

CRA-S-1351-SB of 2001

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

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Date of decision: 25.03.2015

Malkiat Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. P.S. Ahluwalia, Advocate, for the appellant.
Mr. K.S. Sidhu, DAG, Punjab.

PARAMJEET SINGH, J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.11.2001 passed by learned Additional Sessions Judge, Ludhiana, whereby appellant has been convicted and sentenced to undergo rigorous imprisonment for one year and fined Rs.500/- under Section 25 of the Arms Act, in default of payment of fine to further undergo rigorous imprisonment for three months in a case arising from FIR No.38 dated 03.03.1996 registered under Section 25/54/59 of the Arms Act at Police Station Sahnewal.

The factual matrix of the prosecution version is to the effect

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that on 03.03.1996 ASI/SHO Naginder Singh along with other police officials was present in connection with investigation of case FIR No.35 dated 01.03.1996 under Sections 307/34 IPC and 25/57/59 of the Arms Act titled 'State v. Malkiat Singh alias Meeta etc. at Police Station Sahnewal, where he interrogated appellant-convict Malkiat Singh who made disclosure statement that he had kept concealed a pistol country made .12 bore which he used on 29.02.1996 on Harjit Singh, Dalbir Singh, Nachhattar Singh and Charanjit Singh along with one empty cartridge and five live cartridges of 12 bore which he had kept concealed near a safeda tree situated near his motor after digging a pit near the roots of safeda tree and he knows about it and could get the same recovered. ASI Naginder Singh, prepared disclosure statement Ex.PC of the appellant-convict, which was thumb marked by the appellant and attested by the witnesses and thereafter appellant led the police party to the disclosed place as per his statement and got recovered one pistol 12 bore country made and one empty cartridge 12 bore and five live cartridges 12 bore from the disclosed place which were wrapped in a polythene envelope. Investigating Officer prepared rough sketch of the pistol Ex.PD and then prepared the parcel of the pistol and empty cartridge 12 bore and sealed the same with his seal bearing initial 'NSR' and took the same alongwith five live cartridges vide recovery memo Ex.PE which was also attested by the witnesses. As accused was found in possession of country made pistol and cartridges 12 bore, therefore,

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investigating officer sent ruqa Ex.PG to the police station on the basis of which formal FIR Ex.PG/1 was registered. Investigating Officer prepared rough site plan of recovery Ex.PF and arrested the appellant in this case also. Investigating Officer recorded the statement of witnesses during the investigation of the case and after the completion of investigation, challan against the appellant was presented in the Court of learned Illaqa Magistrate who vide order dated 19.07.1996 sent the case to the Court of learned Sessions Judge, Ludhiana, along with main case under Section 307/34 IPC after delivering the copies of challan papers to the appellant-convict and thereafter the case was sent to learned Additional Sessions Judge, Ludhiana. Charge under Section 25 of the Arms Act was framed against the appellant-convict to which he pleaded not guilty and claimed trial.

To prove its case, prosecution examined PW-1 ASI Dev Raj, PW-2 Joginder Malik, PW-3 ASI Ranjit Singh and PW-4 DSP Naginder Singh Rana and thereafter prosecution closed its evidence.

Statement of the appellant-convict was recorded under Section 313 of the Code of Criminal Procedure. The accused denied all the incriminating circumstances appearing against him in prosecution evidence and claimed to be innocent. However, he closed his defence evidence without producing any witness.

The trial Court after conclusion of trial convicted and sentenced the appellant as aforesaid. Hence, this appeal.

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It is expedient to have a bird's eye view of the relevant prosecution witnesses hereunder: -

- (i) ASI Dev Raj PW-1 deposed that ASI Ranjit Singh brought 315 bore pistol for test. He tested the pistol with E.M.E.R. gauge and the same was found in working order. In his cross-examination, ASI Dev Raj has stated that he had not test fired the pistol. There was no chit or any other mark on the pistol.
- (ii) ASI Ranjit Singh PW-3 deposed that he along with SI Naginder Singh were present in the area of village Mehlon in connection with investigation of the main case u/s 307 IPC. Malkiat Singh disclosed about the concealment of 12 bore country made pistol, one empty cartridge and five live cartridges near his tubewell motor under the safeda tree. Thereafter Malkiat Singh led the police party to the disclosed place and got recovered the pistol, one empty cartridge and five live cartridges of the same bore. The appellant could not produce any permit or licence for possession of the same. Rough sketch of the pistol was prepared and same was taken into possession vide recovery memo attested by him and PW Kamikkar Singh after sealing the same at the spot with the seal bearing impression NSR and the seal after use was handed over to him. In his cross-examination, ASI Ranjit Singh has stated that entire writing work was done by SI Naginder Singh. Pistol was not tested to fire and same was not sealed at the spot.
- (iii) DSP Naginder Singh PW-4 deposed that he along with other police officials was present in area of village

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Mehlon in connection with investigation of the main case. He arrested Malkiat Singh. In pursuance of disclosure statement of Malkiat Singh, he recovered 12 bore country made pistol, five live cartridges and one spent cartridge of the same bore from the roots of the tree near the electric motor of Malkiat Singh. He further stated that he sealed the pistol and cartridges with his seal bearing impression NSR and seal after use was handed over to ASI Ranjit Singh. In his cross-examination, DSP Naginder Singh has stated that chits were pasted on the pistol and the cartridges but now there is no chit on the pistol and the cartridges. All the writing work was done by ASI Ranjit Singh at his dictation. The pistol was not test fired.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants vehemently contended that prosecution has miserably failed to prove the case against the appellant. As per prosecution version, recovery has been effected on the basis of disclosure statement of the appellant. However, the recovery is from an open and accessible place and requires no disclosure. Learned counsel for the appellant further contended that pistol was not test fired by the investigating officer at the spot or by the Armourer at the time of its testing, thus, it could not be said that pistol was in working condition. Learned counsel further contended that no independent witness has been examined by the prosecution. Learned counsel for the appellant relied upon the judgments of this Court in *Randhir Singh @ Chini v. State of*

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Haryana, 2012(4) R.C.R.(Criminal) 770, Bhuptej Pal Singh v. State of Punjab, 2014(1) R.C.R.(Criminal) 24, Naresh v. State of Haryana, 2013(4) R.C.R.(Criminal)895 and Division Bench judgment of this Court in Darshan Singh v. State of Punjab, 1989(1) Cr.L.J. 74.

On the other hand, learned counsel for the State has vehemently contended that case stands fully proved, learned counsel for the appellant has failed to point out any discrepancy in the impugned judgment.. Learned counsel for the State has supported the judgment of trial Court and submitted that present appeal deserves to be dismissed.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, recovery was effected in pursuance of the disclosure statement of the appellant during the investigation of main case under Section 307 IPC. There are material contradictions in the statements of the witnesses. In his examination-in-chief ASI Ranjit Singh has stated that pistol and cartridges were sealed at the spot whereas in his cross-examination he has stated that pistol was not sealed at the spot. He has further stated that entire writing work was done by SI Naginder Singh whereas Naginder Singh has stated that all the writing work was done by ASI Ranjit Singh at his dictation. Kumikar Singh independent witness to the disclosure statement Ex.PC and recovery memo Ex.PE, has not been examined by the prosecution. The weapon was not test fired, therefore, prosecution failed to prove that pistol and

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cartridges were in working condition. It is not safe to convict the appellant merely on the statement of police official. Moreover, appellant stands acquitted in the main case under Section 307 IPC. A Division Bench of this Court in the case of ***Darshan Singh v. State of Punjab, 1989(1) Cr.L.J. 74*** has acquitted the appellant in that case in similar circumstances. In that case the only independent witness to the disclosure statement and recovery memo was not produced. It was held that it is not safe to convict the appellant on the sole statement of investigating officer. The judgment in ***Darshan Singh's*** case (supra) is fully applicable to the facts of the case in hand. Therefore, appellant is entitled to be acquitted in the present case also.

In view of above, present appeal is allowed, the impugned judgment of conviction and order of sentence are set aside. Appellant is acquitted of the charge as framed against him. He is stated to be on bail. His bail bonds/surety bonds stand discharged.

March 25, 2015
R.S.

(Paramjeet Singh)
Judge