



CRA-S-2301-SB-2004 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA-S-2301-SB-2004 (O&M)
Reserved on: 02.04.2025
Pronounced on: 08.04.2025**

JAGDISH

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Nirmal Rani, Advocate for
Mr. Rajesh Lamba, Advocate for the appellant.

Ms. Geeta Sharma, DAG Haryana.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 05.08.2004/07.08.2004 passed by learned Additional Sessions Judge, Fatehabad vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
458 of Indian Penal Code	Rigorous imprisonment for three years	Rs. 10,000/-	Rigorous imprisonment for six months
459 of Indian Penal Code	Rigorous imprisonment for four years	Rs. 10,000/-	Rigorous imprisonment for six months

2. FIR in the present case was registered on the statement of Narender Singh, who stated that on the night of 20.12.1999 he alongwith his family had gone to sleep in his house. At about 12.45 A.M. he woke up with a urge to urinate and at that time he heard some noise from one of the rooms. He saw a young boy committing theft. On seeing the complainant, the said thief had attacked the complainant with a rod and gave 5-6 blows. The complainant tried to catch the thief but did not succeed. The thief tried to scale the boundary wall

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of the house, but in the process he fell down and received injuries. The complainant raised hue and cry, on which his neighbours arrived and they caught hold of the thief, who then disclosed his name as Jagdish (appellant herein).

3. Learned counsel for the appellant submits that the prosecution case is not proved beyond the shadow of reasonable doubt and appellant was returning to home with a relative and he had stopped for urination besides the house of the complainant and on suspicion, the complainant had raised hue and cry and the accused-appellant was caught by the neighbours and gave beatings to him. Learned counsel further submits that prosecution has also not given any explanation regarding injuries suffered by the accused-appellant and statements of prosecution witnesses suffer from various contradictions and factual ingredients to invoke the provisions under Sections 458 and 459 of IPC are not made out. Further, the appellant has undergone a period of 01 year 01 month and 21 days of custody out of substantive sentence of 04 years awarded to him.

4. Per contra, learned State counsel opposes the prayer of the appellant on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellant does not deserve any leniency. Moreover, the appellant is also involved 06 other cases, thus, he is a habitual offender

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted for lurking house trespass and causing injuries to complainant, attracting the offences under Section 458 and 459 of Indian Penal Code, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 01 year 01 month and 21 days out of substantive sentence of 04

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years, in the instant case. Since there is no minimum punishment prescribed under Section 458 and 459 of Indian Penal Code, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

6. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined 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, 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.

7. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated 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 the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

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8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 21.12.1999 and the appellant has been suffering the agony of trial for last more than 25 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

9. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 05.08.2004 passed by the learned Additional Sessions Judge, Fatehabad is upheld.

(ii) The order of sentence dated 07.08.2004 is modified to the extent that the substantive sentence of rigorous imprisonment for 04 years along with total fine of Rs. 20,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

08.04.2025*Ajay Goswami**Whether speaking/reasoned**Whether reportable**Yes/No**Yes/No*