

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

1. CRA-S-147-SB-2005

Waryam Singh and Another

...Appellants

vs.

State of Haryana

...Respondent

2. CRA-S-1970-SB-2004

Pola Singh

...Appellant

vs.

State of Haryana

...Respondent

Date of Decision: 24.03.2015

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

**PRESENT: Mr. Dinesh Trehan, Advocate for the appellants
in CRA-S-147-SB-2005.**

**Ms. Aditi Girdhar, Advocate, Amicus Curiae
for appellant in CRA-S-1970-SB-2004.**

**Mr. M. D. Sharma, Assistant Advocate General,
Haryana.**

Raj Rahul Garg, J.

Against judgment dated 09.09.2004 rendered by Sh. S. K. Gupta,
the then Additional Sessions Judge, Jagadhri, the aforementioned two appeals
have been preferred. In fact against Pola Singh only charge under Section 29 of
Indian Arms Act, 1959 was framed whereas other appellants Waryam Singh,
Avtar Singh along with Parvesh Kumar faced trial for committing offences

punishable under Sections 392/397 IPC.

After trial, vide impugned judgment dated 09.09.2004, the then Additional Sessions Judge, Jagadhri, acquitted Parvesh Kumar-accused holding that the charge against him was not proved. However, accused-appellants Avtar Singh and Waryam Singh were held guilty for the offences punishable under Sections 392/397 IPC and accused Pola Singh for the offence punishable under Section 29 of Indian Arms Act, 1959.

Vide order of sentence of the even date, accused Avtar Singh and Waryam Singh were sentenced to undergo RI for a period of 10 years for the offences punishable under Sections 392/397 IPC whereas appellant-accused Pola Singh to undergo RI for period of one year for offence punishable under Section 29 of Indian Arms Act, 1959.

Brief facts of the case are like this; that complainant Harbhajan Singh (PW-12) lodged report (Ex. PF) with the police stating that he owns Maruti Car bearing No. DL-4-CB-2637 which was being plied as taxi. On 28.03.2003, one Labh Singh of his village came to him by his Esteem car with three passengers (two Sikh gentlemen and one clean shaven) and told him that aforesaid three persons had hired his car for going to Bilaspur to attend a marriage, but his car had gone out of order near Radaur. Labh Singh then requested him to take him to Bilaspur by his car. Charges were settled at Rs. 600/-. Complainant alongwith aforesaid three persons started from Ladwa at about 6.30 PM for going to Bilaspur. At about 08.00 PM when they reached near Village Shahpur PS-Chhachhrauli, the aforesaid people asked him to stop the car as they were to pass urine. When complainant stopped the car, they asked him to get down. When he came out of the car, they caught hold of him by his neck and asked him to handover whatever valuables he was possessing at

that time. They removed a purse from the backside pocket of his pant. That purse was containing Driving Licence, currency notes to the tune of Rs. 400/- and some documents. They took out a small gun and threatened him not to report the matter to the police otherwise he will be done to death. Then they all pushed him aside and could make good their escape along with his car. Complainant also gave identity of the aforesaid persons. He told that the offenders were speaking Punjabi and were calling themselves by the names of Avtar Singh and Waryam Singh. A wireless message was sent to all the police stations for nabbing the offenders. Thereafter, Investigating Officer of the case Sh. Ishwar Singh, SHO (PW-8) accompanied the complainant to the place of occurrence and inspected the spot. He prepared rough site plan (Ex. PO).

On the same day, Ishwar Singh, ASI (PW-9) of Police Station Sadar, Jagadhri accompanied with HC Pardeep Kumar was on patrol duty near Parkash Metal Chowk, Jagadhri. A public man met them at about 09.30 PM and had informed about the robbery. After sometime, a car was seen coming on old Chhachhrauli road. It was signalled to stop. It was being driven by a clean shaven person and two Sikh gentlemen were sitting in the rear seat. When car was got stopped, the clean shaven person and one of the Sikh gentlemen could make good their escape under the cover of darkness while another Sikh gentleman was apprehended. He was identified as Waryam Singh, accused-appellant. Recovery was effected at about 10.15 PM. At about 10.30/10.45 PM, Ishwar Singh, ASI alongwith complainant was present near village Manakpur when he received a wireless message from Ishwar Singh, ASI that one of the offenders had been nabbed near Parkash Metal Chowk, Jagadhri along with car. On receiving information, Ishwar Singh, ASI accompanied with complainant reached the spot. The car and the accused were produced before him. The car

was taken into police possession vide memo Ex-PG. The complainant identified the car as the one owned by him of which he was robbed off. Waryam Singh was arrested. He was also identified by the complainant as one of the offenders.

On 29.03.2003, Waryam Singh accused-appellant was interrogated. On interrogation, he disclosed the names of co-accused as his brother Avtar Singh and Parvesh Kumar. On the basis of his disclosure statement, Parvesh Kumar was arrested on 30.03.2003. Waryam Singh accused-appellant was again interrogated on 01.04.2003 by Ranjit Singh, Inspector (PW-10). On interrogation, he suffered disclosure statement (Ex.PL) to the effect that the money and the papers recovered from the purse of the complainant were handed over to Avtar Singh whereas Driving Licence of complainant was retained by him. He further disclosed that gun alongwith 19 live cartridges in a belt used at the time of committing the crime and driving licence of the complainant were kept concealed by him near a bridge within the area of Chhachhrauli and offered to get the same recovered from there stating that he himself knew about the same and no one else knows about it. In pursuance of the aforesaid disclosure statement, he got recovered a 12 Bore double barrel gun (Ex. P-6) and 19 live cartridges (P-8 to Ex. P-26) in a belt (Ex. P-7) and driving licence (Ex. P-27) of the complainant from the disclosed place. All the aforesaid articles were taken into police possession vide memo Ex. PN after converting the same into sealed parcels. Rough sketch of the gun was prepared as Ex. PM. Rough site plan of the place was prepared as Ex. PN/1.

On further investigation it revealed that one double barrel gun recovered by Waryam Singh accused-appellant, infact, belongs to Pola Singh. Accused-appellant Pola Singh was arrested on 03.04.2003. He produced the licence of the gun and same was taken into police possession vide memo Ex.

PB.

On 22.08.2003 accused-appellant Avtar Singh was brought from Panchkula. He was confined there in some other case pertaining to PS-Raipur Rani. He was interrogated on 23.08.2003 by Raj Pal, SI (PW-10) from C.I.A., Yamuna Nagar. On interrogation, he gave disclosure statement (Ex. PH) to the effect that he had kept concealed the purse of the complainant containing some documents in a box in his house situated in village Seoli and offered to get the same recovered. In pursuance of his disclosure statement, he got recovered a purse (Ex.P-1) containing two photographs (Ex. P-2 & P-3) of the complainant and two other papers (Ex. P-4 and Ex. P-5). All these articles were taken into police possession vide memo Ex. P-J. These articles were identified by the complainant as belongings to him. This accused also lead the police party to the place of occurrence and gave demarcation of the spot. Memo to that effect was prepared. Double barrel gun and cartridges wre got mechanically tested from HC Tejvir Singh (PW-6). He gave report (Ex. PE) with the opinion that double barrel gun was found in working condition and cartridges were live cartridges. After completion of necessary investigation, challan was put in the Court for offences punishable under Sections 392/397 IPC against Waryam Singh, Avtar Singh and Parvesh Kumar, accused-appellants, whereas it was filed against Pola Singh for the offence punishable under Section 29 of Indian Arms Act, 1959.

Finding prima facie case against accused Waryam Singh and Avtar Singh for committing offences punishable under Sections 392/397 IPC whereas finding prima facie case against accused Pola Singh for committing offence punishable under Section 29 of Indian Arms Act, 1959 they were chargesheeted accordingly to which they did not plead guilty and claimed trial.

After taking entire prosecution evidence and recording of

statements of accused under Section 313 Cr.P.C. and after hearing both the counsel for the parties, Parvesh Kumar was acquitted whereas accused-appellants Waryam Singh and Avtar Singh were convicted for committing offences punishable under Sections 392/397 IPC and accused Pola Singh for committing offence punishable under Section 29 of Indian Arms Act, 1959, vide judgment dated 09.09.2004. They were sentenced accordingly as mentioned in the earlier part of this judgment.

I have heard Sh. Dinesh Trehan, learned counsel for the appellant and Sh. M. D. Sharma, learned counsel for the State and have also appraised entire material coming on record. At the very outset, the learned counsel for the appellant Sh. Dinesh Trehan stated that he does not contest the findings of the learned Trial Court recorded on merits of the case and prayed that some leniency may be shown to the accused-appellant in the matter of sentence. It was contended that infact accused Waryma Singh has already completed the period of his sentence whereas accused-appellant Avtar Singh has undergone 8 years and 04 days of sentence including remissions. Under these circumstances, counsel for the appellant Avtar Singh contended that sentence of accused Avtar Singh be reduced to the tune already undergone.

On the other hand, learned state counsel contended that the offence is of serious nature and this is not the first offence of the Avtar Singh. He has also been convicted in case FIR No. 175 dated 03.04.2003 under Section 302 IPC pertaining to PS-Raipur Rani. Even his co-accused Waryam Singh is also of criminal nature and several offences including offences of murder, dacoity, Arms Act etc. were there against him.

The FIR is of the year 2003. Of course the accused-appellant has already undergone 8 years and 04 days sentence including remissions, yet, this

Court does not find this case as a fit case for showing leniency in the matter of sentence. The act of robbery was pre-meditated act. By coming to the house of complainant his taxi was hired; he was taken to a particular place; his car was got stopped on the pretext of passing urine on the way; then he was made to get down from the car and was then robbed off his valuables and was pushed aside while making good their escape along with his car. The act of accused-appellants is a dare devil act. It is an attack on the personal safety of a common man. Moreover, such like offences are on increase these days. Criminals are indulging in such like offences making it a routine matter. Infact the culprits of such like offences should be dealt with heavy hands for which deterrent punishment can be considered as one of the factors. Consequently, though the learned counsel for the appellant does not contest the findings of learned trial Court recorded on merits of the case, yet, finding it not a fit case for showing leniency in the matter of sentence, the impugned judgment dated 09.09.2004 of conviction and order of sentence of the even date are upheld/maintained, as it is.

If Avtar Singh-appellant is on bail, his bail bonds shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate shall take necessary steps to comply with the judgment with due promptitude keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code and submit compliance report to this Court within a period of two months from the date of receipt of a copy of this order thereof.

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Regarding the case of Pola Singh, accused-appellant, the only allegation against him is this: that two months prior to 28.03.2003 he delivered his lincensed gun to accused Avtar Singh without previsouly ascertaining that

Avtar Singh was not entitled to have the same in his possession. Thus, as per prosecution, Pola Singh has given his licenced gun, which is a subject in commission of crime of this case, to Avtar Singh which he could not have. Avtar Singh was not having any retainer's licence with him. He could not carry the licenced gun of Pola Singh, accused-appellant.

Pola Singh accused-appellant did not deny the fact that the aforesaid gun was belonging to him or that the licence of aforesaid gun was in his name. He only tried to explain the possession of the aforesaid gun as that of Avtar Singh. He tried to explain as to how Avtar Singh came in possession of the same. For that Ms. Aditi Girdhar, Amicus Curiae for the appellant referred the statement of Pola Singh recorded under Section 313 Cr.P.C. She read out that Pola Singh appellant-accused stated that he has licence of gun. He had nothing to do with alleged occurrence. He further stated that during those days there was terrorism in Punjab. His gun was taken away from his house by someone in his absence. He went to police station for reporting the matter but his complaint was not recorded by the police regarding missing of his gun. Even his application was not taken by the police and police officials asked him to go home and whenever his gun is recovered he would be intimidated by them. Police officials were afraid of terrorism and they were not inclined to entertain such application. Counsel for the appellant also argued that Pola Singh remained Sarpanch of his village for about 10 years. He is a respectable person of the area and his involvement in the commission of the crime cannot be inferred by any stretch of imagination. He is infact innocent.

The plea of terrorism taken by Pola Singh was dealt with effectively by the learned trial Court. In fact this FIR is of the year 2003. In the year 2003, there was no terrorism. Terrorism ended much much before 2003.

Even otherwise, had someone taken away the licenced gun of appellant-accused from his house, there would have been some police report in that regard. Simple statement of appellant-accused that police did not record the FIR or asked him to go home as he would be intimidated whenever his gun recovered; is not sufficient. If the police refused to register the FIR, the same can well be sent to SP by post or otherwise. Being Sarpanch of the village, Pola Singh must be knowing all that. As such, the plea taken by accused-appellant that someone has taken away his gun from his house on account of terrorism in Punjab, is not tenable.

Even no date, month, year or time was mentioned as to when and under what circumstances his gun was taken away by someone from his house and further as to how the same came in possession of Avtar Singh.

Apart from above, even Ex. PC Arms Licence of Pola Singh shows that it was got renewed from time to time and lastly it was got renewed on 09.07.1999 and was valid upto 10.07.2002. Sh. Sukhbir Singh, Clerk (PW-13) of the office of Deputy Commissioner Patiala deposed so from the Arm Licence Register containing entries with respect to the arm licence of appellant-accused. He brought the aforesaid record to the court and deposed from the record that aforesaid licensee is in the name of accused-appellant Pola Singh and the licence is valid upto 10.07.2002. One double barrel 12 bore gun bearing No. 7939 is entered against this licence. The original gun licence is Ex. PC.

Thus, with this clinching evidence on the file, it stands proved that the double barrel gun must be with accused-appellant at the time of renewal of licence as without that it was not possible for him to get the licence renewed from time to time and as such the argument advanced by learned counsel for the appellant that the licenced gun of accused-appellant was taken away by

someone from his house during terrorism days, is devoid of any force.

With the above discussed evidence, available on record, finding no merit in this appeal, the order of conviction dated 09.09.2004, recorded against accused-appellant Pola Singh son of Charan Singh holding him guilty for committing offence punishable under Section 29 of Indian Arms Act, 1959, is maintained.

Keeping in view the nexus of Sarpanch of the village with criminals, I find no ground to reduce the sentence already awarded to the appellant-accused by the learned trial court. As such, the order of sentence dated 09.09.2004 recorded against accused-appellant Pola Singh is also maintained.

If the appellant is on bail, his bail bonds shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate shall take necessary steps to comply with the judgment with due promptitude keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code and submit compliance report to this Court within a period of two months from the date of receipt of a copy of this order thereof.

Photocopy of this order be placed on the file of connected case.

(Raj Rahul Garg)
Judge

24.03.2015
Waseem