

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.**

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**CRR-1918-2017 (O &M)  
Date of decision: 29.03.2022**

RAJESH DHIMAN & ANR

.....Petitioners

Versus

STATE OF HARYANA

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SANT PARKASH**

Present : Ms. Ishita Jain, Advocate  
for Ms.Shivani Bawa, Advocate  
for the petitioners.

Mr. Manish Dadwal, AAG, Haryana  
for the respondent-State.

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**SANT PARKASH, J. (ORAL)**

The petitioners have preferred the instant petition being aggrieved of judgment dated 25.04.2017 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby appeal filed by him, challenging their conviction vide judgment dated 02.03.2013 and order of sentence dated 04.03.2013, passed by Judicial Magistrate First Class, Yamuna Nagar at Jagadhri in case, FIR No.336 dated 29.09.2009 under Sections 435, 34 of the Indian Penal Code, 1860 at Police Station, Farakpur has been upheld and appeal dismissed.

The aforesaid FIR was registered on statement of Manoj Bakshi who stated that on 28.09.2009, in the night, he went to Captain Palace to attend marriage of his neighbour along with his brother Sanjay Bakshi then accused Raju Nepali along with one another boy

came there in drunken condition and they started teasing the girls present in the marriage. When the complainant and his brother tried to stop them, accused Raju Nepali threatened his brother that he will put their car on fire. Thereafter, at about 3.00 A.M. a blast took place in the street, upon hearing which the complainant and other neighbours came out of their houses and saw that the accused Raju Nepali had put fire to the car of the complainant. When they tried to catch him, the accused fled. The neighbours of the complainant told him that the accused was accompanying some other boys also along with him.

After completion of investigation, final report under Section 173 Cr.P.C. was presented in the court of competent jurisdiction. Finding a *prima face* against the accused persons (petitioners), they were charge-sheeted under Section 435 read with Section 34 of the IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as five witnesses. Statements of accused persons (petitioners) were recorded under Section 313 Cr.P.C. apprising them of all incriminating circumstances appearing against them in prosecution evidence to which they claimed innocence and pleaded false implication.

Learned defence counsel submitted that the petitioners have been falsely implicated due to previous enmity. There are material contradictions in the testimony of prosecution witnesses.

After considering the rival contentions and evidence on record, learned Judicial Magistrate First Class, Yamuna Nagar at

Jagadhri held the accused-petitioners Rajesh Dhiman alias Raju Nepali and Rajat Malhotra guilty of the offence under Section 435 read with Section 34 IPC and sentenced both the petitioners to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs. 250/- and in case of default of payment of fine to further undergo simple imprisonment of three months.

At the very outset of arguments, learned counsel for the applicants-petitioners had confined her arguments to the quantum of sentence only and did not challenge the conviction on merit. He prayed for a lenient view of the quantum of sentence.

Vide order dated 07.11.2017 passed by Co-ordinate Bench of this Court, the sentence of imprisonment of the petitioners was suspended and as per the custody certificates dated 07.09.2017 of the petitioners already placed on record, petitioner-Rajesh Dhiman @ Raju Nepali had undergone total sentence of 5 months and 25 days including remissions and petitioner- Rajat Malhotra had undergone total sentence of 5 months and 23 days including remissions as on that date. The custody period if counted till 07.11.2017, both the petitioners have undergone more than 7 months of their sentence out of the total awarded sentence of one year. FIR in the present case was registered on 29.09.2009. However, taking into consideration that there is a shortfall of only 4 ½ months (approximately), in my opinion, no useful purpose would be served by keeping them behind the bars to undergo a meager sentence of less than 5 months so as to make the total undergone sentence as one year. Rather, the said process would prove to be a

cumbersome one, thereby causing unnecessary burden on the state exchequer as also harassment to the petitioners.

Accordingly, the conviction of the petitioners under Sections 435 read with Section 34 of the IPC is maintained. However, sentence qua imprisonment of the petitioners, is reduced to the period already undergone by them. The petitioners be set at liberty forthwith, if not required in any other case.

The petition stands disposed of with the aforesaid order.

**29.03.2022**  
kavneet singh

**(SANT PARKASH)**  
**JUDGE**

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