

CRA-S-47 of 2021 (O&M)

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

CRA-S-47 of 2021 (O&M)

Reserved on: 05.05.2023

Date of Pronouncement: 24.05.2023

Lovepreet alias Happy

.....Appellant

Versus

UT Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. A.P. Kaushal, Advocate,
for the appellant.

Mr. Dheeraj Kumar, Advocate,
for Mr. Anil Kumar Lamdharia, APP, U.T., Chandigarh.

NAMIT KUMAR, J.

1. This appeal has been preferred by the appellant against the judgment of conviction and order of sentence dated 24.11.2020 passed by the Court of learned Additional Sessions Judge, Chandigarh, whereby appellant has been convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- under Section 392 IPC, in default of payment of fine to further undergo rigorous imprisonment for a period of six months and to undergo rigorous imprisonment for a period of three years under Section 411 IPC. Both the sentences have been ordered to run concurrently.

2. Brief facts of the case are that complainant Sanjeev Kumar got recorded his statement before the police to the effect that he had

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been serving at Dhaba, Delhi Paranthé Wali Gali, Sector 22A, Chandigarh. After finishing his job, he was going to his home on his motor cycle no.CH76(T)6691 at about 2:00 a.m. When he reached a little ahead of light point of sector 22/23, Chandigarh, one white colour car came from backside and stopped in front of his motor cycle. Two boys came out of the said car and asked him to handover, whatever he had at that time. One boy slapped him, while the other boy took out a weapon like a pistol and hit at his head. They forcibly robbed amount of Rs.10,000/- from his pocket and gold chain from his neck and threatened to kill him, if he raised any alarm. Thereafter, said boys fled away in the same car bearing no HR-9671. On the basis of said statement, present FIR No.398 dated 26.12.2017 under Sections 397, 34, 411 IPC and Section 25/54/59 of the Arms Act, was registered at Police Station 17, Chandigarh.

3. Petitioner was charge-sheeted under Sections 397, 392 read with Section 34 and 411 IPC and Sections 25 & 27 of the Arms Act. After hearing learned counsel for the parties and considering the evidence on record, petitioner was convicted and sentenced as above.

4. During the course of arguments, learned counsel for the appellant has submitted that he does not wish to challenge the conviction of the appellant on merits but would be satisfied if a lenient view is taken with respect to the sentence which has been awarded to the appellant. In this regard, he has submitted that incident is of the year 2017 and the appellant has suffered the agony of trial/appeal for all these years. It is further submitted that appellant has already

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undergone more than five years of sentence. Under these circumstances, the sentence imposed upon the appellant may be reduced to the one already undergone by him.

5. On the other hand, learned State counsel, while opposing the submissions made by learned counsel for the appellant and placing on record custody certificate, submitted that the sentence awarded to the appellant is in proportion to the offence committed by him. The appellant does not deserve any leniency.

6. I have heard learned counsel for the parties and perused the case file along with lower Court record.

7. Before proceeding further in the matter, it would be apposite to refer certain judgments on the subject.

8. In ***R. Soundarajan v. Seed Inspector, Coimbatore and another"*** reported as 2006(4) R.C.R. (Criminal) 645 the Hon'ble Supreme Court held as under:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

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9. In the case of ***Sahab Singh vs. State of Haryana***” 2019(3) ***RCR (Crl.) 727*** by following the judgment of the Hon'ble Supreme Court in ***State of Punjab vs. Saurabh Bakshi***” 2015 (2) ***RCR (Criminal) 495***, this Court while upholding the conviction of the petitioner therein has reduced the sentence of the petitioner by observing as under:-

*“However, the prayer of the learned counsel for reduction of the substantive sentence of the petitioner to six months in view of the Hon'ble Supreme Court's judgment in **Saurabh Bakshi's** case, merits acceptance. It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 7 months and 9 days out of the total sentence of two years imposed upon him.*

*The Hon'ble Supreme Court in **Saurabh Bakshi's** case (supra), while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. one year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-*

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of

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compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

10. Adverting to the facts of the present case and keeping in view the mitigating circumstances noted above and the fact that out of total sentence of seven years, appellant has already undergone a period of 05 years 03 months and 21 days, as per custody certificate filed by learned State counsel, this Court is of the considered view and has no hesitation to conclude that the ends of justice would be adequately met

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if the sentence of the appellant is ordered to be reduced to the period already undergone by him.

11. It would be apt to mention here that in FIR No.6 dated 05.01.2018 under Sections 356/379/392/411 IPC and Section 25-54-59 of the Arms Act, registered at Police Station Sector 39, Chandigarh, petitioner has already undergone the awarded sentence, whereas in other two cases i.e. in FIR No.32 of 2015 under Section 22-61-85 of the NDPS Act, registered at Police Station Shakot, Jalandhar and FIR No.02 dated 05.01.2018 under Sections 341/392/34/473 IPC and Section 25-54-59 of the Arms Act, registered at Police Sector 11, Chandigarh, he has already been acquitted.

12. In view of the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the conviction of the appellant is upheld. However, the sentence is ordered to be reduced to the period already undergone by the appellant. The same would, however, be subject to deposit of costs of Rs.10,000/- by the petitioner with the Punjab and Haryana High Court Lawyers' Welfare Fund, within a period of one month from today. It is made clear that in case the aforesaid amount of Rs.10,000/- is not deposited within the stipulated period, then the appeal would be deemed to have been dismissed.

13. Impugned judgment of conviction stands affirmed with above modification. The sentence of fine, as ordered by the trial Court, however, shall stand maintained, which shall be paid within four weeks from the date of passing of this order.

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14. With the above observations, present criminal appeal is disposed of. Pending application(s), if any, stand disposed of in view of the aforesaid judgment.

24.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No