

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

**Criminal Appeal S-948-SB of 2004
Date of Decision: September 28, 2015**

Gurinder Pal Singh @ Kittu and anotherAppellants

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. J.S.Gill, Advocate for the appellants.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN, J. (Oral)

Appellant-Gurinder Pal Singh @ Kittu was tried for committing offence punishable under Section 307 IPC while appellant-Balraj Singh under Section 307 read with Section 34 IPC for firing at Sukhdev Singh with such an intention or knowledge that if by that act, the death of Sukhdev Singh had occurred, they would have been guilty of murder. Appellant-Balraj Singh was also charged for committing offence punishable under Section 323 IPC whereas appellant-Gurinder Pal Singh @ Kittu under Section 323 IPC read with Section 34 IPC for voluntarily causing hurt to Sukhdev Singh. Appellant-Balraj Singh was also charged for offences punishable under Section 29 of the Arms Act

for handing over his double barrel licenced gun to appellant-Gurinder Pal Singh @ Kittu, who was not entitled to possess the same whereas appellant-Gurinder Pal Singh @ Kittu was charged for committing offence punishable under Section 25 of the Arms Act for being found in possession of the said gun and one empty cartridge of the same bore. Appellant-Balraj Singh was further charged for committing offence punishable under Section 3(1)(x) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 for intentionally insulting and humiliating Sukdev Singh in the name of his caste in public view.

Vide judgment and order dated 6.4.2004, learned Additional Sessions Judge-cum-Special Judge, Amritsar, acquitted appellant-Gurinder Pal Singh @ Kittu under Section 307 IPC and appellant-Balraj Singh under Section 307 read with Section 34 IPC. Similarly, appellant Balraj Singh was acquitted under Section 323 IPC and appellant-Gurinder Pal Singh @ Kittu under Section 323 read with Section 34 IPC. Appellant-Balraj Singh was also acquitted under Section 3(1)(x) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. At the same time, appellant-Balraj Singh was convicted under Section 29 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year whereas appellant-Gurinder Pal Singh @ Kittu was convicted under Section 25 of

the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- and in default of the same, to further undergo rigorous imprisonment for one month. The period of detention already undergone by them during the investigation/trial was ordered to be set off against the substantive period of sentence.

It is the case of the prosecution that during the investigation of the main case, appellant-Gurinder Pal Singh @ Kittu had suffered disclosure statement pursuant to which he got recovered .12 bore double barrel gun which belonged to appellant-Balraj Singh, who had valid licence for the same. In the hands of appellant-Gurinder Pal Singh @ Kittu, it was an unlicensed weapon, for which, he has been held guilty under Section 25 of the Arms Act. As appellant-Balraj Singh, who had licence to carry the firearm, had handed over the same to appellant-Gurinder Pal Singh @ Kittu, he was found to have committed the offence under Section 29 of the Arms Act.

Learned counsel for the appellants has submitted that the prosecution has not led sufficient evidence to seek conviction of the appellants of the offences under the Arms Act. It is submitted that the recovery of the firearm was said to have been effected at the instance of appellant-Gurinder Pal Singh @ Kittu, who suffered disclosure statement that he had kept concealed .12

bore double barrel gun along with one empty cartridge in the room containing chaff, about which, only he knew and could get the same recovered. Pursuant to the said disclosure statement, the gun was shown to have been recovered. Further, appellant-Balraj Singh made a statement on 19.2.2004 that he was the actual licence holder of the gun in question, which he had handed over to appellant-Gurinder Pal Singh @ Kittu. It is submitted that at the time of recording of the disclosure statement and recovery of the weapon, ASI Darbara Singh had associated ASI Bhupinder Singh and HC Satnam Singh but none of them was examined by the prosecution at the trial of the case. The prosecution remained contented with the testimony of ASI Darbara Singh, who was examined as PW8. It is also submitted that no independent corroboration was sought by the prosecution to connect the appellant with the crime.

Having heard learned counsel for the parties and on going through the evidence recorded by the trial Court, this Court finds that at the time of making of disclosure statements and recovery of the weapon, no one from the public was shown to be present around. Even otherwise, there is no requirement of law that there should always be independent corroboration to the making of the disclosure statement and recovery of the weapon from the accused. At the same time, there is clear testimony of

PW8 ASI Darbara Singh, that he had recorded the statements of the two accused and, thereafter, recovered the weapon. Merely, because ASI Bhupinder Singh and HC Satnam Singh have not been examined is no ground to reject the prosecution case as it is the quality of the evidence which matters and not the quantity. PW8 ASI Darbara Singh, who had deposed about making of the disclosure statements and recovery of the weapon was not at all cross-examined by the defence on that aspect.

In view of the above, no case is made out for any interference in the conviction of the appellants.

Coming to the quantum of sentence, this Court finds that the appellants are facing the agony of criminal prosecution for the last about sixteen years. Both of them have already been acquitted of the main charges in the case. None of them is shown to be involved in any case either before or after the occurrence. As per the custody certificates produced by the State counsel, appellant-Gurinder Pal Singh @ Kittu had undergone an actual period of twenty four days whereas appellant-Balraj Singh had undergone eleven days before they were released on bail during the trial of the case. Offence under Section 25 of the Arms Act entails punishment for a term which should not be less than one year. However, for any adequate and special reasons, the Court can award a sentence of imprisonment for a term of less than one

year. For the offence punishable under Section 29 of the Arms Act, there is no requirement for imposition of any minimum sentence. However, the sentence may extend to three years. In the case of appellant-Gurinder Pal Singh @ Kittu, he was thirty years of age at the time of commission of the offence. He has already remained behind the bars for a period of about one month. He is neither shown to be a previous offender nor there is any case pending against him. For these reasons, this Court finds that appellant-Gurinder Pal Singh @ Kittu can be sentenced to a term less than one year.

Taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose would be served by sending the appellants behind the bars, once again, and, that too, after more than fifteen years, when they were released on bail, to undergo the remaining sentence of imprisonment imposed upon them. Ends of justice would be suitably met if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of appellant-Gurinder Pal Singh @ Kittu under Section 25 of the Arms Act and appellant-Balraj Singh under Section 29 of the Arms Act is maintained. Their substantive sentences of imprisonment are reduced to the one already undergone by them. However, the

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sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

September 28, 2015
amit rana

(T.P.S. MANN)
JUDGE