

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl.Appeal No.S-532-SB-2004

Date of decision : 9.2.2015

Pardeep Kumar & anr.

.....Appellant(s)

Versus

State of Haryana

....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Pankaj Bali, Advocate, learned counsel for the appellants.

Mr. Mukesh Kaushik, learned DAG, Haryana.

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgement of conviction dated 20.2.2004 vide which the appellants have been held guilty and convicted for the offences punishable under Sections 307, 353 read with Section 34 Indian Penal Code, 1860 (in short the 'IPC'). Appellant-Pardeep was further held guilty and convicted for the offence punishable under Section 25 of the Arms Act, 1959 (hereinafter called 'the Act') and the order of sentence of the even date vide which they were sentenced as under:

Sr.No.	<i>Name of the convict</i>	<i>U/S</i>	<i>RI</i>	<i>Fine</i>	<i>In default of payment of fine, further RI</i>
1.	Pardeep Kumar	(i) 307 IPC (ii) 353 IPC (iii) 25 Arms Act	7 years 2 years 2 years	Rs.1,000/- Rs.500/- Rs.500/-	3 months 1 month 1 month
2.	Rakesh	(i) 307 IPC (ii) 353 IPC	7 years 2 years	Rs.1,000/- Rs.500/-	3 months 1 month

2. The brief facts giving rise to the prosecution are that on 18.11.2001, a wireless message was received from the Control Room, Panipat that three boys travelling in Santro car bearing registration No.HR-60-0088 had snatched the motorcycle bearing registration No.DL-1SD-3507 and one of the said boys had taken away the said motor cycle and other boys had fled away with Santro vehicle. On this information, PW-8 Inspector Badan Singh, SHO Police Station City, Panipat along with ASI Prithvi Raj and other police officials started towards Ganda Nala Babarpur in a Govt. jeep. When the police party was standing near the Ganda Nala Bridge, a Santro car was spotted coming from the side of the Panipat in which the appellants, who were already known to the Investigating Officer, were travelling. They were signalled to stop but they opened fire upon the police party and ran towards Babarpur Mandi. The bullet had hit the bonnet of the police jeep. In the self-defence, on the direction of the Investigating Officer, Constable Jaswant Singh fired nine shots from his self loading rifle (SLR) upon the car in which the appellants were travelling. Police started chasing them and

ultimately, they reached near the Western Jamuna Canal and pushed the car in the canal and ran towards the fields. In the meantime, ASI Om Parkash along with other police employees also reached there and apprehended the appellants. In the meanwhile, the police parties headed by the SHO Police Station, Mehrana and SHO Police Station Model town, Panipat along with police officials also arrived at the spot. Both the accused were apprehended. Inspector Badan Singh sent the Ruqa Ex.PF to the police station on the basis of which the formal FIR Ex.PG was registered and investigation was started.

3. The Investigating Officer prepared the rough site plan of the place of occurrence Ex.PH. Thereafter, he interrogated the appellants in the presence of PW-9 ASI Prithvi Raj and Constable Surinder Singh. Appellant-Pardeep suffered the disclosure statement Ex.PI and appellant Rakesh also suffered the disclosure statement Ex.PJ. The Investigating Officer called the crane operator, Bhim Singh, who arrived at the spot with his crane and took out the car from the canal. In pursuance of his disclosure statement, appellant Pardeep got recovered .315 bore pistol. The sketch of the pistol Ex.PK was prepared and the same was taken into possession vide memo Ex.PL. The Investigating Officer also took into possession Santro car No.HR-60-0088 vide memo Ex.PM. Both the accused were arrested. The case property was deposited with the MHC, Police Station City Panipat.

4. On completion of the formalities of investigation, the report under Section 173 Cr.P.C was presented in the Court.

5. The accused appellants were charge-sheeted for the offences punishable under Sections 307 and 353 read with Section 34 IPC. Appellant Pardeep was further charge-sheeted for the offence punishable under Section 25 of the Act to which both the appellants pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as nine witnesses.

7. When examined under Section 313 Cr.P.C, the appellants pleaded that they were taken away by the police from their village and were falsely implicated in this case. They are innocent. In defence, the appellants produced a copy of the judgement Ex.DB.

8. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the learned trial Court vide impugned judgment dated 20.2.2004 held guilty and convicted both the appellants for the offences punishable under Sections 307 and 353 read with Section 34 IPC. Appellant-Pardeep was also held guilty and convicted for the offence punishable under Section 25 Arms Act and they were awarded the sentences as mentioned in the upper part of the judgement.

9. Aggrieved with the aforesaid judgement of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Sh.Pankaj Bali, Advocate, learned counsel for the appellant and Mr. Mukesh Kaushik, learned DAG, for the State of Haryana and have meticulously gone through the record.

11. Initiating the arguments learned counsel for the

appellants contended that as per the admitted version of the prosecution, no one from the police party had suffered any injury. PW-8 Inspector Badan Singh and PW-9 ASI Prithvi Raj have stated that the accused had fired aimlessly in the air. It shows that the accused had not fired any shot at the police party or their jeep. The jeep of the police party has not been got examined from any expert to establish that any bullet had hit that jeep. So, no offence punishable under Section 307 IPC is made out. To support his contentions, he relied upon cases **Dharmender Singh and others versus State of Haryana, 2014 (1) RCR (Criminal) 487** and **Dalbir Singh and another versus State of Punjab 2013 (4) RCR (Criminal) 281**.

12. Learned counsel for the appellants further contended that even the recovery of the country made pistol from the possession of accused appellant-Pardeep is extremely doubtful as no independent witness has been associated even though the same is alleged to have been effected at a public place on the basis of the disclosure statement. The Investigating Officer had ample opportunity and time to associate the independent witnesses. Thus, he pleaded that the appellants have been wrongly convicted.

13. On the other hand, learned State counsel contended that from the testimonies of PW-8 Inspector Badan Singh and PW-9 ASI Prithvi Raj, it is established that when the police party signalled the appellants to stop their vehicle they opened fire at the police party and the bullet had hit the police jeep which shows that the appellants had intention to kill the members of the police party. It is immaterial

that no injury was suffered by the police officials but the action of the appellants in opening the fire shot at the police party will attract Section 307 IPC. He further contended that the police had apprehended the appellants after chasing them and thereafter, recovery of the country made pistol was effected from the possession of the appellant-Pardeep. In those circumstances, it was not possible to associate the independent witnesses. So, there is no reason to ignore the testimonies of the official witnesses. Consequently, he pleaded that there is no infirmity in the conviction of the appellants.

14. I have duly considered the aforesaid contentions.

15. As per the prosecution case, PW-8 Inspector Badan Singh had received the wireless message through Control Room, Panipat that the appellants along with one another boy travelling in Santro car Bearing Registration No.HR-60-0088 had snatched a motorcycle bearing Registration No.DL-1SD-3507 from a boy in between village Pugthala and Tewri. One boy had taken away the motorcycle and two boys i.e. the present appellants were running away in the said Santro car, as a result of which, a nakabandi was held at the roundabout. The said car was coming from the side of Panipat. Appellant-Pardeep was driving the car and Rakesh was sitting on the adjoining seat of the driver. They were signalled to stop but they opened fire at the police party and fled away. The fire had hit the bonnet of the jeep of the police party. Constable Jaswant Singh also returned the fire from his SLR on the car of the appellants and the police chased them. Thereafter, the appellants pushed the

car in the canal and started running in the fields but they were apprehended. So, as per the aforesaid version, the appellants have opened the fire at the police party and the fire had also hit the bonnet of the car. But when the police officials appeared in the witness box they have narrated the different versions. PW-8 Inspector Badan Singh, the Investigating Officer, who was heading the police party and held the nakabandi, deposed that they tried to stop them but the accused fired in air aimlessly and took the car towards Babarpur. They followed them. They (police officials) fired at them and he further categorically stated that he did not notice whether the fire shot hit any police person or the jeep because it was fired aimlessly. The second witness of occurrence PW-9 ASI Prithvi Raj has also stated that they tried to stop them but the accused fired aimlessly in the air and took the car towards Babarpur. They followed and fired at them. He also categorically stated that he did not notice if any fire cartridge hit any police official or jeep because it was fired aimlessly. So, both the witnesses of occurrence have consistently deposed that the accused have fired aimlessly in the air, so, they have not targeted or aimed at the police officials or their vehicle which negates their intention to commit murder of the members of the police party.

16. It is alleged that nine shots were fired by Constable Jaswant Singh but not even a single empty cartridge has been recovered by the Investigating Officer. Similarly, no empty cartridge has been recovered from the car or from their possession used by the appellants. This fact also renders the story put forward by the

prosecution suspicious.

17. It has been alleged that a bullet had hit the jeep of the police but the prosecution has not led any scientific evidence to establish that there was any bullet mark on the bonnet of the police jeep.

18. In order to attract the penal provisions of Section 307 IPC, the intention or knowledge to cause the death are the essential ingredients. An attempt for the purpose of Section 307 IPC should stem from a specific intention to commit murder that means that an act would not constitute an offence punishable under Section 307 IPC, if the necessary intention or knowledge of the accused to cause death is lacking. Thus, for the purpose of this offence, the intention or knowledge on the part of the accused to cause death has to be established but here in this case from the consistent testimonies of PW-8 Inspector Badan Singh and PW-9 ASI Prithvi Raj, it is evident that these ingredients were totally lacking as these witnesses have stated that accused had fired aimlessly in the air. If the intention of the appellants would have been to murder the police officers, they could have fired the shots aiming at the police officials or their vehicle but as per the statements of both the witnesses that was not so, and they had fired aimlessly in the air. Both these witnesses have categorically stated that they did not notice that any police officer or their vehicle was hit with the bullet. The purpose of the appellants firing aimlessly in the air may be to frighten the police officials chasing them, so that they may escape or to prevent their

apprehension. So, the intention of the appellants in firing the shots was in order to escape and not to commit the murder of the police officials. Thus, the offence punishable under Section 307 IPC is not at all attracted from the evidence on record.

19. The assault has been defined in Section 351 IPC which reads as under:

“351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.”

20. As per the aforesaid provisions of law whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person to apprehend that he is about to use the criminal force to that person, is said to commit an assault. In the instant case also, the gesture of the appellants by firing the shots aimlessly in the air was sufficient to frighten the police party and cause them to believe that the accused appellants were going to cause them harm in order to prevent their apprehension and thereby they had deterred the police officials i.e

public servants from discharging their official duties which will clearly attract Section 353 IPC.

21. From the testimonies of Inspector Badan Singh and ASI Prithvi Raj, it is also established that a country made 315 bore pistol has been recovered from the possession of appellant-Pardeep. As per the prosecution version, the appellants were running in the car, they were chased by different police parties as a result of which they were apprehended. In such a situation, it cannot be expected that the police officials will waste their time to rope in the independent witnesses. Thus, the non-joining of the independent witnesses is not going to erode the credibility of their testimonies. It is also well settled principle by this time that the testimonies of the official witnesses also carry the same evidentiary value. Their official designation is ipso facto no ground to reject their testimonies. The appellants have not been able to establish any animus or ill will on the part of the police officials towards them. They also had no motive for the false implication of the appellants. So, there is nothing to disbelieve their testimonies with respect to the recovery of the country made pistol from the possession of appellant-Pardeep on the basis of his disclosure statement and on the point of the occurrence.

22. Thus, keeping in view my aforesaid discussion, the offence punishable under Section 307 IPC is not attracted in view of the statements of PW-8 Inspector Badan Singh and PW-9 ASI Prithvi Raj. So, the conviction of the appellants recorded for the offence punishable under Section 307 read with Section 34 IPC cannot be

sustained in the eyes of law and is liable to be set aside. However, there is no legal infirmity in the conviction of the appellants for the remaining offences i.e the conviction of both the appellants for the offences punishable under Section 353 read with Section 34 IPC and the conviction of appellant Pardeep for the offence punishable under Section 25 of the Arms Act. The same are hereby maintained and affirmed.

23. Resultantly, the present appeal is hereby partly allowed. The conviction and sentence of both the appellants for the offence punishable under Section 307 read with Section 34 IPC is hereby set aside and they stand acquitted thereunder. The conviction and sentence of both the appellants for the offence punishable under Section 353 read with Section 34 IPC and conviction and sentence of appellant Pardeep for the offence punishable under Section 25 of the Arms Act is hereby upheld and maintained. Thus, the appeal qua these offences stands dismissed.

24. It is apparent from the record that the appellants have not deposited the fine imposed by the learned trial Court. It is ordered that the appellants shall deposit the fine imposed by the trial Court within 15 days from the date of passing of this judgment, failing which the default clause as ordered by the trial Court shall be applicable.

February 09, 2015
ps

(DARSHAN SINGH)
JUDGE

