

388

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2084-SB-2004 (O&M)
Date of Decision: 21.07.2023

Rajender @ Kala and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Malik, Advocate for the appellants.

Mr. Manish Bansal, Sr. D.A.G, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
89	01.06.2002	Sadar Sonapat	324, 307, 34 IPC (325 IPC at the time of added passing judgment)

Criminal Case before Sessions Court	SC No. 75 of 2003/2004 Date of Decision: 05.10.2004 Date of order on quantum of sentence: 11.10.2004
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Challenging the conviction and sentences, the convicts Rajender @ Kala (A-1) and Ram Kumar (A-3) had come up before this Court.

2. After registration of above captioned FIR and completion of investigation, the concerned officer in-charge of the police station had launched prosecution against seven accused. The trial Court had framed the

charges against all of them. However, vide judgment dated 05.10.2004, the trial Court acquitted five of them and has convicted only two accused/appellants namely, Rajender @ Kala (A-1) and Ram Kumar (A-3). Accused Rajender @ Kala was held guilty for the commission of offence punishable under Section 325 of IPC, whereas, the accused Ram Kumar was held guilty for the commission of offence punishable under Section 324 of IPC. Rajender @ Kala was sentenced to rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in case of non-payment of fine, he shall further undergo rigorous imprisonment for six months. Whereas, Ram Kumar was sentenced to imprisonment for two years and to pay a fine of Rs. 500/-, in default of payment of fine, he shall further undergo rigorous imprisonment for three months.

3. I have heard learned counsel for the appellants and Mr. Manish Bansal, Sr. DAG, Haryana and gone through the record.

4. Counsel for the appellants submits that he has gone through his brief and in his considered opinion; he restricts his submissions to reduction of sentence.

5. Firstly, that the accused Ram Kumar had inflicted only single blow with spade which cannot be called as a weapon and was also not attributed any specific weapon. Secondly, that the injury received by the victim did not cause any permanent damage or disfigurement. Thirdly, that the sentence of three years is highly disproportionate and excessive for the offence under Section 325 IPC. Fourthly, that the appeal was filed way back in the year 2004 and the threat of conviction being upheld was always on their head since then and at

that point of time, they were of the opinion that their appeal is good and likely to be acquitted. Fifthly, that as per custody certificate dated 12.07.2023 supplied by the State, the appellant Rajender @ Kala has already undergone 01 year and 26 days of sentence out of three years, whereas, the other appellant-Ram Kumar is concerned, he has undergone 05 months and 03 days of sentence out of two years and even that two years of sentence was awarded for offence under Section 324 IPC is on higher side and needs to be reduced.

6. Counsel for the appellants seeks further reduction on the grounds that he is confining his arguments only on reduction of sentence and prayed that the sentence be reduced to already undergone as the sentence was disproportionate and that there is no allegation of any of the accused repeating any offence during the interregnum, which fact is corroborated from the custody certificate.

7. Although the pendency of the appeal for around the last two decades is a mitigating factor and the appellants should be entitled to some reduction in this regard. Even if, hypothetically 1% reduction is given for every year's delay, then the appellants would be entitled to around 19% of reduction in sentence on this count alone. Given the absence of any such studies before this Court, hypothetically 1% reduction of every year prima facie can be taken as reasonable and acceptable mitigating factor. On this count, sentence of both the accused is reduced i.e. in the case of Rajender @ Kala, the same can be reduced by seven months and in case of Ram Kumar, the same can be reduced by four months.

8. Be that as it may, this Court is inclined to consider another factor which is that when counsel for the appellants has confined his submissions to reduction of sentence without taking appreciate evidence on merits, it results not only saving the precious time of the Court but it also favours the State because conviction is not being challenged by the State. In my opinion, this is one of the most prominent mitigating factor and convicts are certainly entitled to some reduction of sentence on this count.

9. Thus, in the cumulative, this Court is satisfied that the sentence can be reduced and it is reduced to the imprisonment which has already been undergone. Considering all above, the sentence of Rajender @ Kala is reduced to one year, he has already undergone one year and twenty-six days and fine of Rs. 1000/-Regarding the convict Ram Kumar, he has already undergone five months and three days of sentence and his sentence is reduced to five months and fine of Rs. 500/-.

10. Given above, the appeal is partly allowed. While upholding the conviction for the aforesaid offences, the sentence is reduced to sentence already undergone. Fine already paid. Bail bonds and surety bonds are discharged. All pending miscellaneous applications if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

21.07.2023
Jyoti-II

Whether speaking/reasoned	:	Yes
Whether reportable	:	No