

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

**Criminal Appeal S-1836-SB of 2004
Date of Decision: February 1, 2018**

Swinder Singh @ Sonu @ Surinder Singh and others

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present : Ms. Isha Goyal, Advocate
for the appellants.

Mr. Gaurav Garg Dhuriwala, Sr. Deputy A.G., Punjab.

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

The appellants, namely, Swinder Singh @ Sonu @ Surinder Singh, Satpal Singh and Pargat Singh, were tried for committing offences punishable under Section 395 read with Section 397 IPC and Section 342 IPC. Swinder Singh @ Sonu @ Surinder Singh appellant was also tried for committing offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 27.8.2004, learned Additional Sessions Judge (Adhoc), Amritsar convicted them under Section 395 IPC and

sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one month. They were also convicted under Section 342 IPC and sentenced to undergo rigorous imprisonment for six months each. Besides, Swinder Singh @ Sonu @ Surinder Singh appellant was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for fifteen days. All the sentences were ordered to run concurrently.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which was admitted on 23.9.2004. Subsequently, in the months of August and September 2005, this Court suspended their sentences of imprisonment and released them on bail.

According to the prosecution, on 25.1.1995, a secret information was received by SI Gurdip Singh regarding dacoity of a truck loaded with goods by some persons in the area of village Chohan. On receipt of this information, he alongwith other police officials held naka on a bridge of the canal minor in the area of village Thathian. It being night time, no independent witness was available who could be joined in the naka party despite the efforts

made by him. At about 2 a.m., a truck without registration number of which head light was switched off, was seen coming from the side of the link road towards village Thathian. Signal of flash torch was given to stop the truck. Occupants of the truck tried to drive it away. However, the police officials by placing drums on the road succeeded in stopping the truck. He asked the occupants not to run away otherwise they would be shot dead. The truck was being driven by Swinder Singh @ Sonu @ Surinder Singh, who was carrying with him double barrel gun, which barrel had been shortened and was in working condition. The gun was seized and two live cartridges were recovered from its chamber. Two live cartridges were also recovered from the pocket of the trouser of the accused. In the truck, accused Mohinder Singh was also found sitting to the left side of accused Swinder Singh @ Sonu @ Surinder Singh. He too was having .12 bore single barrel gun and when gun was unloaded, one live cartridge was recovered. From his chest pocket, two more live cartridges were recovered. Gun and cartridges were sealed in a parcel and taken into possession. Gurmukh Singh @ Gokhi accused was also found sitting in the truck and from the left side pocket of his trouser, a country made pistol was recovered. Upon unloading, one live cartridge was recovered from its chamber. Pargat Singh accused was also found sitting in the truck, who

was carrying kirpan, which was taken into possession. Satpal Singh accused was also arrested from the truck having iron rod in his right hand. The iron rod was taken into possession. Accused could not produce any document pertaining to the ownership of the truck loaded with 702 bags of dry tea leaves of Goodrick. Each bag weighed 18 kilograms of dry tea leaves. The truck and the goods were taken into possession. Upon interrogation, the accused revealed that they had stopped the truck, when it was coming from the side of Jandiala by parking another truck. It was also revealed by them that they had left their own truck near the place and driver and cleaner of the truck looted by them, who were Hindu gentlemen were pushed into a tubewell room near that place and its door was chained from outside.

It is also the case of the prosecution that SI Gurdip Singh prepared ruqa and sent it to Police Station Jandiala, on the basis of which, FIR No.30 dated 25.1.1995 under Sections 347/395 IPC and Section 25 of the Arms Act was registered. During the investigation of the case, SI Gurdip Singh prepared rough site plan Ex.PN of the place of occurrence. The accused led Sub-Inspector Gurdip Singh to the tubewell where Pawan Kumar driver and Ganesh conductor of the truck were found with their arms tied. Site plan Ex.PQ of that place was also prepared. Truck No. PB-02-9987 was found parked at that place which was

taken into possession. Registration, driving licence and Bilti produced by Pawan Kumar were taken into possession vide memo Ex.PB. Statements of the witnesses were recorded. The registration number of the looted truck, which was owned by Onkar Singh was HR 06 IA 5835. On 24.1.1995, Ganesh and Pawan Kumar were carrying tea leaves in that truck from Siliguri to Amritsar, when the dacoity was committed. Ganesh was joined in the investigation and he identified the bags of tea leaves. His statement was recorded. Ganesh Kumar of Doars Transport, Sheranwala Gate was also joined in the investigation and his statement was recorded. After the completion of the investigation, challan was presented in the Court of Ilaqa Magistrate, who supplied copies of the documents to the accused. Case was committed to the Court of Sessions. The appellants and Mohinder Singh, who had absconded and Gurmukh Singh, who died thereafter were charge sheeted under Section 395 read with Section 397 IPC and Section 342 IPC and Swinder Singh @ Sonu @ Surinder Singh and Mohinder Singh were also charge sheeted under Section 25 of the Arms Act.

Learned counsel for the appellants submits that she does not challenge the impugned judgment of conviction passed by the learned trial Court. However, she submits that the appellants are facing the agony of criminal prosecution for the last

more than twenty three years. They are on bail for the last more than twelve years. Out of the sentence of seven years imposed upon them, they have undergone substantial portion. It is also submitted that the appellants have not misused the concession of bail. Prayer has, accordingly, been made for taking a lenient view in the matter of sentence of imprisonment of the appellants.

Learned State counsel has vehemently opposed the prayer by submitting that the appellant had committed a very serious crime of looting the truck and confining the truck driver and its cleaner. He has, however, produced the custody certificates, as per which, Swinder Singh @ Sonu @ Surinder Singh appellant has undergone an actual period of three years, eleven months and twenty six days, Pargat Singh appellant has undergone two years, four months and fourteen days whereas Satpal Singh appellant has undergone two years, five months and twenty days. Besides, all of them have earned remissions of more than one year and one month.

After hearing learned counsel for the parties and on going through the record, this Court finds that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already

undergone by them.

Resultantly, the conviction of the appellants under Sections 395 and 342 IPC and also of Swinder Singh @ Sonu @ Surinder Singh appellant under Section 25 of the Arms Act are upheld. The substantive sentence of imprisonment imposed upon all the appellants is reduced to the one already undergone by them. The fine of Rs.1,000/- imposed upon them for the offence under Section 395 IPC is, however, enhanced to Rs.10,000/- each. The sentence of fine imposed upon Swinder Singh @ Sonu @ Surinder Singh appellant under Section 25 of the Arms Act alongwith its default clause is maintained. The enhanced amount of fine be deposited by the appellants in the Court of Chief Judicial Magistrate, Amritsar within three months from today, failing which, they shall undergo rigorous imprisonment for six months.

The appeal is, accordingly, disposed of.

February 1, 2018

amit rana

(T.P.S. MANN)

JUDGE

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