

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. 1160-SB of 2004

Date of decision : September 29, 2015

Balwinder Singh @ Billu @ Baj

... Appellant

vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. Yogesh Gupta, AAG, Punjab.

Surinder Gupta, J

This is an appeal against the judgment dated 22.5.2004 whereby the learned Additional Sessions Judge, Hoshiarpur convicted and sentenced the appellant for offence punishable under Section 4 of Explosive Substances Act, 1908.

The prosecution case, in brief, is that on 16.6.1999, SI Kulwant Singh along with his police party was holding a special *naka* at the turning point of village Salaur near bus stop Bhagpur. At about 11.30 p.m. appellant came there on scooter and was signaled to stop. The pillion rider of the scooter slipped in the cover of darkness, however, the appellant stopped the scooter. On search, one plastic bag was found hanging on the hook below the driver seat which was having an RDX of black colour. The total quantity of RDX was found to be 8 kg. From the dicky of the scooter one plastic bag containing 10 electronic detonator, 10 non electronic detonator, two plastic caps, two pencil bombs and one role tape were recovered. All these articles were taken into possession vide recovery memo Ex.PA.

On inspection of the scooter, the same was found without any chassis or engine number and was taken into possession vide recovery memo Ex.P2. *Ruqa* Ex.PC was sent to the Police Station, Sadar, Hoshiarpur whereupon formal FIR Ex.PC/1 was recorded. One bag of black colour material was got tested from Forensic Science Laboratory and was

found to be mixture of RDX, carbon and mobil-oil vide report Ex.PR. After completion of the investigation challan against the appellant was presented in the court of Additional Chief Judicial Magistrate, Hoshiarpur who committed the same to the court of Sessions for trial.

Finding a prima facie case for offence punishable under Section 4/5 of the Explosive Substance Act, the appellant was charge sheeted to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ASI Surinder Pal Singh as PW-1, SI Kulwant Singh as PW-2, Sudesh Kumar Senior Assistant in the office of Deputy Commissioner, Hoshiarpur as PW-3, Constable Vijay Kumar who had taken the sample of RDX to the Forensic Science Laboratory as PW-4, ASI Hardial Singh as PW-5, MHC Gobinder Kumar as PW-6, Inspector Bhagwan, who had destroyed the case property and submitted report Ex.PS as PW7 and HC Jarnail Singh as PW-8

On completion of the prosecution evidence, statement of the appellant as required under Section 313 Cr.P.C. was recorded wherein he denied the allegations levelled by the prosecution and pleaded his false implication. He has stated in his defence as follows :-

“I am innocent. In the year 1987 a case under section 302, 34 IPC, 25 Arms Act was got registered against me in the FIR No.144 dt. 24.6.87 when I was only 16 years old and later on after verifying the facts I was discharged in the year 1999 and later on to make their score the police has falsely implicated me in the present case. No recovery was effected from me. I have been falsely involved after taking away me from my house.”

In defence, he has examined Gulzar Singh, Criminal Ahlmad in the court of Sh. K.C. Gupta, Judicial Magistrate Ist Class, Dasuya as DW-1 and HC Balwinder Singh as DW-2.

The trial court vide judgment dated 22.5.2004 convicted and sentenced the appellant for offence punishable under Section 4 of the Explosive Substances Act, 1908.

Learned counsel for appellant has argued that the case of the prosecution is based on the testimony of official witnesses and the police

had not joined any independent witness. The story propounded by the prosecution that the pillion rider of the appellant escaped in darkness when the torch signal was given to the appellant to stop his scooter is not believable. The police party was holding a *naka* and was armed. It is quite strange that a person had escaped by running away from the spot and so many police personals could not apprehend him or fired at him. The motive for implication of the appellant in this case is evidence as he was first involved in case bearing FIR No. 144 of 1987, however, he had to be discharged when it was found that the appellant was only 6 years of age at the time of commission of crime in that case, and was involved in this false case. For conviction under Section 4 of Explosive Substances Act, 1908, the intention to cause blast is must while in this case the substance recovered from the appellant was RDX and some detonators. There is no report that detonators could be used to cause explosion.

Learned State counsel has argued that the recovery was effected from the appellant at about 11.30 p.m. during night time. The police party was holding routine *naka* near village Baghpur and was not supposed to have an independent witness at that odd hours. The defence of appellant that he was involved in case bearing FIR No. 144 dated 24.6.1987 has no basis as that FIR was registered against unidentified persons. The appellant was associated in the investigation of that case after registration of this case and was got discharged vide application Ex.DE.

This argument of learned counsel for appellant that the prosecution was required to prove the intention of the appellant to cause blast has no meaning. The appellant was held carrying RDX in huge quantity, which is an explosive substance, along with detonators. The recovery of this substance from the appellant in itself reflect that the same was being carried with the intention to cause blast. The appellant was apprehended at 11.30 p.m. The entire attention of the police party was towards the appellant and the pillion rider escaped in the cover of darkness. There was no reason or occasion with the police party to fire at that person in the darkness.

The case bearing FIR No. 144 of 1987 was registered at Police Station Tanda while in this case he was arrested by the police of Police

Station Sadar, Hoshiarpur. The testimony of the prosecution witness is unshattered. The prosecution has examined ASI Sunder Pal and SI Kulwant Singh, who both have stated that the appellant was arrested on the intervening night of 16/17.6.1999 when police party was holding a *naka bandi* at the turn of village Salaur near bus stand Baghpur. Recovery of 8 kg of RDX, 10 electronic detonators, 10 non electronic detonators, two plastic caps, two pencil bombs and one role tape was effected from the scooter of the appellant which was also having no chassis and engine number. Both the witnesses have shown ignorance about the involvement of the appellant in case bearing FIR No. 144 of 1987 registered at Police Station Tanda. The said FIR has been brought on record as Ex.DC. This FIR was registered for offence punishable under Section 302 IPC and 25 Arms Act against unidentified person. From the order Ex.DD it is evident that the appellant was associated in the investigation of that case also but vide application dated 30.6.1999 filed in the court on 9.8.1999, he was got discharged after investigation. Though the date of the arrest of appellant in that case has not come on record yet the document placed on file i.e. Copy of the interim orders, copy of the application seeking discharge of the appellant Ex.DE and the order of discharge passed by learned Sessions Judge, Hoshiarpur, Ex.DD show that these were all after registration of the instant case, as such, do not support the contention of the appellant that he was involved in this case because of his discharge in that FIR.

Much stress has been laid on the fact that testimony of the official witnesses find no corroboration from the independent witness. The law is well settled that statement of official witnesses if un-shattered and duly proved on record can be relied upon even when there is no independent corroboration.

The Hon'ble Division Bench of this Court in the case of ***Ramesh Kumar Versus State of Punjab, 2013(4) RCR (Criminal) 320***, has observed that the testimony of official witnesses cannot be discarded until it is proved that they have any animus or hostility against the accused for his false implication. While discussing the question of non-joining of the independent witnesses, it was observed that they are averse to join the police and depose in favour of prosecution as they are afraid of the fact that

joining the police and deposing in favour of the prosecution may expose them to serious consequences.

Adverting to the facts of this case, it is evident that the police party was holding a *naka* at 11.30 p.m. It is not expected that the police will carry with it an independent witness on all occasions particularly during odd night hours. It was a chance recovery. The RDX recovered from the appellant was sent for chemical examination and vide report of Forensic Science Laboratory Ex.PR, the same was found to be RDX mixed with carbon and mobile oil (mobil-oil). It was specifically observed in the report that it is combination of high explosive mixture. The appellant was also found in possession of electronic and non electronic detonators, pencil bombs etc. The recovery of highly explosive substance from the appellant clearly reflect that the was not taking this substance with him for any other purpose except with the intention to use it to cause explosion.

The conviction of the appellant has been recorded for offence punishable under Section 4 of Explosive Substance Act, 1908, which reads as follows :-

“4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property – Any person who unlawfully and maliciously -

- (a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substances or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or*
- (b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India.*

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished, -

- (i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;*
- (ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”*

As is clear from the perusal of above provisions, the possession of explosive substance is also punishable. The trial court has committed no error while rejecting the defence version and the arguments that the testimony of prosecution witnesses could not be relied for want of independent corroboration has observed that the prosecution witnesses have withstood the test of scrutiny and extensive cross examination. There was no ulterior motive with the police officials to plant such a huge recovery of highly explosive substance on the appellant. It was also observed that the appellant was arrested in FIR No.144 of 1987 after his apprehension in the present case. As such, this argument that because of discharge of the appellant in that case is the reason for his false implication in this case has no substance.

On perusal of the paper book, lower court record and the judgment of the trial court, I find no legal or factual infirmity therein calling for any interference. The conviction of the appellant as recorded by the trial court for offence punishable under Section 4 of Explosive Substance Act, 1908 is upheld.

On the point of quantum of sentence, learned counsel for appellant has requested for a lenient view but keeping in view the recovery of huge quantity of highly explosive substance like RDX, pencil bombs and other explosive substances from the appellant during the period when the State of Punjab was passing through the period of turmoil, I find that

quantum of sentence awarded by the trial court calls for no interference.

In view of my discussion above, this appeal has no merits and is dismissed. Bail bond and surety bond of appellant furnished in pursuant to the order dated 19.07.2005, suspending his sentence are cancelled and he is ordered to be taken in custody and sent to jail to undergo remaining part of sentence awarded to him.

(Surinder Gupta)
Judge

September 29, 2015
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