view that the judgment of conviction was recorded correctly. No material contradiction could be pointed out in the statements of these witnesses. The defence version is just plea of denial which does not find any scope for interference. The judgment of conviction recorded by learned trial Judge is maintained and appeals against judgment of conviction qua appellants Raju and Sonu alias Ajay stand dismissed.

10. As regard to the appeals against order of sentence, appellant Raju has already undergone a total sentence of 6 years, 10 months and 08 days, whereas appellant Sonu alias Ajay has already undergone a total

sentence of 6 years, 8 months and 13 days while remaining in custody against awarded sentence of seven years. The order of sentence is modified to the extent that the sentence awarded to appellants Raju and Sonu alias Ajay is reduced to the one already undergone by them while remaining in custody in this case.

11. Accordingly, appeals: CRA-S-1268-SB of 2013 filed by appellant Raju and CRA-S-1448-SB of 2013 qua appellant Sonu alias Ajay stand partly accepted, in the above terms.

12. Resultantly, appeals CRA-S-1268-SB of 2013 filed by appellant Raju and CRA-S-1448-SB of 2013 qua appellant Sonu alias Ajay stand partly accepted and appeals CRA-S-3521-SB of 2012 filed by appellant Deepak and CRA-S-1448-SB of 2013 qua appellant Sehdev alias Jagdamba have become infructuous and are disposed of as such.

(SHEKHER DHAWAN)
JUDGE

17.04.2017.

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Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No