



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision No. 1512/2017

Kanwar Lal @ Kanwaria S/o Shri Kesu Ram, By Caste Bawri, R/o
Bambora, P.s. Choti Sadri, District Pratapgarh Raj.. At Present
Lodged In District Jail, Chittorgarh

-----Petitioner

Versus

The State Of Rajasthan

-----Respondent

For Petitioner(s) : Mr. K.R. Bhati
For Respondent(s) : Mr. O.P. Rathi, P.P.

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Judgment

28/11/2018

Instant revision petition has been filed by the petitioner challenging the judgment dated 19.08.2017 passed by learned Addl. Sessions Judge No.1, Bhilwara Camp Court Gangapur (hereinafter referred to as 'the appellate court') by which the appellate court upheld the judgment passed by the learned Addl. Chief Judicial Magistrate, Gangapur, Distt. Bhilwara (hereinafter referred to as 'the trial court') dated 27.04.2013 whereby, the learned trial court convicted the present petitioner for offence under Section 394/34 IPC and sentenced to undergo 04 years R.I and fine of Rs.2000/-, in default of payment of fine to further undergo two months R.I.

Briefly stated, the prosecution case as set up is that on 20.09.2008, complainant Mangi lal filed a report before the Police



station Karoi stating therein that he is having a shop near Kachi Tapri. In the evening when he was preparing to leave the shop, three persons came on a motorcycle and purchased apple, Gutkha, Beedi. When the complainant was going towards his home, all the three persons followed and caught hold of appellant and one person gave beating by reverse side of axe. They snatched away Rs. 1000/-, wrist watch and his bag. One Mangu Ba came to to his rescue and accused ran away.

On the basis of the above report, police registered a case and started investigation. On completion of investigation, a charge-sheet was filed against the present petitioner and two more accused persons.

During the course of trial, the prosecution examined as many as 12 witnesses and got exhibited various documents. The statement of accused petitioners were recorded under Sec. 313 Cr.P.C. and one witness DW/1 Suman was examined in defence.

After considering the testimonies of the prosecution witnesses and the material available on record, the petitioner/accused were convicted and sentenced for offences as mentioned above.

Aggrieved by the judgment and order dated 27.04.2013, passed by the learned trial court, an appeal was preferred before the learned Addl. Sessions Judge No.1, Bhilwara Camp Court Gangapur which came to be dismissed vide judgment dated 19.08.2017.

At the threshold, learned counsel for the petitioner submits



that he does not challenge the finding of conviction but since the accused petitioner is behind the bars for last two years and eight months, therefore, it is prayed that the substantive sentence awarded to the petitioner for the aforesaid offence may be reduced to the period already undergone by him.

On the other hand, the learned Public Prosecutor opposed the submissions made by the learned counsel for the petitioners. The learned PP submitted that there is neither any occasion to interfere with the sentence awarded to the accused petitioners nor any compassion or sympathy is called for in the said case.

I have perused the evidence of the prosecution as well as defence and the judgments passed by both the courts below regarding conviction of the accused-petitioner. However, undisputedly, the incident relates back to the year 2008 and the petitioner has so far undergone a period of 02 years and 08 months in custody out of 04 years of total sentence, so also suffered the agony and trauma of protracted trial. Thus, looking to the over-all circumstances and the fact that the petitioner has remained behind the bars for some time, it will be just and proper if the sentence awarded by the trial court for offence under Section 394/34 IPC is reduced from 04 years to 03 years rigorous imprisonment.

Accordingly, the revision petition is partly allowed. While maintaining the petitioners' conviction for offence under Section 394/34 IPC, the sentence awarded to him is hereby reduced from 04 years to 03 years rigorous imprisonment, however, the fine imposed by the learned trial court is kept intact with default



stipulation.

The record of trial Court as well as the appellate court be sent back forthwith.

(MANOJ KUMAR GARG),J

bjsh/-



RAJASTHAN HIGH COURT



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