

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 5.6.2015

1. **CRA-S-985-SB of 2004**
Lakhbir Singh @ LakhiAppellant

Versus

State of PunjabRespondent

2. **CRA-S-643-SB of 2004**
Sukhbir Singh @ SonuAppellant

Versus

State of PunjabRespondent

3. **CRA-S-384-SB of 2004**
Gurwinder Singh @GoldyAppellant

Versus

State of PunjabRespondent

4. **CRA-S-644 -SB of 2004**
Amrik Singh @ MikaAppellant

Versus

State of PunjabRespondent

5. **CRA-S-494-SB of 2004**
Baldev Singh @ BilluAppellant

Versus

State of PunjabRespondent

6.

CRA-S-645-SB of 2004

Shiv Dayal @ Sonu

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naresh Prabhakar, Advocate,
for the appellants in CRA-S-494-SB-2004,
CRA-S-384-SB-2004.

Mr. D.S.Sandhu, Advocate,
for the appellants in CRA-S-985-SB-2004.

None for appellants in
CRA-S- 645-SB-2004, CRA-S-643-SB-2004
and CRA-S-644-SB-2004

Mr.A.S.Kler, DAG, Punjab.

- 1. Whether Reporters of 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?***

RAJ MOHAN SINGH, J.

1. Vide this common judgment, CRA-S-985-SB-2004 arising out of FIR No. 98 dated 10.6.2003; CRA-S-643-SB-2004 arising out of FIR No. 101 dated 10.6.2003; CRA-S-384-SB-2004 arising out of FIR No. 99 dated 10.6.2003; CRA-S-644-SB-2004 arising out of FIR No. 102 dated 10.6.2003; CRA-S-494-SB-2004 arising out of FIR No. 100 dated 10.6.2003 and CRA-

S-645-SB-2004 arising out of FIR No. 103 dated 10.6.2003, registered under Section 25 of the Arms Act at Police Station Subhanpur District Kapurthala are being disposed of .

2. All the aforesaid cases have common genesis in case being FIR No.97 dated 10.6.2003 registered under Sections 399/402 IPC and under Section 25 of the Arms Act at Police Station Subhanpur District Kapurthala

3. Accused were tried for the offences under Sections 399 and 402 IPC. Trial Court acquitted the accused for the offence under Section 399 IPC and convicted and sentenced them for the offence under Section 402 IPC. All the accused filed appeals in this Court. Vide judgment of the even date, the said appeals have been accepted and conviction qua offence under Section 402 IPC stands set aside.

4. Case of the prosecution based on the prosecution story relied in aforesaid FIR No.97 dated 10.6.2003. Different police parties headed by ASI Brij Lal, HC Kewal Singh, ASI Parminder Singh, HC Surinder Singh, HC Harmail Singh and SI Rashminder Singh apprehended accused Lakhbir Singh, Sukhbir Singh, Gurwinder Singh, Amrik Singh, Baldev Singh and Shiv Dayal respectively and from their possession, country made pistols along with live cartridges were recovered. Recoveries effected from the accused/ appellants were sealed and were taken in police possession. The seals after use were handed

over to official witnesses.

5. On the basis of *ruqa*, FIRs were registered and the weapons were got tested from Armourer and sanction to prosecute the appellants was also obtained from District Magistrate Kapurthala. On presentation of challan, charge was framed against the accused/ appellants for the offence under Section 25 of the Arms Act. Accused pleaded not guilty and claimed trial.

6. In order to prove its case prosecution got examined different prosecution witnesses. Statements of the accused were also recorded, who claimed that no recoveries were effected from their possession and false case has been planted. However, accused did not lead any evidence in their defence.

7. Sarwan Singh was joined as independent witness after receipt of secret information. Said independent witness, who was associated by the prosecution throughout in the capacity of eye witness, witness of recoveries and arrest, was left out and given up without getting him declared hostile by the trial Court, on the request of Public Prosecutor. The plea of prosecution that he was won over by the accused does not stand to reasons. Nobody can be impeached without hearing him. Examination of Sarwan Singh was sine-qua-non before impeaching him being won over and thereafter he could have been declared as hostile that too by the trial Court on the

request of Public Prosecutor and could have been subjected to cross-examination also.

8. The prosecution case is based on secret information. The investigating officer did not record reasons to believe for arriving at the conclusion that the accused were in fact making preparation to commit dacoity after assembling in a secluded place of abandoned brick kiln. In the absence of reasons to believe recorded by the Investigating Officer, the raid and subsequent arrest of the accused are to be viewed without any basis, particularly when the sole independent witness, who allegedly associated with the police party, was not examined on the alleged plea of being won over.

9. Basic features of the main case arising out of FIR No.97 dated 10.6.2003 have been dis-believed vide judgment of the even date and the accused/ appellants have been acquitted. The present conclusion in respect of Arms Act is based upon basic feature arising out of aforesaid FIR.

10. In **Jahangir vs. State of Haryana 1996 (2) RCR (Crl.) 433**, this Court was of the opinion that when no independent witness was joined at the time of recovery of country made pistol with cartridges, the same was held to be fatal to the prosecution and the accused was acquitted. Secondly, the link evidence is also missing altogether in view of the fact that after the alleged recovery and sealing, seal after

use was handed over to official witness and not to the independent witness.

11. Factum of joining the independent witness and thereafter, leaving the same without examining him amounting to impeaching the credibility of witness. In the absence of any independent corroboration of alleged recovery, the testimony of official witness cannot be held to be sufficient for recording conviction of the accused/ appellants.

12. In Dadu @ Indraka vs. State of M.P.U 2003 (2) RCR (CrI.) 548, bench of Madhya Pradesh High Court was of the opinion that working condition of the weapon is also essential feature to record conviction. The prosecution must disclose with regard to evidence on record that the alleged pistol was in working condition and the cartridges so recovered were also alive. The aforesaid proposition, if read in the context of missing link evidence, would give rise only irresistible conclusion that the prosecution has failed to bring home the guilt of the accused/ appellant to the hilt.

13. In Jasbir @ Banti @ Jasbir Singh vs. State of Haryana 2011 (1) RCR (CrI.) 626, this Court held that it is not safe to convict the accused/ appellants solely on the basis of official testimony. In the present case, the manner in which the independent witness has been brought out from consideration of the Court is a feature which adds to the evil design of the

prosecution in subjecting the accused to the vagaries of unnecessary trial without there being any legal evidence.

14. In CRA-S-1633-SB-2002 titled Bhuptej Pal Singh vs. State of Punjab, decided on 30.7.2013, this Court emphasized in para No.14 to arrive at a conclusion that in the absence of an independent witness, the testimony of official witness in the context of recovery and firing mechanism of the arm remained uncorroborated and it is not safe to record conviction of the accused on that premise.

15. Taking stock of the entire circumstances of the case, particularly in view of the fact that the main theory propounded by the prosecution in FIR No.97 dated 10.6.2003 already stood demolished and the accused/ appellants therein have been acquitted, the launching of present prosecution under the Arms Act, which was also subject matter of the recovery in the main case, also falls through being unsustainable.

16. Consequently, the impugned judgment of conviction under Section 25 of the Arms Act is held not sustainable. Hence, these appeals are allowed. Appellants are acquitted of the charges against them.

(RAJ MOHAN SINGH)
JUDGE

June 05, 2015

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