

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

**Criminal Appeal S-235-SB of 2014
Date of Decision: January 11, 2017**

Shamim	Versus	Appellant
State of Haryana		 Respondent

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

Present : Mr. Naresh Kaushik, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

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

Appellant Shamim alongwith Naushad and Salim was charged for committing offences punishable under Sections 342, 394 and 397 IPC. Shamim and Naushad were also charged for committing offence under Section 25 of the Arms Act. Vide judgment and order dated 18.11.2013, learned Additional Sessions Judge, Panipat, acquitted Salim of the charges against him. Shamim and Naushad were also acquitted under Section 397 IPC and Section 25 of the Arms Act. However, they were convicted under Section 394 IPC and sentenced to undergo

rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- each, and, in default of payment of fine, to undergo rigorous imprisonment for a period of one year. They were also convicted under Section 342 IPC and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each, and, in default of payment of fine, to undergo rigorous imprisonment for a period of one month. Both the substantive sentences of imprisonment were ordered to run concurrently. The period already undergone by them during inquiry, investigation or trial was ordered to be set off against the period of substantive sentences of imprisonment.

Aggrieved of his conviction and sentence, Shamim filed the present appeal whereas Naushad filed Criminal Appeal S-1052-SB of 2014. As both the appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

The case of the prosecution has been detailed by the trial Court under para 2 of its judgment, which is reproduced hereinbelow:-

“ The FIR was registered on the basis of the statement made by Parveen Kumar son of Sukhbir resident of village Dahar, Police Station Israna. It was stated by the complainant that he used to work as a Gunman in Shivalik Rugs Factory Risalu Road,

Siwah. On 20.11.2012 at about 8 p.m., he came to the factory to perform his duty. At about 9.30 p.m., he had to go to his house. He kept his gun in the factory and left for his village on motor-cycle No.HR-06Z-3504 make Hero Honda. After about 10-15 minutes when he reached a little ahead of railway crossing Siwah, five-six boys armed with dandas stopped his motor-cycle. They started beating him with dandas and also gave him leg and fist blows. They took him and his motor-cycle towards the nearby tubewell kotha. They tied him to a cot with a rope and searched him personally. They took away his purse containing Rs.15/-, driving licence, registration certificate of the motor-cycle, etc. They also snatched the key of the motor-cycle from him. Thereafter, the boys left the spot. After about 20-25 minutes, the boys again came at the spot and gave him two danda blows. They tied him tightly and again went away. After about two hours, he somehow managed to escape and came to the road after passing through the fields. When he reached near the railway crossing, he met PCR Rider police and informed them about the incident. He thus prayed for taking action against the accused persons.”

Learned counsel for the appellants have not challenged the impugned judgment of conviction passed by the learned trial Court. They have, however, submitted that the appellants are facing the agony of criminal prosecution for the last

more than four years. They are poor persons and earning their livelihood by doing labour. They have small children and old parents to maintain. None of them is a previous convict. Out of the sentence of seven years imposed upon them, Shamim appellant has undergone a period of about four years and nine months whereas Naushad appellant has undergone a period of four years and one month. Prayer has, accordingly, been made for setting aside their remaining sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer made on behalf of the appellants by submitting that the sentence of imprisonment awarded to them is commensurate with the crime, which they have committed.

As per the custody certificate 20.11.2016 in respect of Shamim appellant, which has already been placed on record by the learned State counsel, he had undergone total sentence of four years, seven months and eight days including the remission of eight months and four days. He is neither shown to be involved nor convicted in any other criminal case.

Learned State counsel has produced the photocopy of the custody certificate dated 19.11.2016 issued by the Superintendent, District Jail, Muzaffarnagar, as per which, Naushad appellant had undergone one year, three months and eighteen days in jail from 2.8.2015 to 19.11.2016. He has also

produced another letter dated 20.11.2016 issued by the Superintendent, District Jail, Karnal, as per which, Naushad appellant had remained confined in said jail for two years, seven months and twelve days before he was transferred on 28.7.2015 to District Jail Muzaffarnagar. Therefore, said Naushad appellant has already undergone about four years out of the sentence of seven years imposed upon him. Said Naushad has also not been convicted in any other case apart from the present case.

Having heard learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that appellants have already remained behind the bars for sufficiently long. No useful purpose will be served by directing them to complete their remaining sentences of imprisonment.

Resultantly, the conviction of the appellants under Sections 394 and 342 IPC is upheld and their substantive sentences of imprisonment are reduced to the one already undergone by them. The fine of Rs.500/- imposed upon them for the offence under Section 342 IPC alongwith its default clause is maintained. However, the fine of Rs.5,000/- for the offence under Section 394 IPC is enhanced to Rs.10,000/- each and in default of its payment, the appellants shall undergo rigorous imprisonment for 1 ½ years.

Criminal Appeal S-235-SB of 2014 filed by Shamim
appellant and Criminal Appeal S-1052-SB of 2014 filed by
Naushad appellant are disposed of, accordingly.

January 11, 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No