

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CRA-S-1621-SB-2004 (O&M)
Date of decision: 29.01.2024

Krishan Kumar and others

.....Appellants

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms. Aashna Gill, Advocate for the appellants.

Mr. Jagdish Manchanda, Addl. A.G., Haryana.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment/order dated 31.07.2004, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, whereby the appellants were convicted and sentenced as under:

Krishan Kumar, Bhim Sain and Satpal			
Offence u/s	Imprisonment	Fine	Default sentence
308 read with Section 34 IPC	RI for two years and six months	Rs.1000/-	RI three months
353 read with Section 34 IPC	RI for one year	Rs.500/-	RI one month
61(1)(a) of Punjab Excise Act, 1914.	RI for one year and six months	Rs.5000/-	RI two months

Satish Kumar			
Offence u/s	Imprisonment	Fine	Default sentence
61(1)(a) read with Section 67 of Punjab Excise Act, 1914.	RI for one year and six months	Rs.5000/-	RI two months

All the sentences of Krishan Kumar, Bhim Sain and Satpal were ordered to run concurrently.

2. Succinctly, the facts are that on 01.09.1997, when Sub Inspector Mam Chand alongwith other police officials were on patrolling duty in connection with the checking of miscreants and excise inspection, they received a secret information and apprehended the accused, who were travelling in a truck, loaded with 499 bottles of liquor in jute bags, after a chase in which they hit the barricades and even tried to turn over the police jeep. The requisite samples were drawn and sealed. Ruqa was sent on the basis of which an FIR was registered.

3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused and the case of the accused-appellants was committed to the Court of Sessions. On finding a prima facie case, charges were framed against them, to which they pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, examined as many as 8 witnesses. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C., whereby incriminating evidence was put to them, which they denied. They pleaded innocence and false implication. No evidence was led in defence.

5. The trial Court, after appreciating the evidence, came to the conclusion that prosecution has proved its case beyond any reasonable doubt, and accordingly convicted and sentenced the appellants as mentioned in para No.1 above.

6. Aggrieved appellants are before this Court.

7. Learned counsel for the appellants, at the outset, gives up the challenge to their conviction and prays for reducing the sentence to the period already undergone by appellant No.1, aged 73 years, is 01 month and 17 days, appellant No.2, aged 65 years, 03 months and 12 days, appellant No.3, aged 51

years, 22 days, and appellant No.4 is aged 65 years on the ground that they are not involved in any other case under IPC; belong to poor strata of society; sole breadwinner of the family; appellant Nos. 2 and 3 have children of marriageable age; appellant No.4 was stated to be owner of the truck but was not its occupant at the relevant time; they never misused the concession of bail and have been facing the agony of protracted trial for the last 27 years.

8. Learned State counsel opposes the appeal on the ground that the trial Court after evaluating the evidence has rightly convicted the appellants and the sentence awarded to them cannot be said to be excessive, therefore, he prays for the dismissal of the present appeal. He, however, affirms the fact of the non-involvement of the appellants in any other case under IPC as per the custody certificates

9. Heard the learned counsel on either side and perused the record with their able assistance.

10. Evidently, PW8- Inspector Mam Chand had deposed that on basis of the secret information regarding selling the liquor in the area, barricade was put and nakabandi was done. A truck bearing No.HYQ 2754 seen coming from Ambala side, a signal was given to stop but the driver instead of doing so, accelerated the speed. The accused-appellants while trying to escape, broke the barricades and rather tried to run them over. When the police chased them, the driver of the truck swerved it towards the police jeep with an intention to make it over turn, but the mishap was averted by its driver having taken due precautions. The truck was later on intercepted after crossing Markanda-river and the occupants alighted from the same and fled towards the Nursery. The said statement stood corroborated by PW7, SI Dharamvir, who was also accompanying PW8, Insp. Mam Chand. On going through the evidence on record, the prosecution case is found well established beyond shadow of reasonable doubt.

Thus, the trial Court has rightly convicted the appellants, therefore, there is no scope for interference in the findings recorded and conclusion arrived at. As such, the conviction of the appellants is upheld.

11. Insofar as the prayer for reducing the sentence of the appellants to the period already undergone is concerned, it would be worthwhile to make a reference to the judgment in **Nafeesa vs. State N.C.T. of Delhi**, 2023 SCC OnLine Del 6506, wherein the accused was convicted under Section 308/341/323/34 IPC and Hon'ble the Supreme Court reduced the sentence of imprisonment to the period already undergone by her, considering that the occurrence took place in 2003 and she was not involved in any other criminal case.

12. As regards, conviction under Section 353/34 IPC is concerned, a reference can be made to **Haribhau vs. State of Maharashtra** (2018) 18 SCC 43, wherein the appellant had given kicks and blows and was thus convicted under Sections 353, 504 and 294 read with Section 34 IPC, however Hon'ble the Supreme Court while considering the fact that 13 years lapsed since the date of incident, had reduced his sentence to the period already undergone by him and instead more fine on him to meet the ends of justice.

13. This Court in **Amarbeer Singh and another vs. State of Punjab** CRR-139-2008, decided on 24.05.2003, where the appellants were convicted under Section 61(1)(a) of the Punjab Excise Act, 1914, reduced the sentence to already undergone, as the petitioners were sole breadwinners of their respective families, never misused the concession of bail and had faced the agony of trial for 20 years.

14. Viewing humanistically, the appellants having suffered the ignominy of trial since long; successfully warded off their crime-proneness-an evident learning of a lesson; their socio-economic circumstances, this Court finds

extenuation to be implicit. Thus, it would serve the ends of justice to reduce their sentence to the period already undergone, however, keeping the fine intact.

15. The order of sentence dated 31.07.2004 is modified to the aforesaid extent and as such, the present petition stands partly allowed.

29.01.2024
Hemant

(AMAN CHAUDHARY)
JUDGE

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