

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-2996-SB of 2016

Date of Decision: 08.02.2017

Deepak and another

.....Appellants

Versus

State of Haryana

....Respondent

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

Present: Mr. Suneet Singh Deol, Advocate, for
Mr. Vikram Singh, Advocate, for the appellants.

Mr. Praveen Bhadu, Assistant A.G., Haryana.

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

The appellants were tried for committing the offences punishable under Section 397 read with Section 34 IPC and Section 411 IPC. Deepak appellant was also charged for committing the offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 29/30.7.2016, learned Additional Sessions Judge, Karnal, acquitted them of the charge under Section 397 read with Section 34 IPC. Deepak appellant was also acquitted of the charge under Section 25 of the Arms Act. However, they were convicted under Section 411 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to further undergo imprisonment for one month.

As the appellants were sentenced to undergo imprisonment for one year only and they were on bail during the trial of the case, learned trial Court had suspended their sentences of imprisonment so as to enable them to prefer an appeal against their conviction and sentence. The appeal filed by the appellants came to be admitted by this Court on 29.08.2016 and while issuing notice on their application for suspension of sentence, this Court directed that interim bail granted to them would continue till the next date of hearing. On the adjourned date, this Court directed that the sentences of imprisonment of the appellants would remain suspended during the pendency of the appeal subject to their furnishing of fresh bail bonds/surety bonds to the satisfaction of the trial Court within a period of two weeks. Pursuant to the same, Praveen appellant furnished the requisite bail bonds within the stipulated period of time. However, Deepak appellant could not do so and accordingly, he was taken into custody on 22.12.2016 and continues to remain behind the bars till date.

According to the prosecution, on 28.6.2013 at about 8.45 p.m., complainant-Udey Singh, was going to his house on the motorcycle make CBZ-Xtreme bearing Registration No. HR-05Z-1394. When he reached near the poultry farm of Raghubir Singh in between villages Jhinjari and Bhaini Khurd, he received a call on his mobile from his friend. He stopped his motorcycle for taking the call. In the meantime, two boys came on foot from opposite side and asked him if he had any problem. He replied that there was no problem. Accordingly, both the boys proceeded further. After about

five minutes, they returned and asked him as to what was the problem and again he gave a similar reply. While he was talking on the mobile, both the boys told him to leave the motorcycle. All of a sudden, one of them took out a country made pistol. After starting the motorcycle and snatching his mobile phone, both the boys fled towards kacha passage of village Shamgarh. The complainant then went to the poultry farm and made a call to his father upon which his father alongwith other family members reached there. All of them searched for the motorcycle and the two culprits, but it was all in vain.

During the investigation of the case, a country made pistol of .315 bore was recovered from the personal search of Deepak appellant. The motorcycle along with its registration certificate as well as the mobile phone were recovered from the possession of Deepak appellant, whereas one Chinese phone of white colour was recovered from Praveen appellant.

Complainant Udey Singh, who was examined by the prosecution as PW7 in support of its case, did not identify any of the two appellants to be the ones who had snatched his motorcycle and the mobile phone as they were keeping their faces muffled at the time of occurrence and for that reason the learned trial Court absolved the appellants of the charge under Section 397 IPC. As regards the charge under Section 25 of the Arms Act, it has come in the testimony of PW2-ASI Parmod Kumar, Armourer that he had not conducted any test fire upon the country

made pistol Ex.MO3 and, thus, Deepak appellant was also exonerated of the aforementioned charge. However, as the appellants were found in possession of the property which they knew to be stolen, they were convicted under Section 411 IPC and sentenced accordingly.

After hearing learned counsel for the parties, this Court finds that the conviction of the appellants for the offence under Section 411 IPC is well merited as sufficient evidence is available on record from which it could be concluded that the appellants were found in possession of stolen property. Therefore, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the sentence of imprisonment, it may be noticed that the appellants have been facing the agony of the criminal prosecution for the last about four years. Out of the sentence of one year imposed upon them, Deepak appellant has undergone a period of five months and ten days, whereas Praveen appellant has undergone three months and twenty three days. These facts stand mentioned in the custody certificates produced by the learned State counsel. It is also mentioned therein that none of the two appellants is either involved or convicted in any other case. Under these circumstances, this Court is of the view that their remaining substantive sentences of imprisonment can be set aside.

Resultantly, the conviction of the appellants under Section 411 IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.5,000/- imposed upon each of them, is however, enhanced to Rs.10,000/- each and in default of payment of fine, they shall undergo imprisonment for two months each.

The appeal is, accordingly, disposed of.

08.02.2017
ds

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No