

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(112)

CRR-509-2022 (O&M)
Date of decision : - 27.09.2022

Sagar

...Petitioner

Versus

U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Naveen Sharma, Advocate, for the petitioner.
Mr. Akashdeep Singh, Additional P.P., U.T., Chandigarh.

VIKAS BAHL, J. (ORAL)

Challenge in the present revision petition is to the judgment dated 12.09.2017 and order of sentence dated 18.09.2017, vide which, the Judicial Magistrate 1st Class, Chandigarh has convicted and awarded sentence to the petitioner as has been reproduced herien-below: -

"CONVICTS VIKAS AND SAGAR

<i>Offence</i>	<i>Imprisonment</i>	<i>Imprisonment in default of payment of fine</i>
<i>U/S 392 r/w 34 IPC</i>	<i>To undergo rigorous imprisonment for seven years and to pay fine of Rs.10,000/- (Rs. Ten thousand only)</i>	<i>To undergo rigorous imprisonment for three months</i>
<i>U/S 411 IPC</i>	<i>To undergo rigorous imprisonment for one year</i>	---
<i>34 IPC</i>	<i>Imprisonment for seven years and to pay fine of Rs.10,000/- (Rs. Ten thousand only)</i>	<i>Rigorous imprisonment for three months</i>
<i>U/S 411 IPC</i>	<i>To undergo rigorous imprisonment for one year</i>	----

Sentences shall run concurrently. Period of custody, if any,

already undergone by the convicts during investigation/trial of present case, be set off from the substantive period of sentence awarded today. Personal bond & surety bond of the convicts stand discharged. Copy of this order be supplied to the convicts as per rules."

Challenge is also to the judgment dated 08.10.2020, vide which the appeal against the said judgment filed by the petitioner was partly allowed and his conviction and the sentence awarded to the petitioner for the offence under Section 392 IPC was upheld, but his conviction and sentence under Section 411 IPC was set aside, by the Additional Sessions Judge, U.T., Chandigarh.

Learned counsel for the petitioner has submitted that he does not wish to challenge the conviction of the petitioner as the judgments of the Courts below are well reasoned and has prayed for a lenient view with respect to the sentence, which has been imposed upon the petitioner.

Learned counsel appearing on behalf of the U.T., Chandigarh has opposed the said prayer and has submitted that the petitioner has been convicted in 12 other cases and is a habitual offender and has also submitted that even in the present case, he along with other co-accused, by pointing a knife at the complainant had committed robbery and had taken the belongings of the complainant including a silver chain, which was recovered from the petitioner.

The case of the prosecution in brief is that Anil Kumar resident of Jhuggi No.1056, near Balmiki Mandir, DBC, Sector 25, Chandigarh, had got FIR No.253 dated 15.06.2015, registered on the allegations that he was

a sweeper and on 15.06.2015 at about 1:30 AM at night, when he came from Sector 16 to Sector 25 Chandigarh, he saw 4 persons coming from front side and they caught hold of him and the present petitioner was one of them and one of the persons, namely, Marauli was holding a knife like object in his hand and co-accused Nangad and Vikka @ Pulsiya held his arms, whereas the present petitioner Sagar removed silver chain from the neck of complainant at knife point. Thereafter, co-accused Vikka @ Pulsiya also took his purse out of his pocket which was containing cash amount of ₹ 400/-, bill of the chain and photocopy of receipt of Aadhar Card and all the said persons warned the complainant against making any disclosure and also threatened him that in case he does so, he will be done to death. After the FIR was registered, the site plan Ex.PW1/2 of the place of the said occurrence was prepared. During the course of investigation, the disclosure statement of the petitioner was recorded as Ex.PW1/C dated 05.07.2015 and the recovery of silver chain was effected at the instance of present petitioner vide seizure memo Ex.PW1/6 and the site plan Ex.PW1/7 of the place of the said recovery was prepared. The statements of witnesses under Section 161 Cr.P.C. were recorded and the charges were framed and the prosecution had examined the following witnesses: -

<i>PW-1</i>	<i>Head Constable Rajinder Singh</i>
<i>PW-2</i>	<i>Head Constable Jasbir Singh</i>
<i>PW-3</i>	<i>Constable Ajay</i>
<i>PW-4</i>	<i>Head Constable Jatinder Singh</i>
<i>PW-5</i>	<i>Head Constable Ram Niwas</i>
<i>PW-6</i>	<i>Constable Karambir</i>
<i>PW-7</i>	<i>Rakesh Kumar</i>
<i>PW-8</i>	<i>Anil Kumar"</i>

The learned trial Court, after considering the evidence of all the said witnesses had come to the conclusion that the petitioner, along with co-accused Vikas and Pardeep, had committed the offence under Section 392 IPC and the petitioner along with Vikas had also committed the offence under Section 411 IPC, however, co-accused Pardeep was acquitted of the charge under Section 411 IPC and accordingly, all the three accused persons were convicted for committing the offence under Section 392 read with Section 34 IPC and co-accused Vikas and the present petitioner were convicted for an offence under Section 411 IPC and were sentenced vide order dated 18.09.2017, as has been detailed herein above.

The petitioner has filed an appeal before the appellate Court and the appellate Court after reconsidering the entire matter, upheld the conviction of the petitioner under Section 392 IPC, but acquitted the petitioner under Section 411 IPC and maintained the sentence awarded to the petitioner.

This Court has heard learned counsel for the parties and has gone through the paper-book and is of the opinion that the present petition is merit less.

PW-1 Head Constable Rajinder Singh had stated in his evidence that he was on patrolling duty along with other police officials, then Anil Kumar had come and had met him and had given a written complaint Ex.PW1/1, in which, he had stated that on the intervening night 14/15.06.2015 at about 1.30 AM, four boys stopped him and threatened him with a sharp edged knife like weapon and asked him to hand over all his

belongings and valuables and the present petitioner had snatched his silver chain from his neck and other accused Vikas had snatched his purse containing Rs.400/- alongwith bill of chain and photocopy of Aadhar Card and they had then threatened him. The said PW has also stated that the present petitioner was arrested on 03.07.2015 and his personal search was carried out vide memo Ex. PW1/5 and on 04.07.2015, the petitioner had suffered a disclosure statement Ex. PW1/B and on 05.07.2015, he had suffered another disclosure statement Ex. PW1/C and on the basis of the said disclosure statement, the recovery of silver chain was effected from the present petitioner and the said articles were identified by the complainant Anil Kumar vide memo Ex. PW1/6. The rough site plan of the recovery has been proved on record as Ex. PW1/7. It had been further stated by PW1 that on the disclosure statement of present petitioner one silver chain was recovered from back side of rally ground, Sector 25, Chandigarh.

PW-2 Head Constable Jasbir Singh had also deposed on the same lines and had proved on record the disclosure statement of the petitioner as well as the recovery effected on the basis of the same.

PW-8 Anil Kumar complainant had reiterated the entire version given by him in the complaint and had identified the accused persons as the present petitioner, Maroli, Nangad and Vikas and had stated that he knew them earlier and had specifically stated that accused Maroli and the present petitioner had put a knife on his neck and they snatched his silver chain and also his purse and thereafter, when he shouted the accused persons ran away. He has proved on record the complaint as Ex. PW1/1 and site plan as

Ex.PW1/2 and had stated that after the arrest of all accused persons at his instance and he had signed personal search memo Ex. PW1/3 to Ex. PW1/5 and had also identified his silver chain which was got recovered from the present petitioner.

The prosecution had also examined PW-7 Rakesh Kumar who had deposed in the court that he is owner of B.K. Jewellers, Shop No. 1308, DMC 38 West, Chandigarh and had proved the receipt dated 07.05.2015 which is Ex.PW7/A and had identified his signature over the same. All the said witnesses, along with PWs 3, 4, 5 and 6, had fully proved the case of the prosecution. The petitioner has been duly identified by the complainant as being one of the persons, who had committed the said offence and the recovery of the silver chain which was snatched from the complainant has been effected at the instance of present petitioner.

This Court is, thus, of the opinion that the judgments of the Courts below convicting the present petitioner under Section 392 IPC are legal and in accordance with law and no perversity has been pointed out in the said judgments.

On the aspect of leniency with respect to the sentence awarded, it would be relevant to note that as per the custody certificate, the petitioner has been convicted in 13 FIRs/cases, which has been reproduced as under: -

(i)	FIR No.22 dated 09.02.2016, under Sections 398/324 read with 34 IPC, Police Station Sector 11, Chandigarh
(ii)	FIR No.23 dated 09.02.2016, under Section 392 read with 34 IPC, Police Station Sector 11, Chandigarh
(iii)	FIR No.534 dated 15.11.2015, under Section 395 IPC, Police Station Sector 34, Chandigarh.

(iv)	FIR No.253 dated 15.06.2015, under Section 392 read with 34/411 IPC, Police Station Sector 11, Chandigarh
(v)	FIR No.325 of 2014, under Section 411 IPC, Police Station, Sector 39, Chandigarh
(vi)	FIR No.378 dated 12.09.2014, under Sections 473/411/34 IPC, Police Station Sector 11, Chandigarh
(vii)	FIR No.164 dated 11.09.2014, under Sections 379 and 411 IPC, Police Station Sector 19, Chandigarh
(viii)	FIR No.323 dated 31.10.2015, under Sections 379, 356, 411 IPC, Police Station Sector 31, Chandigarh
(ix)	FIR N.28 dated 20.01.2015, under Section 411 IPC, Police Station Sector 11, Chandigarh
(x)	FIR No.619 dated 28.12.2015, under Section 411 IPC, Police Station Sector 34, Chandigarh
(xi)	FIR No.68 dated 17.08.2017, under Section 20 of NDPS Act, Police Station Sector 49, Chandigarh
(xii)	FIR No.244 dated 23.06.2015, under Sections 379/411 IPC, Police Station Sector 39, Chandigarh
(xiii)	FIR No.25 dated 09.02.2016, under Section 392 IPC, Police Station Sector 36, Chandigarh.

From a perusal of the above table, it is apparent that the petitioner is a habitual offender and thus, does not deserve leniency with respect to the sentence awarded. Moreover, on account of the said convictions, the custody period undergone by the present petitioner in the present case is only 1 month and 7 days, as per the custody certificate and accordingly, the present revision petition is dismissed and the impugned judgments are upheld.

Pending application, if any, stands disposed of in view of the above-said order.

September 27, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes