

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2112-SB-2004 (O&M)
Date of Decision: 13.02.2024

Sukhwinder Singh and others

...Appellants

Versus

U.T.Admin.

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rajan Lakhanpal, Advocate for the appellants.
Mr. Sumit Jain, A.P.P., U.T., Chandigarh.

N.S.SHEKHAWAT, J.

1. The appellants have preferred the present appeal against the impugned judgment of conviction and the order of the sentence dated 06.10.2004 passed by the Additional Sessions Judge, Chandigarh, whereby, the appellants have been convicted for the offences punishable under Sections 393 and 353 of IPC and were sentenced as follows:-

*Under Section 393 IPC Rigorous imprisonment for three years each
and to pay a fine of Rs. 500/- or in default of
payment of fine to further undergo rigorous
imprisonment for three months each.*

Under Section 353 IPC Rigorous imprisonment for one year each.

Both the substantive sentences were ordered to run concurrently.

2. At the very outset, learned counsel appearing on behalf of the appellants submits that he does not wish to challenge the judgment of conviction in the present case and since the appellants are facing the prosecution for the last 22 years, so, some leniency may be shown to them, while awarding the sentence. Even though, learned counsel for the appellants does not challenge the judgment of conviction, still this Court has examined the merits of the present case.

3. As per the case of the prosecution, at about 9/9.30 p.m., on 06.02.2002, complainant Gurjit Singh was present on the road outside his house situated in Sector 43-B. Chandigarh and a male youth came to him, telling him that another youth, sitting on motorcycle nearby, is calling him. When Gurjit Singh reached near that motorcycle, he was given a blow with an iron rod by first youth on his right hand. The person sitting on motorcycle bearing registration No. RJ. 08-M-8951 also tried to give blows with his knife on the person of Gurjit Singh, who pushed the motorcycle in order to save himself, as a result which, the motorcyclist and the motorcycle both fell on the road. After getting up from the road, the motorcyclist snatched a bag containing currency notes of Rs. 5700/- and tried to run away. On an alarm being raised by Gurjit Singh, Mohan Singh, Satish Sharma, Walia, Sucha Singh and Malhotra reached there form

the neighborhood and caught hold of both of the robbers. Upon being asked, they disclosed their names as Jaswinder Singh son of Gurnam Singh and Sukhwinder Singh son of Gurnam Singh, both residents of custom colony, Sector 37-C. Chandigarh. Gurjit Singh, in his complaint made in writing, further revealed that both of the accused were customers of his shop and were aware of the fact that after closing his shop, Gurjit Singh was not only carrying sale proceeds but was also wearing gold chain and kara. The police also reached at the spot itself and both Jaswinder Singh and Sukhwinder Singh were handed over to the police there and then. On receiving this narration of the incident, the police lodged the instant FIR and launched its investigations upon completion whereof, challan was presented against the accused.

4. After the completion of the investigation, the trial Court found that a *prima-facie* case under Sections 332, 353 and 397 of IPC was made out against the appellants and they were charge sheeted accordingly. Both the appellants pleaded innocence and claimed trial.

5. In order to prove the charge against the appellants, the prosecution had examined 18 witnesses in the present case. After recording of the prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and the entire incriminating evidence was put to them.

6. In defence, DW1 Rajiv Thakur, clerk from the Judicial Record Room, Ropar, was examined, who proved on record a

criminal complaint titled as “Jaswinder Singh Vs. Devinder Singh Malhi”, which was decided on 14.08.2002. Even, the said complaint was finally dismissed in default on 14.08.2002.

7. In the present case, the criminal machinery was set into motion on the basis of the statement made by PW3 Gurjit Singh. However, the said witness did not support the case of the prosecution in totality and after admitting the incident, he turned hostile and did not identify the accused facing trial by feigning lack of light at the place of occurrence and stated that the accused were bearing helmets. Apart from him, PW1 Mohan Singh, eye witness and PW2 Harinder Singh, neighbour of the complainant, PW6 S.K. Malhotra, neighbour had turned partly hostile. However, the prosecution examined PW18 SI Prem Nath, who was present in the market of Section 35 Chandigarh alongwith the police party on patrolling duty and on receipt of the information regarding the incident, he reached at the spot and recorded the statement of complainant Gurjit Singh. The statement finally led to the registration of the formal FIR Ex.PB by SI Jaswinder Singh. PW18 SI Prem Nath clearly deposed that both the accused facing trial had been apprehended by the public at the spot and Sukhdev Singh @ Sukhwinder Singh was armed with a rod and Jaswinder Singh was carrying a *Daggar* and an iron rod. The weapons of offence were recovered by him vide memo Ex.P-3, Ex.P-5 and Ex.P-26 and he conducted the investigation at the spot. The testimony of PW18 SI Prem Nath was duly corroborated by PW4 Constable

Kulwinder Singh, who was member of the party headed by SI Prem Nath. Apart from that PW5 HC Didar Singh was also present at the spot and both the accused facing trial had grappled with them, instead of cooperating with the police. The statement of PW18 SI Prem Nath finds full corroboration from the testimony of PW4 Constable Kulwinder Singh and PW5 HC Didar Singh and conclusively proved the involvement of both the appellants in the crime. Apart from that, the statement of PW8 Rulda Singh, Home Guard and PW9 Constable Gobind Singh also supported the case of the prosecution. Apart from that, PW10 Constable Sukhwinder Singh also testified on similar lines with PW8 Rulda Singh, Home Guard and PW9 Constable Gobind Singh.

8. In the present case, even though, PW1 Mohan Singh, eye witness, PW2 Harinder Singh, neighbour, PW3 Gurjit Singh, complainant and PW6 S.K. Malhotra had partly turned hostile, however, the testimonies of such hostile witnesses cannot be completely brushed aside. In fact, the said witnesses had supported the case of the prosecution with regard to the occurrence and their statement could not be discarded in totality. They clearly stated that two boys had committed the crime but refused to identify the appellants as the real culprits in the present case. Apart from that, their testimonies have been supported by the statements of the official witnesses, who had no revengeful attitude towards the appellants and were performing their official duties. Even, the trial Court had

correctly placed reliance on the testimonies of these official witnesses, who had nabbed the accused alongwith the public and the recoveries were effected from them.

9. Apart from the testimonies of the official witnesses, the medical evidence in the shape of the statement of PW16 Dr. Deepak Sharma and MLR of Gurjit Singh Ex.P-20 further established that PW3 Gurjit Singh, complainant had received an injury on his hand with a blunt weapon on the date of occurrence. Apart from that, the other police officials had duly proved the investigation carried out at the spot and on subsequent dates and the prosecution had proved the case against the appellants beyond the reasonable doubt.

10. Thus, the appellants have been rightly convicted by the trial Court for the commission of the offences punishable under Sections 353 and 393 IPC and the conviction of the appellants is ordered to be upheld.

11. Now advertng to the order on sentence, this Court is conscious of the fact that the appellants were arrested in the present case on 06.02.2002 and are facing the agony of trial/appeal for the last more than 22 years. At present, Sukhwinder Singh is aged about 53 years whereas Jaswinder Singh is stated to be aged about 51 years. They are the sole bread earners of the family. Apart from that, on 29.01.2024, learned State counsel had made a statement that two more cases were registered against the appellants in U.T., Chandigarh, however, they have been acquitted. However, one case FIR No. 146

of 2001 under Sections 302/34 IPC and Section 25 of the Arms Act, Police Station Chandimandir, Panchkula was pending against them. However, the appellants have placed on record (Annexure A-1) to contend that an untrace report was filed in the said case, which was accepted by the Judicial Magistrate 1st Class, Panchkula, on 06.09.2005. Thus, the appellants are not facing the prosecution in any other case, at this stage. Apart from that, as per the custody certificate, both the appellants have undergone about 11 months of sentence out of total sentence of 03 years and it is apparent that they have undergone a substantial period of sentence in the present case. Thus, no purpose will be served by sending the appellants behind bars after such a long period. Thus, the order of sentence is modified to the extent that the sentence imposed on the present appellants is reduced to the period already undergone by them. However, the amount of fine is enhanced to Rs. 50,000/-, which shall be deposited by them in the Punjab and Haryana High Court Bar Clerks' Association, within a period of 03 months from today. In case, the amount of fine is not deposited within a period of 03 months, the appellants shall undergo rigorous imprisonment for a period of 03 months each, as observed by the trial Court.

12. With the above modifications, the appeal is partly allowed and the impugned judgment of conviction is upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present appellants are reduced to the period already

undergone by him. However, the amount of fine is enhanced to Rs. 50,000/- as observed, which shall be deposited by them within a period of three months from today.

13. All pending applications, if any, are disposed off, accordingly.
14. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

13.02.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No