

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

Crl. Appeal S-477-SB of 2006
Date of Decision : November 27, 2017

Sunil Kumar @ Sonu

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. B.S.Saroha, Advocate
for the appellant.

Mr. Kapil Aggarwal, Addl. A.G., Haryana.

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

Appellant-Sunil Kumar @ Sonu alongwith Parvesh Kumar and Rajesh Kumar was tried for committing the offences punishable under Sections 392/397 IPC. Vide judgment and order dated 25/27.2.2006, learned Additional Sessions Judge, Sonapat acquitted Rajesh Kumar and Parvesh Kumar of the charges against them. The appellant was convicted for the offence under Section 392 IPC only and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo further simple imprisonment for two months.

Aggrieved of his conviction and sentence, the appellant filed the present appeal which was admitted on 10.3.2006. Subsequently, on 6.2.2007, this Court had suspended his sentence of imprisonment and ordered his release on bail.

According to the prosecution, Parneel Kumar-complainant lodged complaint Ex. PA with ASI Raj Singh on 24.6.2002 at Bus Stand of village Kundal to the effect that he was resident of village Thana Kalan and owner of Maruti car bearing No. DL-2CJ-6929. He had been plying his car as a taxi between Thana Kalan and Kharkhoda villages and used to park the same at the taxi stand. On that day, at about 12 noon, a young boy came to him and asked him to take him to village Kundal as he was to attend marriage function at Sonipat. An amount of Rs.550/- was settled as a fare. In the meantime, two other boys also appeared there and all of them boarded the taxi. At about 12.30 p.m. when they reached near village Kundal, the three passengers asked the complainant to stop the taxi as they were to ease themselves. The car was parked near a hand pump and the three boys went in the fields in order to ease themselves. The complainant kept on sitting near a kotha by the side of the road. In the meantime, the three boys returned there and asked him as to whether he wanted to remain alive. One of the boys showed a pistol to him. Thereafter, all three of them left in his car towards Delhi. They were young boys and 5'.9"/5'.10" tall. He could

recognize if produced before him. Accordingly, on the basis of the said complaint made by the complainant, FIR No. 104 dated 24.6.2002 under Sections 392/397 IPC and Section 25 of the Arms Act was registered at Police Station, Kharkhoda.

This Court has heard Mr. B.S.Saroja, learned counsel for the appellant and Mr. Kapil Aggarwal, Addl. A.G., Haryana and scanned the evidence with their able assistance.

The occurrence in question had taken place on 24.6.2002 at about 12 o'clock. Soon thereafter, complainant-Parneel Kumar had made statement before the police and on its basis FIR was registered at 6.05 p.m. The special report which was entrusted to Constable Bijender Singh at 7.00 p.m. was duly delivered to the higher officers. Therefore, it is very much established that the FIR was lodged with due promptitude which lends corroboration to the prosecution case.

During the investigation of the case, the appellant was apprehended on 17.10.2002 and from his possession a countrymade pistol of .315 bore was recovered. The appellant had then made disclosure statement Ex. PG to the effect that he alongwith Rajesh and Parvesh had hired one car from Kharkhoda for going to village Kundal and the car which was snatched on a pistol point was lying in a pit on the road side leading to village Kultana from Ismila. Pursuant to the said disclosure statement, the appellant got recovered car No. DL-2CJ-6929 make Maruti of

white colour from the designated place which was lying in a pit. The car stood duly identified by complainant-Parneel Kumar. Further, during the investigation of the case, the police had collected sufficient material so as to file the challan against the appellant and his two co-accused. Under these circumstances, no case is made out for any interference in the impugned judgment passed by the learned trial Court to the extent of convicting the appellant under Section 392 IPC.

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. When he was heard by the learned trial Court on the quantum of sentence, he had pleaded that he was a first offender. He was married and having one minor child. As per the custody certificate dated 31.8.2006 already brought on record, the appellant had undergone a total period of two years, four months and thirteen days. Further, as the appellant was granted the concession of bail vide order dated 6.2.2007, he had undergone another period of five months and six days. The total period undergone by him, thus, comes to two years, nine months and nineteen days. He is not shown to be convicted in any other case though three other criminal cases stood registered against him.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellant, who is

on bail for the last more than ten years, 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 of Rs. 5,000/- is, however, enhanced to Rs. 10,000/-. The entire amount of fine be deposited by him in the Court of Chief Judicial Magistrate, Sonipat within three months from today, failing which he shall be required to undergo simple imprisonment for one year.

The appeal is, accordingly, disposed of.

November 27, 2017
ajay-1

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No