

SANJIV KUMAR @ GORA

v.

STATE OF PUNJAB

(Criminal Appeal No. 1424 of 2009 etc.)

MARCH 19, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Penal code, 1860 – ss. 395, 450 and 342 – Prosecution under – Of appellant-accused – Conviction affirmed by High Court reducing the sentence – On appeal, held: In view of the evidence on record the accused was rightly convicted – His sentence cannot be reduced to the period already undergone on the ground that more than 10 years have passed after the incident – Sentence/Sentencing.

Sentence/Sentencing – Imposition of punishment – Principles to be followed by court – Discussed.

Dismissing the appeals, the Court

HELD: 1. After re-assessing the entire evidence on record, no illegality is found to have been committed by the trial court in convicting the appellant-accused u/ ss.450 and 342 IPC, which is rightly affirmed, with modification of sentence, by the High Court. [Para 13] [717-F-G]

2. It cannot be said that the conviction recorded against the accused cannot be sustained, on the ground that Inspector ‘G’, who actually lodged FIR against the present complainant has not been punished. ‘G’ was not the co-accused in the trial, nor this Court has made any

A observation as to innocence of the appellant-accused. As such, the decision given by Supreme Court in Criminal Appeal filed by 'G' is of little help to the present appellant-accused. [Paras 10 and 11] [716-C-D; G-H]

B 3. Sentencing for any offence has a social goal. In each case, facts and circumstances of that case are always required to be taken into consideration. For the purpose of just and proper punishment, not only the accused must be made to realize that the crime was committed by him, but there should be proportionality between the offence committed and the penalty imposed. It is obligatory on the part of the Court to keep in mind the impact of the offence on the society, and its ramifications including the repercussion on the victim.

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D Therefore, the sentence against the appellant cannot be further reduced to the period already undergone, on the ground that more than 10 years have passed after the incident. [Paras 14 and 15] [717-H; 718-A, C-D]

E *C. Muniappan and others vs. State of Tamil Nadu (2010) 9 SCC 567: 2010 (10) SCR 262; Shyam Narain vs. State (NCT of Delhi) (2013) 7 SCC 77: 2013 (8) SCR 951 – referred to.*

F CASE LAW REFERENCE

2010 (10) SCR 262	referred to.	Para 14
2013 (8) SCR 951	referred to.	Para 14

G CRIMINALAPPELLATE JURISDICTION: Criminal Appeal No. 1424 of 2009.

From the Judgment and Order dated 08.11.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 1746-SB of 2005.

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WITH

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Crl. A. No. 489 of 2015

K. G. Bhagat, Rahul Dagar, Ms. Divya Shukla, Dinesh Singh, Neha Jain, Debasis Misra, Nitin Sangra, Pragya Baghel, Nishant Bishnoi, Saurabh Ajay Gupta, Kuldeep Singh for the appearing parties. B

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. These appeals are directed against judgment and order dated 8.11.2006 passed by the High Court of Punjab and Haryana in Criminal Appeal No. 1746-SB/2005 whereby the appeal of Sanjiv Kumar @ Gora has been dismissed, thereby affirming conviction recorded by Sessions Judge, Kapurthala in Sessions Case No. 18 of 2003 under Sections 395, 450 and 342 of the Indian Penal Code (IPC). However, the sentence has been reduced by the High Court from 10 years imprisonment to 3 years imprisonment with enhancement in the quantum of fine from Rs.2,000/- to Rs.1,00,000/- under Section 395 IPC, and from imprisonment of 7 years to imprisonment of 3 years with enhancement of fine from Rs.1000/-to Rs. 20,000/-under Section 450 IPC, without interfering in the quantum of sentence awarded by the trial court in respect of offence punishable under Section 342 IPC. C D E

2. We have heard learned counsel for the parties and perused the papers on record. F

3. Prosecution story, in brief, is that appellant Sanjiv Kumar @ Gora was posted as Assistant Sub Inspector at Police Station, City Phagwara. On 23.02.2002 at about 7.30 p.m., he along with some others committed trespass in the premises of M/s. Wadhawan Forex (P) Ltd., and committed robbery of Indian Currency of Rs.6,64,576/- and foreign currency of value of Rs.13,44,500/-. PW-1 Sukhraj Singh (complainant) was G H

A wrongfully confined, showing recovery of Rs.10,09,076/- of
Indian and Foreign exchange recovered from him, and FIR
No. 19 dated 23.02.2002 was lodged against him relating to
offence punishable under Sections 411 and 414 IPC and under
Section 3(B) and 3(C) of Foreign Exchange Management Act
B at the police station. On investigation, the said case filed
against PW 1 Sukhraj Singh, Director of M/s. Wadhawan Forex
(P) Ltd., was found to be false, and the FIR was cancelled.
Complainant (PW1) Sukhraj Singh lodged a complaint with
C Deputy Inspector General of Police (Internal Vigilance Cell),
Chandigarh, alleging as to the manner robbery was committed
from premises of the above firm, and the amount of Indian and
foreign currency, as mentioned above, was taken away even
D though the aforesaid firm M/s. Wadhawan Forex (P) Ltd. had
a licence from Reserve Bank of India valid up to 28.05.2002
for sale and purchase of foreign currency. On the complaint of
PW 1 Sukhraj Singh, enquiry was conducted, and thereafter
First Information Report No. 147 (Ex.PB/1) was registered on
E 10.10.2002 against the appellant Sanjiv Kumar and he was
arrested on 22.02.2003. After investigation, sanction (Ex.PF)
for prosecution was sought and chargesheet was filed against
him in respect of offences punishable under Sections 450,395
and 342 IPC.

F 4. It appears that necessary copies were given to the
accused and the case was committed by the Magistrate to
the Court of Sessions for trial. The trial court, after hearing the
parties, framed charge of offences punishable under Sections
450, 395 and 342 IPC against accused Sanjiv Kumar, to which
G he pleaded not guilty and claimed to be tried.

5. On this, prosecution got examined, PW-1 Sukhraj Singh
(Complainant), PW-2 Satwant Singh (neighbouring
shopkeeper), PW-3 Gurdayal Singh, who proved sanction of
prosecution, PW-4 Rajinder Singh, PW-5 Kartar Singh, PW-6
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Gurwinder Singh, PW-7 Darshan Lal (Accountant of M/s. Wadhawan Forex (P) Ltd.), PW-8 Surinder Singh Atwal, (Superintendent of Police, who enquired into the matter on the complaint of Sukhraj Singh), and PW-9 S.I. Amrik Singh (who inspected the crime). A

6. In reply to oral and documentary evidence put to him under Section 313 Cr.P.C, accused Sanjiv Kumar pleaded that he acted under instructions of Station House Officer Inspector Gurmej Singh. He pleaded that at 'naka' on Hoshiyarpur Road, Phagwara, the team of Police men intercepted a Maruti Car from which Indian and foreign currency was recovered, on the basis of which FIR No. 19 dated 23.2.2002 was lodged against Sukhraj Singh, who was arrested for said offence. Appellant Sanjiv Kumar also took the plea that Additional Director General of Police, Punjab, was inimical against him. In defence, the accused got examined DW-1 Inspector Gurmej Singh, DW-2 SSP Arun Pal, and DW-3 Reader Jaswant Singh. B C D

7. The trial court, after hearing the parties, came to the conclusion that the First Information Report No. 19 dated 23.02.2002 which was got lodged, in respect of offences punishable under Sections 411 and 414 I.P.C and Section 3(B) and 3(C) of Foreign Exchange Management Act, against Sukhraj Singh, at the instance of the appellant Sanjiv Kumar, was false. The trial court believed the statement of prosecution witnesses and found that the offence for which accused Sanjiv Kumar was charged, stood proved. Accordingly, he was convicted and sentenced vide judgment and order dated 8.2.2005/11.2.2005 passed in sessions case no. 18 of 2003. E F G

8. Aggrieved by said judgment, the convict preferred Criminal Appeal no. 1746-SB of 2005 before the High Court. The High Court, after hearing the parties, affirmed the conviction of appellant Sanjiv Kumar under Sections 395, 450 and 342 H

A IPC. However, the sentence was reduced by the High Court, as mentioned earlier. Hence, this appeal (Criminal Appeal No. 1424 of 2009) through special leave.

B 9. Also, Sukhraj Singh (complainant) has filed connected criminal appeal for enhancement of the sentence awarded by the High Court.

C 10. On behalf of the appellant Sanjiv Kumar, it is argued before us that Inspector Gurmej Singh, who actually lodged First Information Report No. 19 dated 23.2.2002 against Sukhraj Singh (PW1) has not been punished. It is contended that the appellant Sanjiv Kumar has been made scape goat. In this connection, our attention is drawn to the fact that vide order dated 28.4.2009 in Criminal Appeal No. 992 of 2009 (arising out of SLP (Crl) No. 6705 of 2006 Gurmej Singh vs. State of Punjab & Anr), this Court has already granted relief to him, as such the conviction recorded against the present appellant Sanjiv Kumar cannot be sustained.

E 11. We have carefully gone through the order passed in Criminal Appeal No. 992 of 2009. What has been held in said appeal, filed by Gurmej Singh, is that the High Court erred in law in issuing directions while hearing the appeal of appellant Sanjiv Kumar, pending before it, qua Gurmej Singh, without adhering to principles of natural justice. We think it relevant to mention here that Gurmej Singh was not the co-accused in the trial, nor this Court has made any observation as to innocence of present appellant Sanjiv Kumar. As such, the decision given in Criminal Appeal No. 992 of 2009 is of little help to the present appellant Sanjiv Kumar before us.

G 12. Both the Courts below, after discussing the prosecution evidence as well as defence evidence have come to the categorical finding that PW 1 Sukhraj Singh was wrongfully arrested after the Indian and foreign currency was robbed by H the appellant Sanjiv Kumar, who came with fire arm in the shop

and premises of M/s. Wadhawan Forex (P) Ltd., and out of A
the robbed sum, part of it was falsely shown recovered from
Sukhraj Singh by 'naka' party of police officers. The case
registered against Sukhraj Singh was found false after the
senior police officer, who held enquiry on the complaint of PW-
1 Sukhraj Singh. It is relevant to mention here that after B
investigation, no charge sheet was filed against complainant
Sukhraj Singh (PW-1). We have perused the evidence of
prosecution witnesses, which include that of the neighbouring
shopkeepers, in the light of the report dated 8.7.2002 of Sub C
Divisional Judicial Magistrate, Phagwara (copy of which is
annexed as annexure P-5) to the appeal filed by Sanjiv Kumar.
We have also considered the fact that the foreign currency
consisting Euros 1850, Pounds U.K. 150, Canadian Dollars
500, Australian Dollars 500 and U.S. Dollars 895 shown to D
have been recovered from Sukhraj Singh were actually validly
held by him with other currencies as he had a valid licence, to
deal with foreign exchange, issued by Reserve Bank of India.

13. Having re-assessed the entire evidence on record, E
we do not find any illegality committed by the trial court in
convicting the accused Sanjiv Kumar under Sections 395, 450
and 342 IPC, which is rightly affirmed; with modification of
sentence, by the High Court.

14. Next, learned counsel for the appellant Sanjiv Kumar F
drew our attention to the case of **C. Muniappan and others**
vs. State of Tamil Nadu¹ and it is submitted that since more
than 10 years have passed after the incident as such the
sentence against the appellant should be further reduced to
the period already undergone. However, above submission G
is vehemently opposed by the learned counsel for the
complainant, who relied upon the principle of law laid down by
this Court in the case of **Shyam Narain vs. State (NCT of**
Delhi)².

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1 (2010) 9 SCC 567

2 (2013) 7 SCC 77

A 15. We have considered the rival submissions of the parties, and we are of the view that sentencing for any offence has a social goal. In each case, facts and circumstances of that case are always required to be taken into consideration. For the purpose of just and proper punishment, not only the accused must be made to realize that the crime was committed by him, but there should be proportionality between the offence committed and the penalty imposed. It is obligatory on the part of the Court to keep in mind the impact of the offence on the society, and its ramifications including the repercussion on the victim.

16. Therefore, for the reasons, as discussed above, we are not inclined to interfere with the impugned order passed by the High Court. Accordingly, both the appeals are dismissed.

Kalpana K. Tripathy

Appeals dismissed.

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