

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CRA-S-1996-SB-2004 (O&M)
Date of decision : 24.01.2024

Harsh KumarAppellant

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Bhupinder Singh Bairagi, Advocate for the appellant.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment/order dated 03.09.2004, passed by the learned Additional Sessions Judge, Fast Track Court, Hoshiarpur, whereby appellant was convicted and sentenced as under:

Offence u/s	Imprisonment	Fine	Default sentence
328 IPC	RI for four years	Rs.1000/-	RI for one month
411 IPC	RI for two years	-	-

All the sentences shall run concurrently.

2. Shorn of unnecessary details, the facts are that on 28.8.2001 in the evening Palwinder Dev was going to the relatives of Mandip Saini to Hoshiarpur from Jalandhar while driving Toyota Qualis No. PB-10Z Temp. 7771. When he was in the area of village Pialan on Taragarh turning point, two men and a women with a child took a lift. Thereafter, one boy offered a piece of Burfi to the complainant saying that it is a prashad of the Babaji, which was consumed by the complainant and after 2/3 K.M. he felt giddiness and became unconscious. He found himself in the hospital of Barsar (H.P) and the vehicle was stolen. On the basis of his statement, an F.I.R. was registered on 3.9.2001 under sections 328, 379 and 420 of IPC.

3. After completion of investigation, final report under Section 173

Cr.P.C. was presented in the Court against the accused-appellant. On finding a prima facie case, charges under Sections 328/411 IPC were framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to bring home the guilt of the accused examined as many as 10 PWs. On closure of their evidence, statement of the accused was recorded under Section 313 of Cr.P.C. He denied all the incriminating circumstances that appeared against him in the prosecution case while pleading false implication by the police.

5. The learned trial Court after hearing the learned counsel for the parties, while acquitting the accused-appellant, convicted and sentenced the accused-appellant as noticed above.

6. Aggrieved appellant is before this Court.

7. Learned counsel for the appellant, at the very outset, gives up challenge to the conviction and prays for reducing the sentence awarded to the appellant to the period already undergone, it being 5 months and 3 days, on the ground that he belongs to the poor strata of the society; sole breadwinner of his family; not involved in any other case; never misused the concession of bail and has been facing the agony of protracted trial for the last 23 years.

8. On the other hand, learned State counsel submits that the trial Court after appreciating the evidence led by the prosecution, has rightly convicted and sentenced the appellant, therefore, prays for the dismissal of the present appeal. He, however, affirms the non-involvement of the appellant in any other criminal case and the period undergone by him as per the custody certificate.

9. Heard the learned counsel on either side and perused the record.

10. Evidently, PW1-Palwinder Dev, complainant, in his deposition specifically named the appellant, having made him unconscious, which stood corroborated by PW2-Mandip Saini. Recovery of vehicle has been effected. On

going through the evidence on record, the prosecution has proved the case against the appellant. Thus, there is no scope for interference in the findings recorded and conclusion arrived at by the trial Court. As such, his conviction is upheld.

11. Insofar as the prayer for reducing the sentence of the appellant to the period already undergone is concerned, it would be worthwhile to make a reference to the judgment in **Manoj vs. State of Haryana**, 2023 (4) RCR (Criminal) 644, wherein the accused were convicted under Sections 328, 392 read with 34 IPC and this Court had reduced the sentence of 5 years to the period already undergone by them, being 2 years 19 days, 1 year 3 months 12 days and 1 year 5 months 15 days respectively, by considering the principle of proportionality and the fact that they had faced the trial for more than 8 years.

12. Furthermore, in **Sunny vs. State of Haryana**, 2023 (3) RCR (Criminal) 17, the sentence of 3 years awarded to the accused, convicted under Sections 454, 379 read with 511 IPC, was reduced to 9 months and 7 days, the period undergone, by holding that he was the sole bread winner; the FIR was of the year 2011; was not involved in any other case and nothing was brought on record to show that he had misused the concession of bail.

13. This Court, considering the judgments referred to above and the mitigating circumstances as pointed out by learned counsel for the appellant, finds that the ends of justice would be adequately served if the sentence of appellant is reduced to the period already undergone by him, while keeping the fine intact.

14. The order of sentence dated 03.09.2004 is modified to the aforesaid extent and as such, the present appeal stands partly allowed.

24.01.2024
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(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

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Yes / No