



CRA-S-1109-SB-2009

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**303(2)****CRA-S-1109-SB-2009****Date of Decision: 30.10.2025****DHARMENDER KUMAR****... APPELLANT****VERSUS****STATE OF HARYANA****... RESPONDENT****CORAM : HON'BLE MR. JUSTICE H.S.GREWAL**

Present:- Mr. Rahul Deswal, Advocate for the appellant.

Mr. Sunny Namdev, AAG, Haryana

H.S. Grewal, J.(Oral)

1. This appeal has been filed against the judgment of conviction dated 12.03.2009 and order of sentence dated 14.03.2009 passed by the learned Additional Sessions Judge, Fast Track Court, Gurgaon in case FIR No. 138 dated 22.03.2008 under Sections 399/402 of IPC and Sections 25/54/59 of Arms Act registered at Police Station Manesar, Gurgaon, the appellant has come up before this Court by filing the present appeal.

2. The case of the prosecution is that in the intervening night 21/22.03.2008, ASI Narotam Parshad along with ASI Prithvi Singh, HC Devender, HC Tejpal, Hari Om and others was present at Bas Kusla Chowk. During this time, Inspector Rajiv Kumar received secret information that seven boys were planning to commit a dacoity near the wall, behind Maruti Suzuki Company, at a deserted spot between heaps of earth. The informer disclosed that the suspects were armed and intended to tie up the factory guards before committing the offence. Believing the information to be reliable, Inspector Rajiv Kumar



attempted to associate public persons in the raiding party, but none were willing. Consequently, three raiding parties were formed — one led by Inspector Rajiv Kumar, the second by ASI Prithvi Singh, and the third by ASI Narotam Parshad. Instructions were issued that, on receiving a signal from Inspector Rajiv Kumar, the party led by ASI Prithvi Singh would surround the suspects from the northern side, while the party led by ASI Narotam Parshad would take position from the southern side, and Inspector Rajiv Kumar's party would conduct the raid. The police party proceeded in a Gypsy, which was parked about two killas away from the spot. Thereafter, Inspector Rajiv Kumar, along with his team, approached the location stealthily and observed seven persons armed with pistols, *dandas* and iron rods, with two motorcycles parked nearby. One of the accused was overheard saying that, since it was a holiday due to Holi, it was a good opportunity to commit dacoity. Another person asked Dharmender Kumar what should be done, to which Dharmender replied that he, along with Arun, Hoshiar Singh, and Anil, would enter the Copper Factory, overpower the guards, and open the main gate. Sanju @ Sanjay was instructed to be ready with his pistol, while Naneh and Ajay were to stay near the gate with the motorcycles. Upon hearing this conversation, Inspector Rajiv Kumar signalled the other parties, and the police moved in. The Inspector announced that the accused were surrounded from all sides and should surrender. On this, the accused tried to flee on their motorcycles but were apprehended.

3. Upon interrogation, their identities were ascertained. A search of their persons led to the recovery of one country-made pistol of .315 bore loaded from Dharmender, and one country-made pistol of 12 bore with a live cartridge from Sanjay. From Anil, one iron rod was recovered; from Arun and Hoshiar, one *lathi*



each was seized. Sketches of the weapons were prepared, and the same were taken into police possession as none of the accused could produce any licence or permit for the firearms. A *ruqqa* was sent for registration of the case. Mobile phones recovered from Dharmender, Sanjay, Anil, and Arun @ Harun were also taken into possession.

4. Pursuant thereto, vide order dated 12.03.2009 passed by the learned Additional Sessions Judge, Fast Track Court, Gurgaon, the appellant was convicted as under:

Under Section 399 IPC	To undergo RI for seven years and to a fine of Rs. 2000/-	In default of payment of fine to undergo further RI for six months
Under Section 402 IPC	To undergo RI for five years and to pay a fine of Rs. 2000/-	In default of payment of fine to undergo further RI for six months
Under Section 25 of Arms Act	To undergo RI for two years and to pay a fine of Rs. 1000/-	In default of payment of fine to further undergo RI for three months

All the sentences were ordered to run concurrently.

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 12.03.2009 on merits and restricts his prayer qua modification of the order on quantum of sentence, to the period as already undergone by the appellant, as he has already undergone a sentence of more than 03 years 02 months and 02 days out of awarded sentence of seven years. He further prays that petitioner was aged about 22 years at the time of conviction as FIR in question pertains to the year 2008, a lenient view may be taken while passing an order on quantum by this Court.



6. On the other hand, learned State counsel opposes the prayer of the appellant on the ground that the Court below has passed a well reasoned judgment based on correct appreciation of evidence available on record. As per custody certificate, the petitioner is not involved in any other case.

7. I have heard learned counsel for the parties and have gone through the material placed on record.

8. The FIR in the present case pertains to the year 2008 and he has already faced the rigors of the trial for more than 16 years.

9. Hon'ble the Supreme Court in "***Deo Narain Mandal Vs. State of UP***", (2004) 7 SCC 257, has held 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, the 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.

10. Further, a Division Bench of the Hon'ble Supreme Court in ***Ravada Sasikala Vs. State of AP***, AIR 2017 SC 1166, has held 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 conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

11. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, learned counsel for the appellant has not assailed the judgment of conviction on merits, rather restricted the prayer only qua modification of quantum of sentence to that of the sentence already undergone by the appellant.

12. As far as the question of quantum of sentence is concerned, it is worthwhile to note that the occurrence in this case pertains to the year 2008. The right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. The appellant has already suffered the agony of protracted trial, spanning over a period of more than 16 years and has been in the corridors of the court for this prolonged period. In view of the facts noted above, the case of the appellant deserves to be dealt with leniency. The appellant also deserves the benefit of the consistent view taken by this court in this regard. Thus, guided by the judicial pronouncements made by the Hon'ble Supreme Court in the cases of *Haripada Das Vs. State of West Bengal* reported in (1998) 9 SCC 678 and *Alister Anthony Pareira vs. [2023:RJ-JD:28174]* (5 of 5) [CRLR-755/2003] *State of Maharashtra* reported in 2012 2 SCC 648 and considering the facts and circumstances of the case, age of appellant, his status in the society and the fact that he faced financial hardship and had to go through mental agony, this court is of the view that ends of justice would be met, if sentence imposed upon the appellant is reduced to the one already undergone by him.



13. Accordingly, judgment of conviction dated 12.03.2009 and order of sentence dated 14.03.2009 passed by the learned Additional Sessions Judge, Fast Track Court, Gurgaon is affirmed but the quantum of sentence awarded by the Court concerned under Sections 399 and 402 of the IPC and Section 25 of the Arms Act has been modified and reduced to the period of sentence he has undergone till date as it would be sufficient and justifiable to serve the interest of justice. The appellant is on bail. He need not surrender. His bail bonds are discharged. However, the amount of fine of Rs. 2,000/- imposed upon the appellant by the Id. Trial Court is enhanced to Rs. 10,000/-. The appellant is directed to deposit the enhanced amount of fine in learned trial Court within a period of one month from the date of receipt of certified copy of this order and in case of default of payment of fine, he will be liable to be taken into custody and made to undergo rigorous imprisonment for further period of six months.

14. With these modifications, the present appeal is disposed of.

15. Pending application(s), if any, shall also stand disposed of.

30.10.2025

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(H.S.GREWAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>