



101

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

CRA-S-977-SB-2004 (O&M)

Date of decision: 27.03.2025

Karunapati and others

... Appellants

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Dheerja, Advocate (*legal aid counsel*)
for the appellants.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present appeal has been preferred against the judgment of conviction dated 28.04.2004 and the order of sentence dated 29.04.2004 passed by learned Additional Sessions Judge (Fast Track Court-II), Bhiwani, in FIR No.267 dated 14.10.2001 under Sections 399 & 402 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25/54/59 of Arms Act, registered at Police Station Sadar Dadri, vide which the appellants were convicted and sentenced under Sections 399 & 402 of IPC and were ordered to undergo rigorous imprisonment for a maximum period of five years and to pay a fine of



Rs.500/- each along with default mechanism.

2. Brief facts of the case are that on 14.10.2001, when ASI Om Parkash along with other police officials was present at BBMB, Charkhi Dadri in connection with patrolling, he received a secret information that six persons were planning to commit dacoity behind Hoshiar Singh Market, at Mittal Petrol Pump, Charkhi and they were having weapons like iron rods, dandas and lathis. If a raid is conducted, they can be apprehended. Thereafter, ASI Om Parkash along with other police officials surrounded the accused and he went near the place, where they were sitting. The Investigating Officer heard one person saying that he would enter the room of Cashier of aforesaid petrol pump and would robe the cash amount. The said person directed others to take care of the employees of aforesaid pump and in case of any problem, they would cause injuries to the person, who would create obstruction. After the warning was given by the Investigating Officer to the accused persons to surrender, they tried to run away in different directions, however, they were apprehended and recovery of countrymade pistol .12 bore along with live cartridges, iron rods, dandas, lathis was effected from the accused persons and *ruqa* was sent to the jurisdictional police station to register the FIR.

3. Learned trial Court, vide judgement of conviction dated 28.04.2004, convicted the appellants under Sections 399 & 402 of IPC and vide order of sentence dated 29.04.2004, they were ordered to undergo



rigorous imprisonment for a maximum period of five years and to pay a fine of Rs.500/- each along with default mechanism.

4. Learned legal aid counsel for the appellants, *inter alia*, contends that statements of the material prosecution witnesses i.e. PW5 HC Ishwar Singh and PW6 ASI Om Parkash are discrepant regarding preparation to commit the alleged crime. There is no clarity with regard to sending the ruqa to the jurisdictional police station. Further, the entire case of the prosecution hinges upon testimonies of the official witnesses, wherein there is no independent corroboration. All the prosecution witnesses including PW6 ASI Om Parkash took a contradictory stand during his deposition with regard to hearing the appellants regarding preparation to commit dacoity. Further, there is complete variations between sending of ruqa and statements of the prosecution witnesses regarding recovery of countrymade pistol from appellant Gopal and all have made different statements regarding distance between BBMB, Charkhi and Police Station Sadar Dadri. As such, the prosecution has not been able to prove the case beyond reasonable shadow of doubt and it would be safe to acquit the appellants on the basis of uncorroborated statements of the official witnesses. Learned counsel for the appellants further contends that appellant No.1 Karunapati has undergone the actual custody of 01 year and appellant No.2 Deviya, appellant No.3 Teja, appellant No.4 Gopal @ Partap, appellant No.5 Ganesh and appellant No.6



Hari have undergone the actual sentence of about 09 months.

5. *Per contra*, learned State counsel opposes the prayer of the appellants, as learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, they do not deserve any leniency.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the appellants were convicted for the offence under Sections 399 & 402 of IPC, for which no minimum punishment has been prescribed. As per their custody certificates, appellant No.1 Karunapati has undergone the actual custody of 01 year and appellant No.2 Deviya, appellant No.3 Teja, appellant No.4 Gopal @ Partap, appellant No.5 Ganesh and appellant No.6 Hari have undergone the actual sentence of about 09 months. Since there is no minimum punishment prescribed under Sections 399 & 402 of IPC, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellants is reduced to the period already undergone by them.

7. In *Deo Narain Mandal Vs. State of U.P., (2004) 7 SCC 257*, 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.

8. Further, the Hon'ble Supreme Court in ***Ravada Sasikala Vs. 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 realize 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.

9. A perusal of the judgment of conviction passed by learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (*supra*) was lodged on 14.10.2001 and the appellants have been suffering the agony of trial for last more than 23 years. Since their conviction, they have grown into law-



abiding citizens and desire to live a peaceful life.

10. Consequently, present appeal is disposed of in the following terms:-

- (i) The judgment of conviction dated 28.04.2004 passed by learned Additional Sessions Judge (Fast Track Court-II), Bhiwani is upheld.
- (ii) The order of sentence dated 29.04.2004 is modified to the extent that the sentence of rigorous imprisonment for 05 years along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

11. All the pending miscellaneous application(s), if any, shall stand disposed of.

12. The High Court Legal Services Authority is directed to pay remuneration to learned *legal aid counsel*, as per relevant Rules/Orders.

27.03.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No