

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S No.1180-SB of 2010 (O&M)
Date of Decision: 06.05.2015

Avtar Singh @ Tari

...Appellant.

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

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. R.S. Bajwa, Advocate
for the appellant.

Mr. Gazi Mohd., AAG, Punjab
for the State.

R.P. Nagrath, J. (ORAL)

The instant appeal is filed to challenge conviction of the appellant recorded under Section 25 of the Arms Act, 1959 (for short to be referred as the 'Act'). The appellant was sentenced to undergo Rigorous Imprisonment for a period of five years and to pay a fine of ₹ 1,000/-; in default of payment of fine to further undergo Rigorous Imprisonment for a period of three months under Section 25 of the

Act

2. The facts of the case briefly are that appellant was arrested by Narcotic Control Bureau (NCB) on 23.12.2005 and recovery of 26 kilograms of heroin was made from the motorcycle on which he was travelling. Separate proceedings for that recovery were conducted. From further search of appellant, NCB team headed by PW4 Ravi Kant Pawar recovered one silver colour pistol (mouser) bearing No.67120 CAL 30 made in China by Norin Company along with five live cartridges in the magazine. Due to security reasons, proceedings with regard to seizure of weapon were completed in Police Station Sadar Ferozepur. The sanction for prosecuting the appellant was also obtained from the District Magistrate. The appellant was then presented before the Magistrate but since the case with regard to recovery of heroin was pending before the Judge Special Court, learned Magistrate also committed this case to the Judge Special Court. Accordingly, both the trials were conducted by the same Court.

3. Charge was framed against the appellant for offence under Section 25 of the Act to which the appellant pleaded not guilty and claimed trial. The prosecution examined four witnesses in support of his case. Learned trial Court, however, closed evidence of prosecution by order after observing that sufficient opportunities had already been availed.

4. During his examination under Section 313 Cr.P.C, the appellant denied all the incriminating circumstances appearing in the evidence against him and set up the following defence plea:-

“I have been falsely implicated in this case and false recovery has been planted upon me. Iqbal Singh son of Resham Singh, Resham Singh son of Karam Singh, Kuldeep Singh son of Resham Singh, Manjit Singh son of Jagtar Singh, Chhinder Singh son of Resham Singh all residents of village Kamalwala P.S. Mallanwala and Joga Singh son of Kashmir Singh, Saroj Singh son of Resham Singh, Karamjit Singh son of Resham Singh all residents of village Boggewala wanted to take forcible possession of my agricultural land. All the above said persons used to threat me that I will be falsely implicated in some criminal case for which I had intimated to the higher officers and also to the then Ilaqa Magistrate of P.S.Mallanwala.”

5. No evidence was led in defence. Learned trial Court then found the charge against the appellant to be proved and convicted and awarded the sentence as aforesaid.

6. I have heard learned counsel for the appellant and learned State counsel and also perused the trial Court records.

7. The main witness to prove version of recovery is PW4 Ravi Kant Pawar, Deputy Field Officer then posted as Intelligence Officer of NCB on 23.12.2005. The witness testified that there was specific information regarding drug trafficking at Arif Ke Muthian Wala road. They formed a joint team of NCB officials and police officials of Police Station Sadar Ferozepur and CIA Staff. They held the

picketing at the turning of road leading to Village Usmanwala. PW4 further stated that at about 6.00 am, two persons riding Motorcycle came towards that side. The appellant was driving the motorcycle. The witness stated about the recovery of heroin from the bag kept in the motorcycle. He then stated about the pistol which is described as mouser in the prosecution version.

8. PW4 further stated that on making recovery of the mouser, the weapon and cartridges were handed over to SHO of Police Station Sadar Ferozepur alongwith a letter for which Memo Ex.P2 was prepared and attested by PW4.

9. PW4 has been extensively cross-examined and there is absolutely nothing to attack his statement with any suspicion. Learned counsel for the appellant referred to certain facts for bringing suspicion to the story, but those are quite insignificant. It was contended first of all that place of recovery falls within the jurisdiction of Police Station Mallanwala in Ferozepur, but no police official of Police Station Mallanwala was associated. I do not find any such legal requirement and as per statement of PW4, the police officials of Police Station Sadar Ferozepur and CIA staff were associated in the team by the NCB. PW4 even does not know if the place of recovery falls within jurisdiction of Police Station Mallanwala, which is, however, so testified by PW3 SI Palwinder Singh. Above response of PW4 would further suggest that there was no ulterior motive for the team of NCB to plant a false recovery upon the appellant.

10. PW4 even stated that on reaching Police Station Sadar, he prepared the pistol into sealed parcel with seal of NCB and then the same was handed over to the SHO. Live cartridges were filled in the magazine which was fitted in the pistol as further stated by PW4.

11. Learned counsel for the appellant, however, tried to impeach the credibility of PW4 on the ground that there was a vigilance case against him. PW4 in his cross-examination stated that a news item was published in the Daily Punjab Jagran regarding the bribe taken by him to the tune of ₹ 40,000/- for letting off few smugglers. There is no suggestion as to when that incident happened and the same cannot impinge upon truthfulness of the present case. The appellant has also been convicted in NCB Crime No.11 dated 23.12.2005 for offence under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short to be referred as the NDPS Act) in which he has been sentenced to undergo Rigorous Imprisonment for 15 years as per custody certificate placed on record by learned State counsel. The appeal against that judgement of conviction and sentence has also been filed which is still pending.

12. The explanation furnished by PW4 about the vigilance case against him seems to be quite probable that he had seized 155 kgs. Hashish from two foreign nationals and one Indian national. The real brother of the accused, namely, Narinder Gupta falsely implicated PW4 in the vigilance case in order to put pressure upon him during trial in respect of the aforesaid recovery of 155 kgs.

Hashish in which PW4 is the complainant.

13. The testimony of PW4 with regard to recovery is corroborated by PW2 ASI Bhajan Singh and PW3 Palwinder Singh.

14. PW2 ASI Bhajan Singh stated that he was present in Police Station Sadar Ferozepur alongwith PW3 SI Palwinder Singh and other police officials where PW4 Ravi Kant Pawar produced the mouser in question which was prepared into sealed parcel and seal of Palwinder Singh, Sub Inspector.

15. These facts are also supported by PW3 Palwinder Singh. The case property was produced during cross-examination of PW3. The parcel containing arm and ammunition is Ex.MO1. This witness has also proved the FIR Ex.P5 registered at Police Station Mallanwala on the basis of Ruqa Ex.P4 sent by PW3. He also prepared rough site plan Ex.P6. PW2 in cross-examination stated that recovery was not effected in his presence. He was in the police station when the mouser and cartridges were handed over to PW3.

16. The present case reveals such a sensational recovery of sophisticated weapon at the time when recovery of narcotic drug was also made. There is no possibility of attacking the recovery to have been planted. The other contention of learned counsel for the appellant was that the weapon was not in working condition nor armour or expert has been examined.

17. It is already observed that a magazine containing cartridges was taken out of the mouser and this is sufficient to establish that the weapon was in working condition. PW4 stated that

cartridges were live when recovered and no question was put to witness for attacking the aforesaid version. The parcel containing weapon was produced during cross-examination of PW3, but there is nothing in the cross-examination to bring any circumstance that this weapon could not possibly be in a working condition except suggesting that weapon was not sent for test. Such kind of the response should have been obtained from PW3 himself when the witness was cross-examined.

18. The sanction to prosecute the appellant is proved by PW1 Jagan Nath, Clerk in the office of District Magistrate. The sanction Ex.P1 is accorded by Arvinder Singh, the then District Magistrate, Ferozepur. It was not the contention of the appellant that he was having any licence to keep possession of arm and ammunition. The sanction Ex.P1 would reveal that complete facts of the case were put up before the District Magistrate before sanction was accorded.

19. It was otherwise mainly contended by learned counsel for the appellant that the appellant in this case has undergone almost 04 years of imprisonment i.e. 03 years 11 months and 19 days, which should be sufficient punishment under the circumstances. The post-conviction would start after he completes the sentence under the NDPS Act.

20. As per prosecution story, the mouser in question is of .30 bore caliber. Learned trial Court has not discussed nor even there was any contention on behalf of the prosecution that this weapon would fall under Sub-section (1) or (1A) of Section 25 of the Act for

holding that minimum sentence is either 03 years or 05 years. This was not the case set up by the prosecution that the weapon is covered within the definition of prohibited arm as defined in Section 2 (1)(i) of the Act.

21. Learned State counsel was also not able to say that this weapon falls within the definition of prohibited arm nor there is any observation by the trial Court that minimum sentence of 5 years is being awarded on that account.

22. Basically this ingredient could be proved effectively if the prosecution had produced an armour or expert in the field. The weapon was not sent for such report. Normal characteristics of a mouser are single action chamber 7.63x 5 mm (.30 mouser) 9x19 mm, 9x25 mm, but none of these factors can make the weapon to be prohibited.

23. For prohibited arms as defined under Section 2(1) (i) of the Act, the fire arm is so designed or adapted that if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty. The case has not been set up to bring the same within the aforesaid definition.

24. In view of the aforesaid discussion, I would hold that imprisonment already undergone by the appellant would be sufficient punishment in the present case. Therefore, the appeal is dismissed on merit but partly allowed on the question of sentence, reducing the sentence from 5 years Rigorous Imprisonment to the period already

undergone, maintaining the imposition of fine and the default clause.

06.05.2015.
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(R.P. Nagrath)
Judge