

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRA-S-2589-SB-2012 (O&M)

Sandeep @ Leelu

..... Appellant

Versus

State of Haryana

..... Respondent

2. CRA-S-3520-SB-2012 (O&M)

Sandeep @ Leelu @ Shamsher @ Karam Dass

..... Appellant

Versus

State of Haryana

..... Respondent

3. CRA-S-1141-SB-2012(O&M)

Sandeep @ Shamsher @ Lilu @ Karamdass and another

..... Appellants

Versus

State of Haryana

..... Respondent

Date of decision: 16.01.2017

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Baljit Mann, Advocate
for the appellant-Sandeep @ Lilu @ Shamsher @ Karamdass
(in CRA Nos. 1141, 3520 and 2589-SB-2012).

Mr. PR Yadav, Advocate
for appellant No. 2-Ravi @ Sanata (in CRA-S-1141-SB-2012).

Mr. Gaurav Bansal, AAG, Haryana.

RAMENDRA JAIN, J.

1. By this common judgment, above-mentioned three appeals are being disposed of because all these have arisen out of series of different FIRs registered one after the other in a single day against the appellants, namely; Sandeep @ Shamsheer @ Lilu @ Karamdass and Ravi @ Sanata i.e. (i) FIR No. 113 dated 11.09.2011, under Sections 307 and 427 of the Indian Penal Code ('IPC'-for short) and Section 25 of the Arms Act at Police Station Sadar, Rewari (CRA-S-2589-SB-2012); (ii) FIR No. 114 dated 11.09.2011, under Sections 392 read with Section 34 IPC and Section 25 of the Arms Act, Police Station Sadar, Rewari (CRA-S-3520-SB-2012) and (iii) FIR No. 117 dated 11.09.2011 under Sections 398 and 401 IPC and Section 25 of the Arms Act at Police Station Sadar, Rewari (CRA-S-1141-SB-2012).
2. Briefly stated, the prosecution story, in all the aforesaid three FIRs is as under:-

- (i) FIR No. 113 dated 11.09.2011, under Sections 307 and 427 IPC and Section 25 of the Arms Act at Police Station Sadar, Rewari (CRA-S-2589-SB-2012).

On 11.09.2011, Sub Inspector Hazari Lal with HC Azad Singh was present near Pataudi Chowk in connection with routine patrolling duty where he received a telephonic message regarding some firing incident and causing damage to the articles at Rasoi Hotel in village Gokalgarh. On receipt of above information, SI Hazari Lal along with other police officials reached at the spot where Krishan Kumar S/o Khem Chand resident of village Daroli met him and moved an application to the effect that he had taken one hotel from

Mukesh S/o Ranjit, resident of village Gokalgarh on rent and running the same for the last two years under the name and style of Rasoi Hotel. Around 4.00 A.M. on that day, he and one Ranjit Singh were present in the hotel. In the meantime, Sandeep @ Leelu (appellant in all the three appeals) and Ravi @ Sanata (appellant No. 2 in CRA-S-1141-SB-2012) came there on a motorcycle. They both were armed with pistols. Ravi @ Sanata pointed pistol on the temple of Ranjit Singh and Sandeep @ Leelu asked complainant-Krishan Kumar aforesaid about the whereabouts of Mukesh and Satbir. When he told them that they were not there, then Sandeep @ Leelu with an intention to kill him fired a shot upon him and Krishan Kumar saved himself by bowing down and he had a narrow escape. Thereafter, both the accused/appellant(s) have started causing damage to the furniture and various other articles of the hotel. On raising hue and cry by the complainant-Krishan Kumar and Ranjit Singh, both the assailants fled away from the spot on their motorcycle. The motive for enmity was the murder of the cousin of Satbir caused by accused-Sandeep @ Leelu. On the basis of said application, formal FIR was registered. Both the accused/appellant(s) were arrested. Upon completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against both the accused/appellant(s).

On commitment of the case, the accused/appellant(s) were charge-sheeted under Sections 427, 307 read with Section 34 IPC and Section 25 of the Arms Act to which they pleaded

not guilty and claimed trial. The prosecution in support of its case examined as many as 13 witnesses.

In their statements under Section 313 Cr.P.C., the accused/appellant(s) have denied the entire incriminating evidence brought on record against them and pleaded their false implication.

On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court vide judgment of conviction dated 31.05.2012 convicted both the accused/appellant(s) under Sections 427 and 307 read with Section 34 IPC and Section 25 of the Arms Act. The learned trial Court vide order of sentence dated 04.06.2012 sentenced them to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 2000/- each under Section 307/34 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each. They were further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 500/- each under Section 427/34 IPC and in default of payment of fine to further undergo rigorous imprisonment for a period of one month each. They were also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 1000/- each under Section 25 of the Arms Act and in default thereof to further undergo rigorous imprisonment for a period of one month each. All the substantive sentences were ordered to run concurrently.

Feeling aggrieved against the judgment of conviction dated 31.05.2012 and order of sentence dated 04.06.2012, appellant-Sandeep @ Leelu has preferred CRA-S-2589-SB-2012.

(ii) FIR No. 114 dated 11.09.2011, under Sections 392/34 IPC and Section 25 of the Arms Act at Police Station Sadar, Rewari (CRA-S-3520-SB-2012).

On 11.09.2011, an application (Ex. PD) was presented by Rama Nand-complainant before ASI Anil Kumar (PW-10) to the effect that he is working as a salesman at the liquor vend situated in village Bikaner. The said liquor vend was owned by Satbir Singh of village Gokalgarh. On 11.09.2011, at about 11.00 or 11.15 A.M., when he along with one Kanwar Singh was present at the said liquor vend, Sandeep @ Leelu and Ravi @ Sanata came there on a motorcycle and after pushing the gate, they entered into the liquor vend. Sandeep @ Leelu had placed the pistol on the temple of the complainant whereas Ravi @ Sanata had taken an amount of ₹ 4500-4600/- from the cash box and thereafter they fled away from the spot. On the basis of said application formal FIR was registered. Both the accused/appellant(s) were arrested. Upon completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against both the accused/appellant(s).

On commitment of the case, the accused/appellant(s) were charge-sheeted under Sections 397 IPC and Section 25 of the Arms Act to which they pleaded not guilty and claimed trial. The prosecution in support of its case examined as many as 10 witnesses.

In their statements under Section 313 Cr.P.C., both the accused/appellant(s) have denied the entire incriminating evidence brought on record against them and pleaded their false implication.

On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court vide judgment of conviction dated 16.10.2012 convicted both the accused/appellant(s) under Section 397 read with Section 34 IPC and Section 25 of the Arms Act. The learned trial Court vide order of sentence dated 18.10.2012 sentenced them to undergo rigorous imprisonment for a period of seven years each under Section 397/34 IPC. They were further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 1000/- each under Section 25 of the Arms Act and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days each. All the substantive sentences were ordered to run concurrently. Feeling aggrieved against the judgment of conviction dated 16.10.2012 and order of sentence dated 18.10.2012, appellant-Sandeep @ Leelu has preferred CRA-S-3510-SB-2012.

- (ii) FIR No. 117 dated 11.09.2011, under Sections 398 and 401 IPC and Section 25 of the Arms Act at Police Station Sadar, Rewari (CRA-S-1141-SB-2012).

On 11.09.2011, Sub Inspector Om Parkash along with other police officials was on patrolling duty in the area of Rewari-Jhajjar Road near village Gokalgarh. He received a

secret information that three young persons with muffled faces armed with deadly weapons were present in front near the Lisana distributory and were planning to commit robbery and if immediate raid was conducted then they could be apprehended at the spot. Believing the said information reliable, SI Om Parkash conducted a raid and when they reached near canal bridge, one of the miscreants parked his motorcycle in front of their official vehicle and the other two persons who were armed with country made pistols, one of them pointed his pistol towards them and the other had put his country made pistol on the temple of the driver of the police vehicle namely Manoj Kumar and threatened them to hand over the belongings. When SI Om Parkash switched on the inner light of the vehicle, on seeing the police personnel two miscreants tried to fled away along with the motorcycle but their motorcycle slipped and they were nabbed with the help of police party. The other miscreant succeeded in fleeing way by taking advantage of the darkness. On interrogation, they disclosed their names as Sandeep @ Shamsheer @ Lilu @ Karamdass and Ravi @ Sanata. On their personal search, two country made pistols along with live cartridges were recovered from their possession. The motorcycle bearing registration No. HR-36-H-8180 was also taken into police possession vide memo Ex. PH. Both the accused/appellant(s) were the members of a wandering gang and were habitual of committing robbery/dacoity. Rough sketches Ex. PC and Ex. PD of both the country made pistols

Ex. MO1 and Ex. MO6 along with live cartridges Ex. MO2 and to Ex. MO5 and Ex. MO7 were prepared. The weapons of crime were converted into sealed parcels bearing seal impression 'NS' and were taken into police possession vide recovery memo Ex. PG. Rough site plan Ex. PO of the place of occurrence was prepared. Upon completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against both the accused/appellant(s).

On commitment of the case, the accused/appellant(s) were charge-sheeted under Sections 398 and 401 IPC and Section 25 of the Arms Act to which they pleaded not guilty and claimed trial. The prosecution in support of its case examined as many as 9 witnesses.

In their statements under Section 313 Cr.P.C., both the accused/appellant(s) have denied the entire incriminating evidence brought on record against them and pleaded their false implication.

On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court vide judgment of conviction dated 28.01.2012 convicted both the accused/appellant(s) under Sections 398 and 401 IPC and Section 25 of the Arms Act. The learned trial Court vide order of sentence dated 31.01.2012 sentenced them to undergo rigorous imprisonment for a period of seven years each under Section 398 IPC and to pay a fine of ₹ 1000/- and in default of payment of fine to further undergo

rigorous imprisonment for a period of one year each. They were further sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹ 1000/- each under Section 401 IPC and in default thereof, to further undergo rigorous imprisonment for a period of one year each. They were also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 1000/- each under Section 25 of the Arms Act and in default of payment of fine to further undergo rigorous imprisonment for a period of one month each. All the substantive sentences were ordered to run concurrently. Feeling aggrieved against the judgment of conviction dated 28.01.2012 and order of sentence dated 31.01.2012, both the appellants, namely; Sandeep @ Shamsher @ Lilu @ Karamdass and Ravi @ Sanata have preferred CRA-S-1141-SB-2012.

3. At the outset, it is pertinent to mention here that the learned counsels for appellants did not press all the three impugned judgments on merit on the point of conviction. However, learned counsel for the applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass, laid stress for adjudication of the applications i.e. CRM-20321-2013 in CRA-S-2589-SB-2012 and CRM-20320-2013 in CRA-S-3520-SB-2012 by submitting that the sentences awarded to him in all three above-stated FIRs may be ordered to run concurrently in terms of Section 427 Cr.P.C. She also contended that the applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass is undergoing Psychiatric treatment in PGMIS, Rohtak as is discernible from the medical report dated 04.10.2016 of the Medical

Officer, District Jail, Jhajjar. It was further contended that he had not availed any parole/furlough during the custody period. In support of her contentions learned counsel for the appellant has relied upon (i) Jang Singh Vs. State of Punjab, 2008 (1) RCR (Criminal) 323; (ii) Gian Chand Vs. State of Punjab, 2008 (4) RCR (Criminal) 437; (iii) Naresh Vs. State of Haryana, 2016 (3) RCR (Criminal) 824.

4. On the other hand, learned State counsel vehemently oppose the applications and contended that the applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass was convicted and sentenced vide three separate judgments passed on different dates. Hence, Section 427 Cr.P.C. does not permit to run the sentence passed in one case concurrently with subsequent conviction and sentence in a separate trial/case.

5. I have given considerable thoughts to the submissions made by learned counsel for the parties.

6. Since all the three appeals are not challenged on merit on the point of conviction, therefore, I dismiss all three appeals on merit being not pressed and uphold the impugned judgments of conviction.

7. However, as far as the question of the concurrence of sentences of applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass is concerned the Court is basically required to interpret the provisions of Section 427 Cr.P.C. Section 427 Cr.P.C. envisages the mode of execution of sentence in those cases where the offender is already undergoing a sentence for another offence. It reads as under:

“427 Sentence on offender already sentenced for another offence:- (1) When a person already undergoing a sentence of imprisonment is sentenced on a

subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

8. The Full Bench of this Court in **Jang Singh's case (supra)**, in para Nos. 18 and 19 held as under:-

18. The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per Section 427 Cr.P.C., is that a person who is undergoing a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such

imprisonment or imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Section 482/427 Cr.P.C. The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr.P.C. would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R.Kudva' case (Supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under

Section 482 or 427 Cr.P.C. What principle and consideration will govern the exercise of this discretion, as already noted above, can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character, his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Cr.P.C., as observed by Hon'ble Supreme Court, is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.

19. There are, thus, no set guidelines, principles available which would govern the exercise of discretion under Section 427 (1) Cr.P.C. Section leaves a judicial discretion with the courts to exercise such discretion

depending on the facts and circumstances of each case.

Some indication of such consideration is available from judicial pronouncements as enumerated above, which we would approve to be relevant and valid for taking into account while exercising discretion.

9. In the present case, as per custody certificate dated 03.11.2016, placed on record by learned State counsel, the applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass has already undergone total sentence of 6 years and 01 day, out of the maximum sentence of 7 years in FIR No. 117 dated 11.09.2011 (Sessions Case No. 43 of 2011). He is undergoing Psychiatric treatment in PGMIS, Rohtak as is discernible from the medical report dated 04.10.2016 of the Medical Officer, District Jail, Jhajjar. He had not availed any parole/furlough during the custody period. From the perusal of record, it reveals that both the appellants were involved in multiple offences. If the maximum sentences awarded to applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass in all the three FIRs i.e. (i) rigorous imprisonment for a period of 5 years (in FIR No. 113 dated 11.09.2011, CRA-S-2589-SB-2012); (ii) rigorous imprisonment for a period of 7 years (in FIR No. 114 dated 11.09.2011, CRA-S-3520-SB-2012) and (iii) rigorous imprisonment for 7 years (in FIR No. 117 dated 11.09.2011, CRA-S-1141-SB-2012) are not made concurrent, he has to undergo the total sentence of 19 years which would be a very long period. Thus, it would be appropriate to make the sentences of applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass to run concurrently, more particularly, when he is suffering from mental ailment as per medical report dated 04.10.2016. However, it is made clear that applicant/appellant-

Sandeep @ Shamsher @ Lilu @ Karamdass, has to undergo minimum imprisonment for a period 7 years and that would sub-serve the interest of justice. By applying the parameters laid down by the Full Bench of this Court in **Jang Singh's case (supra)**, the aforesaid sentences awarded to the applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass, are ordered to run concurrently.

10. In view of the above discussion, all the three appeals are dismissed on merits being not pressed, but the applications (CRM-20321-2013 in CRA-S-2589-SB-2012 and CM-20320-2013 in CRA-S-3520-SB-2012) filed by the applicant/appellant-Sandeep @ Shamsher @ Lilu @ Karamdass, under Section 427 Cr.P.C. are disposed of in the above-stated term.

12. Since, appellant No. 2-Ravi @ Sanata (in CRA-S-1141-SB-2012) has not filed any application under Section 427 Cr.P.C. for concurrence of his sentences separately awarded to him, thus, he would have to undergo the complete sentence of 19 years, separately awarded to him in all the three FIRs i.e. (i) rigorous imprisonment for a period of 5 years (in FIR No. 113 dated 11.09.2011, CRA-S-2589-SB-2012); (ii) rigorous imprisonment for a period of 7 years (in FIR No. 114 dated 11.09.2011, CRA-S-3520-2012) and (iii) rigorous imprisonment for 7 years (in FIR No. 117 dated 11.09.2011, CRA-S-1141-SB-2012).

January 16, 2017

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No