

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO(S). 362 of 2017**

**NARESH** **...APPELLANT(S)**

**VERSUS**

**STATE OF HARYANA** **...RESPONDENT(S)**

**WITH**

**CRIMINAL APPEAL NO(S).1031 OF 2018**  
**[ARISING OUT OF SPECIAL LEAVE PETITION**  
**(CRIMINAL) NO.2832/2017]**  
**[SAT NARAIN @ SATISH @ SATTU & ANR. VS. THE**  
**STATE OF HARYANA]**

**ORDER**

1. Leave granted in Special Leave Petition (Criminal) No.2832 of 2017.
  
2. The accused appellants, three in number, have been convicted of the offence punishable under Section 398 of the Indian Penal Code, 1860 and have been sentenced to undergo rigorous imprisonment for ten (10) years and to pay a fine of Rs.15,000/-, in default, to undergo rigorous imprisonment

for two years by the learned trial Court. In addition, the accused No.1 - Narender has been convicted and sentenced to rigorous imprisonment for two years for the offence punishable under Section 25 of the Arms Act, 1959. The High Court by the impugned judgment has confirmed the aforesaid conviction and sentence of the accused appellants.

3. We have heard the learned counsels for the parties.

4. The case of the prosecution, in short, is that on the date of the occurrence i.e. 18<sup>th</sup> March, 2004 Jai Bhagwan, (P.W.2), Pawan Kumar (P.W.4) and other members of the Police Force in civil dress were on duty in connection with crime checking. While on duty P.W.4 received an information that in the vicinity some young boys armed with deadly weapons were looting

other persons. Accordingly, Jai Bhagwan, (P.W.2), Pawan Kumar (P.W.4) and some members of the Police Force went in search of the alleged criminals in a private jeep. After the jeep had stopped, according to the prosecution, the accused appellants armed with knife, iron rod and motorcycle chain approached the jeep and by flashing the weapons in their possession, they had demanded that the occupants of the jeep should hand over their possessions. The prosecution case is to the further effect that the accused persons were overpowered by the Police party and were arrested whereafter on completion of investigation they were brought to trial in which they have been found guilty and sentenced as aforesaid.

5. Jai Bhagwan (P.W.2), Satwender Kumar (P.W.3) and Pawan Kumar (P.W.4) are the three material witnesses in the case.

6. P.W. 2 - Jai Bhagwan is the Head constable who was part of the team that had apprehended the accused persons. Though in his examination-in-chief P.W. 2 has deposed that the accused persons had demanded that they be handed over whatever the occupants of the jeep had in their possession, in cross-examination his version is otherwise. The said witness i.e. P.W. 2 in his cross-examination has stated that on seeing the occupants of the jeep the accused persons tried to run away.

7. Satwender Kumar (P.W. 3) is the owner of the motor cycle allegedly stolen and used by the accused appellants in commission of the crime/offence.

8. Pawan Kumar (P.W.4) is the Station House Officer of the Police Station. In his deposition, P.W. 4 had stated that on seeing the occupants of the jeep the

accused persons who were advancing towards the jeep had run away. P.W.4 does not mention about any threat or intimidation to the occupants of the jeep to handover the property in their possession. P.W.4 in his cross-examination has further stated that no case was registered with regard to the alleged theft of the motorcycle belonging to P.W.3 which was claimed to have been used in the crime/offence by the accused appellants. He had further stated that no other case of dacoity/robbery or theft in their vicinity was registered in the Police Station.

9. The aforesaid statement of P.W.4 has to be considered in the light of the prosecution case that the accused appellants were engaging themselves in the commission of the offence of robbery and that a secret information was received by

P.W.4 to the above effect which had triggered the Police Party to go in search of the alleged criminals.

10. Section 398 of the Indian Penal Code, 1860 ("IPC" for short) contemplates the offence of attempt to commit robbery or dacoity by use of deadly weapons. Even if the prosecution case with regard to the possession of deadly weapons by the accused appellants is to be accepted, going by the evidence of P.W.2 and P.W.4 we do not find any evidence of demand made by the accused appellants from the occupants of the jeep by use of the alleged deadly weapons. If this is what the evidence discloses, a vital ingredient of the offence under Section 398 IPC would be absent in the present case. Section 398 IPC, therefore, will not be attracted to the present case so as to enable us to hold the accused

appellants guilty. The conviction under Section 398 IPC, therefore, is unwarranted. We, consequently, set aside the same as also the sentence imposed.

11. From the judgment of the High Court it would appear that the accused Nos. 1 and 2 (Narender and Sat Narain) have also been convicted in another case under Section 397 IPC (i.e Sessions Case No.124 of 2003 arising out of FIR No.61) and have been sentenced to undergo rigorous imprisonment for seven years.

12. Naturally, consequent to the present order accused appellants will be set at liberty forthwith unless their custody is required in connection with Sessions Case No.124 of 2003 arising out of FIR No.61 or in connection with any other case.

13. As the accused No.1 (Narender) has already served the sentence imposed under Section 25 of the Arms Act, 1959 we do not consider it necessary at this stage to go into the legality of the aforesaid conviction.

14. The appeals, consequently, are allowed in the above terms.

....., J.  
(RANJAN GOGOI)

....., J.  
(NAVIN SINHA)

....., J.  
(K.M. JOSEPH)

NEW DELHI  
AUGUST 16, 2018

ITEM NO.101 (PH)

COURT NO.2

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

C R I M I N A L A P P E A L N O ( S ) . 3 6 2 / 2 0 1 7

NARESH

APPELLANT(S)

VERSUS

STATE OF HARYANA

RESPONDENT(S)

WITH

SLP(CRL) NO. 2832/2017 (II-B)

Date : 16-08-2018 These cases were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. A. Sirajudeen, Sr. Adv.  
Mr. Naresh Kumar, AOR [SCLSC]  
Mr. S. Gokulakrishnan, Adv.

Mr. Aditya Singh, AOR  
Mr. Vikas Verma, Adv.  
Mr. Rajiv Dalal, Adv.  
Mr. Moddasir Husain Khan, Adv.

For Respondent(s)

Mr. Dinesh Chander Yadav, AAG  
Dr. Sukhdev Sharma, Adv.  
Ms. Amandeep Kaur, Adv.  
Mr. Sanjay Kumar Visen, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted in Special Leave Petition (Criminal)  
No.2832 of 2017.

The appeals are allowed in terms of the signed  
order.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]