

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRA-S-3885-SB-2017 (O&M)

Date of Decision: 22.09.2023

Manoj

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-S-2685-SB of 2017

Dharmender

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-S-2915-SB of 2017

Dheeraj @ Dheere

... Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sushma Suman, Advocate

Amicus curiae in CRA-S-3885-SB-2017 and CRA-S-2915-SB-2017.

Ms. Sharmila Sharma, Advocate

for the appellant in CRA-S-2685-SB of 2017.

Mr. Manish Dadwal, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. By this order, three appeals, details of which have been given in the head note, are being disposed of, as they have been preferred against a common judgment of conviction and order of sentence dated 04.07.2017 passed by the learned Additional Sessions Judge, Sonipat whereby the appellants herein have been held guilty for commission of offence under Sections 328, 392 read with Section 34 IPC in FIR No.288 dated 25.05.2015 registered under Sections 323,

328, 392 IPC at Police Station City, Sonipat and sentenced to undergo following sentence:-

(i) Dharmender	Section 328 read with Section 34 IPC.	Imprisonment for a period of five years along with fine of Rs.5,000/-. In default of payment of fine, convict shall undergo further imprisonment for six months.
(ii) Dheeraj @ Dheere		
(ii) Manoj	Section 392 read with Section 34 IPC	Rigorous imprisonment for a period of five years along with fine of Rs.5,000/-. In default of payment of fine, convict shall undergo further rigorous imprisonment for six months.

FACTUAL BACKGROUND

2. Brief facts of the prosecution case are that on 25.05.2015, an application was presented by one Nitin @ Chhotu son of Ved Parkash stating therein that on 24.05.2015 at about 5/6 PM when he was present at taxi stand, Sonipat with his vehicle bearing registration No.HR-10-W-5887, two unknown persons aged about 24-25 years approached him to hire taxi for village Bidhlan. Another boy, who was standing at Suri Petrol Pump also joined them. On the way to village Bidhlan via Kharkhoda when they crossed Kharkhoda, the aforesaid persons offered cold drink to the complainant and after consuming the same, he felt giddiness and stopped the car. However, they instructed him to drive the car towards Auchandi border. Further, due to his unconscious condition, they muffled his face and put him in rear of the car. Thereafter, they threw him at an abandoned place. It was also stated in the said application that the complainant could identify the aforesaid persons if they were produced before him. On the basis of the application submitted by him, an FIR was registered and during the course of investigation, the accused were arrested.

3. After completion of usual formalities of investigation, final report under Section 173 Cr.P.C. was prepared against the accused.

4. After making due compliance of the provisions of Section 207 Cr.P.C., charges were framed against the appellants/accused under Sections 328, 392 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

5. The prosecution, in order to prove its case, examined total 9 witnesses and closed its evidence.

6. Appellants/accused did not lead any evidence in their defence.

7. After hearing arguments of both the sides and perusing the evidence on record, the trial Court convicted and sentenced the appellants/accused as stated above.

CONTENTIONS

8. Learned counsel appearing for the appellants submits that they are not assailing the impugned judgment of conviction dated 04.07.2017 on merits and restrict their prayer to modification of the order of sentence dated 04.07.2017 on quantum of sentence to that of the sentence already undergone by them. The appellants Manoj, Dharmender and Dheeraj @ Dheere were convicted under Sections 328, 392 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of five years and have already undergone actual custody of 2 years 19 days, 1 year 3 months 12 days and 1 year 5 months 15 days respectively.

9. Learned counsel for the appellants further contends that appellants herein have reformed and intend to live a peaceful life. It is also contended by counsel for the appellants that there is no minimum sentence provided under Sections 328, 392 IPC and therefore, they pray that order of sentence of the appellants be modified to that of already undergone.

10. Per contra, learned State counsel opposes the prayer of the appellants for modification of the order of sentence to that of one already undergone on the

ground that the appellants have been convicted for a serious crime of robbery and causing hurt to the complainant by administering him some intoxicating substance, as such, they do not deserve any leniency. It is also contended that the learned trial Court has passed a well reasoned judgment based on correct appreciation of evidence available on record.

ANALYSIS AND OBSERVATION

11. Undisputedly, the FIR was registered against unknown persons. PW-8 SI Phool Kumar deposed that on 08.11.2015 he arrested accused Manoj and Dharmender and produced them before Illaqa Magistrate. On being interrogated separately, they suffered their disclosure statements as Ex.PW-4/A and Ex.PW-4/B and confessed their guilt. They confessed that they robbed the car of the complainant on 24.05.2015 and sold it to one Yamin for Rs.40,000/-. Accused-Manoj in his disclosure statement also disclosed that Dheeraj handed over to him the purse of the driver (complainant) containing Rs.3000/- Further identity card, PAN Card and Aadhaar Card of the driver (complainant) were recovered by the police from the residence of accused Manoj. Similarly, ATM card, driving licence and insurance copy of the car were recovered from accused Dharmender. On 19.11.2015, he arrested accused Dheeraj @ Dheere, who suffered his disclosure statement as Ex.PW3/A and confessed his guilt. Currency notes worth Rs.5000/- were also recovered from him.

12. PW-3 EASI Vijay Kumar and PW-4 ASI Hari Om deposed on similar lines as PW-8 SI Phool Kumar. The complainant stepped into the witness box as PW-5 and duly corroborated the prosecution version. He also identified all the accused persons.

13. The FIR in question was registered in the year 2015 and the appellants have already suffered the agony of trial for the last about 8 years as the appeal is

also continuation of trial, therefore, the prayer for modification of the order of sentence can be considered to that of the period already undergone in the light of the facts and circumstances of the case.

14. A two Judge Bench of the Hon'ble Supreme Court in ***State of Haryana Vs. Janak Singh AIR 2013 SC 3246*** has dealt with the power of this Court to reduce the sentence as to the one already undergone in cases where the accused is convicted for an offence for which a minimum sentence is prescribed by law. Speaking through Justice Ranjana Prakash Desai, the Hon'ble Supreme Court has observed as under:-

“10.....It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was “just and expedient” to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the Indian Penal Code. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) of the IPC.”

A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Dhool Singh (2004) 12 SCC 546*** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence.”

15. A two Judge Bench of the Hon'ble Supreme Court in ***Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633*** has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused.”

A two Judge Bench of the Hon'ble Supreme Court in ***Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926***, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The

sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

16. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of

each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

17. A perusal of the *ratio decidendi* culled out in the above-mentioned judgments of the Hon'ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformatory.

18. As per the custody certificates produced by the learned State counsel, out of the total sentence of 5 years, the appellants namely Manoj, Dharmender, and Dheeraj @ Dheere have undergone actual sentence of 2 years 19 days, 1 year 3 months 12 days and 1 year 5 months 15 days respectively.

19. A perusal of the judgment of conviction passed by the trial court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record. Counsel for the appellants has not assailed the judgment of conviction on merits rather they have restricted their prayer only qua quantum of sentence.

CONCLUSION

20. The FIR in the present case was lodged on 25.05.2015 and the appellants have suffered the agony of trial for more than 8 years. After their conviction, they have grown into law abiding citizens with a desire to live a useful and peaceful life. Out of total sentence of 5 years, appellants Manoj, Dharmender, and Dheeraj @ Dheere have already undergone actual sentence of 2 years 19 days, 1 year 3 months 12 days and 1 year 5 months 15 days respectively.

21. Accordingly, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment for 5 years awarded to the appellants is reduced to the period already undergone by them.

22. Consequently, the present appeal is disposed of in the following terms:-

- (i) The judgment dated 04.07.2017 passed by the Additional Sessions Judge, Sonipat convicting the appellants Manoj, Dharmender, and Dheeraj @ Dheere is upheld, however, the order of sentence dated 04.07.2017 is modified to the extent that the sentence of rigorous imprisonment for 5 years awarded to each of the appellants is reduced to the period of sentence already undergone by them.
- (ii) The sentence of fine of an amount of Rs.10,000/- each imposed upon the appellants by the trial Court is kept intact. The appellants are directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellants shall be liable to be taken into custody and made to undergo rigorous imprisonment for six months.

23. Bail bonds and surety bonds of the appellants stand discharged.

24. Pending miscellaneous application(s), if any, in all appeals shall also stand disposed of.

25. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

September 22, 2023
Pankaj*

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