

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

CRA-S-1728-SB-2004 (O&M)
Date of decision : 29.01.2024

Neeraj KumarAppellant

Versus

State of Haryana Respondent

Mohammad AfsarAppellant
CRA-S-2234-SB-2004 (O&M)

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Gurpreet Jayia, Legal Aid Counsel for the appellant
in CRA-S-1728-SB-2004.

Mr. B.S. Mamli, Advocate for the appellant
in CRA-S-2234-SB-2004.

Mr. Jagdish Manchanda, Addl. AG Haryana.

AMAN CHAUDHARY, J.

1. Both these criminal appeals arising out of a common judgment, are thus being decided together.
2. Challenge in the present appeals is to the judgment/order dated 02.07.2004, passed by the learned Additional Sessions Judge, Jagadhari, whereby appellants were convicted and sentenced as under:

Accused Neeraj Kumar			
Offence u/s	Imprisonment	Fine	Default sentence
394 and 397 IPC	RI for seven years	Rs.500/-	RI for three months
25 of Arms Act	RI for one year	Rs.500/-	SI for three months

Accused Mohammad Afsar			
Offence u/s	Imprisonment	Fine	Default sentence

394 and 397 IPC	RI for seven years	Rs.500/-	RI for three months
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3. Shorn of unnecessary details, the facts are that on 12.01.2003, when Yogesh Kumar-complainant along with other employees were doing duty at the petrol pump, all the accused came there and pointed a pistol at him, while Neeraj gave a pistol butt blow on the head of one Sanjiv Kumar. On the basis of a statement made before the police officials present on patrol-duty, an FIR was got registered.
4. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused-appellants and the case of the accused-appellants was committed to the Court of Sessions. On finding a prima facie case, charges under Sections 392, 394, 397 IPC and Sections 25/54/59 of Arms Act, 1959 were framed against them, to which they pleaded not guilty and claimed trial.
5. The prosecution in order to bring home the guilt of the accused examined as many as 13 PWs. On closure of their evidence, statements of the accused were recorded under Section 313 of Cr.P.C. They denied all the incriminating circumstances that appeared against them in the prosecution case while pleading false implication by the police.
6. The learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the accused-appellants as noticed above.
7. Aggrieved appellants are before this Court.
8. Learned counsel for the appellants, at the very outset, give up challenge to the conviction and prays for reducing the sentence awarded to the appellants to the period already undergone, it being 3 years, 5 months and 19 days, on the grounds that they belong to the poor strata of the society; sole breadwinner

of their families; not involved in any other case; never misused the concession of bail and have been facing the agony of protracted trial for the last 20 years.

9. 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 appellants, 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.

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

11. Evidently, PW8-Yogesh, complainant, in his deposition specifically named the appellants and their roles of having caused injuries to the other employee-Sanjiv, which stood corroborated by statements of PW-12 Dinesh Kumar, who was working at the petrol pump for the last 6 years. The MLR of the injured prepared by PW10-Dr. Neenu Kalra also supports the occurrence of the alleged incident. On going through the evidence on record, the prosecution has proved the case against the appellants. 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, their conviction is upheld.

12. 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 **Aslam vs. State of Uttar Pradesh**, 2003 (sup.) Cri. L.R. (SC) 639, wherein the accused was convicted under Section 394 IPC and Hon'ble the Supreme Court reduced the sentence of three years to 1 year.

13. In **Shamim vs. State Of Haryana**, CRA-S-235-SB-2014, decided on 11.01.2017, the sentence of the accused, convicted under Section 394 IPC, which was 7 years was modified to 4 years undergone by holding that no useful purpose will be served by directing them to complete their remaining sentence as they had

been remained behind bars for sufficiently long. Similarly in **Joginder @ Bachi vs. State of Haryana**, CRA-S-2337-SB-2004, decided on 23.09.2017, the sentence awarded to the accused-appellants, who were convicted under Sections 392/34 and 397 IPC for RI of 7 years, was reduced to the extent of already undergone by taking a reformatory approach as the appellants had already suffered sentence of 03 years, 03 months, 10 days and 04 years, 06 months.

14. Humanistically viewing, the appellant having suffered the ignominy of trial since long; successfully warded off his crime-proneness-an evident learning of a lesson; his socio-economic circumstances, this Court finds extenuation to be implicit. Thus, it would serve the ends of justice to reduce his sentence to the period already undergone, however, keeping the fine intact.

15. The order of sentence dated 02.07.2004 is modified to the aforesaid extent and as such, the present appeals stand partly allowed.

16. A photocopy of this order be placed on the file of the connected case.

29.01.2024
M.Kamra

(AMAN CHAUDHARY)
JUDGE

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