

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

CRA-S-1156-SB of 2004 (O&M)  
Date of Decision:16.9.2015

Manjit Singh

....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MS. JUSTICE NAVITA SINGH**

Present: Mr. L.S. Sidhu, Advocate for the appellant.

Mr. S.K. Bansal, AAG, Punjab for the respondent.

**NAVITA SINGH, J.**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 19.05.2004 passed by Additional Session Judge, Fast Track Court, Ferozepur, whereby the appellant was convicted and sentenced for the offences punishable under Sections 384 and 511 of the Indian Penal Code (IPC for short) directing that he would undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default of which the period of imprisonment would be extended by three months.

2. The prosecution story, put briefly, was that on 20.11.1999 at about 08:30 AM, complainant Rajinder Kumar alongwith his brother Suraj Parkash was present in the grocery shop run by them in Ferozepur City, when the appellant alongwith one Palla Singh went there and asked for 5 Kg. of sugar. Suraj Parkash weighed the sugar and placed it on the counter. Suddenly, Palla Singh wielded a pistol and directed the complainant and his brother to handover everything from the safe to them and remarked that they had a letter of Babbar Khalsa. Rajinder Kumar picked up a brick for self defence, upon which both the persons started running towards Bansi Gate. The complainant and his brother chased them. Palla Singh fired a shot in the air, which deterred them for

sometime. The appellant and Palla Singh again went on the run and were chased to some distance. The complainant was able to overpower the appellant, who was under the influence of liquor, and the latter called out to his accomplice to fire from the pistol, at which Palla Singh fired a shot towards the complainant. The complainant was, however, not hit but he released the appellant out of fear.

3. Both the appellant and his accomplice ran towards Heera Mandi. Again the complainant caught hold the appellant while Palla Singh fired another shot. The complainant said that he would not release the appellant even if it caused him his life. Many people gathered there. Palla Singh ran away and Manjit Singh appellant was produced before the police.

4. Palla Singh was declared proclaimed offender, while the appellant was tried for the offences punishable under Section 382 read with Section 511 IPC. He was held guilty, convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.500/-. However, the case was remanded by the Additional Session Judge, Ferozepur, with the observation that the offence under Section 307 IPC was made out. The Chief Judicial Magistrate committed the case to the Court of Sessions. Thereafter, charge under Sections 307, 384 and 511 IPC was framed against the appellant.

5. The prosecution examined complainant Rajinder Kumar and his brother Suraj Parkash as PW1 and PW2 respectively.

6. In the statement under Section 313 Cr.P.C., the appellant alleged that when he had gone to the market to purchase some articles, he was arrested and was falsely implicated. The defence set up by the appellant did not find favour with the Court below and believing the prosecution evidence, the appellant was convicted and sentenced for the offences given above.

7. The appellant was acquitted of the offence under Section 307 IPC and convicted for the other offences. The evidence will, therefore, have to be appreciated in that light only.

8. Counsel for the appellant argued that the appellant was falsely implicated as at the relevant time, he was in the illegal custody of the police and the complainant being well known to police officials, his statement was taken and the appellant was involved in the present case. It came in evidence of the appellant that he knew the police officials quite well. This part of the argument, however, cannot be accepted because in the statement under Section 313 Cr.P.C. the appellant stated that he had gone to the market for shopping and was arrested by the police and the case was foisted on him. Be that as it may, it was for the prosecution to prove the charges against the appellant beyond shadow of doubt and it would be seen from the reasons given herein below that the prosecution could not successfully discharge the onus.

9. The complainant stated that when he overpowered the appellant, the latter was under the influence of liquor. However, no medical examination was conducted to find out whether the appellant was drunk or not. Counsel for the appellant contended that according to the complainant the appellant and Palla Singh were chased upto Heera Mandi, which was not believable as it was 3 Kms. away from the shop of the complainant. According to the complainant, about 100 persons had gathered and according to his brother Suraj Parkash, the number of persons was 150. The Investigating Officer, however, stated that there were 15/20 persons at the spot and he recorded their presence in the case diary but did not record their statements. He did not bother to record the statement of any of the persons from near the place of the occurrence. The investigation was, thus, not conducted properly. No independent witness was joined and the only witnesses examined were the appellant and his brother.

10. The complainant mentioned in his statement Ex.P1 that one of the persons said that they had a letter from Babbar Khalsa and showed the letter but it was not mentioned that the person, who took out the pistol, had the letter with him. The police thus, conveniently, cooked up a story that the pistol was with Palla Singh and so was the letter because Palla Singh had absconded and, therefore, the police posed its helplessness to produce either the letter or the pistol in court.

11. Suraj Parkash, who was appearing in the court as a witness, did not say that Palla Singh had shown him a letter whereas the Investigating Officer stated so. The witness deposed that they had called the police on telephone and the police reached at the spot and the appellant was handed over to them. The complainant in his deposition as PW-1 also stated to the same effect whereas in the original complaint Ex.P1, he mentioned that he and his brother alongwith Satish son of Mangat Ram were taking Manjit Singh to the police, when they met Sadhu Singh, SI on the way and handed over the custody of Manjit Singh to him. In evidence, therefore, both the brothers set up a new story. The Investigating Officer also did not say anything about the telephone call and said that he was on patrolling duty when the complainant and his brother Suraj Parkash presented Manjit Singh to him.

12. The presence of Satish Kumar son of Mangat Ram was not mentioned by any of the witnesses. Since he was categorically named in the complaint, he should have been found present with both the brothers when they met the police and he should have been joined in the investigation. No such thing was done. Neither Rajinder Kumar nor Suraj Parkash gave the date of occurrence. They were both examined on 11.05.2004 and the complainant said that the incident had occurred 3-4 years earlier, while his brother Suraj Parkash stated that it occurred about 6 years earlier. No person was named either by

Rajinder Kumar or by Suraj Parkash out of the people present on the spot and the only person who was named i.e. Satish Kumar was not joined in the investigation as discussed above. The investigation was also conducted in a perfunctory manner and the way in which the story was put up and the manner in which the witnesses deposed, leads to the conclusion that the prosecution put an unbelievable story or at least whatever was the prosecution case, it was most certainly not proved and the prosecution miserably failed to bring the guilt home to the appellant.

13. As per complainant's version, three shots were fired by the Palla Singh i.e. one in the air, one towards him and the third one no one says where. It is not believable that any of the shots did not hit the complainant. If Palla Singh fired so as to save himself and the present appellant, he could have very well injured the complainant and his brother so that they would not chase them. Also there is no explanation as to why no bullets or shells were recovered.

14. No proper discussion and appreciation of evidence was made by the trial Court. After filling few pages by giving the arguments and evidence on both sides, the only finding by the court was that there were minor contradictions in the statements of witnesses and, therefore, a finding of conviction was being returned. The judgment was passed without proper application of mind.

15. The appeal is consequently allowed and the appellant acquitted.

**(NAVITA SINGH)**  
**JUDGE**

16.9.2015  
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