

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-2897-SB of 2009
Date of Decision : January 27, 2015

Ram Chander

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Ms. Swati Batra, Advocate as amicus curiae and
Mr. Rajesh Khandelwal, Advocate
for the appellant.

Mr. Munish Dev Sharma, Assistant A.G., Haryana.

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

Alongwith the present appeal filed by convict Ram Chander, this Court intends to dispose of Criminal Appeal No.S-2961-SB of 2009 filed by convict Rajender Singh and Criminal Appeal No.S-490-SB of 2010 filed by convict Satender @ Gallad, as all the appeals have arisen out of the judgment and order dated 20/21.11.2009 passed by the Additional Sessions Judge, Gurgaon.

In order to recapitulate the facts of the case, it would be in the fitness of things to refer to para 2 of the impugned judgment, which is as under :-

"Brief facts of the present case as made out from the report under Section 173 of Code of Criminal Procedure are that on 28.10.2006 when Abhey Singh ASI alongwith other police officials was present at IMT, Manesar then MHC Surender Singh came and disclosed that an information has been received from Janta Hospital, Manesar that some police officials

received fire-arm injuries. When he reached Janta Hospital, Manesar he came to know that the patients have already been referred to Pushpanjali Hospital, Gurgaon and when he arrived at Pushpanjali Hospital, Gurgaon he came to know that Constable Ramesh Chand No. 728 was hospitalised there. The doctor gave the opinion that the patient was not fit for making statement. However, UGC Rajender Singh made his statement to the effect that on 28.10.2006 he was escort guard and was accompanied by Constable Ramesh Chand and on that day, after producing accused Anand @ Antu in the Courts at Kishangarh Bas, they were returning. They had taken lift from Innova vehicle and two other passersby took lift in the said Innova vehicle. After sometime, one of them told that he had to take mobile phone from Pachgaon and for that reason driver of vehicle turned his vehicle towards Jamalpur side. Thereafter both the aforesaid persons point out gun on them and started belabouring them. One of them fired at Constable Ramesh Chand which hit on his foot. The assailants also shot 2-3 mis-fired. The driver of vehicle was also carrying one pistol and the assailants threw the police officials on the road and sped away alongwith accused Anand @ Antu. On the basis of said complaint, a case under Sections 332, 353, 307, 323, 224, 225, 34 IPC as well as Section 25 of the Arms Act was registered. Investigation was launched and accused were arrested."

Upon completion of the investigation and presentation of the challan, the case was committed to the Court of Sessions, where charges under Section 223 read with Section 34 IPC were framed

against Ram Chander and Rajender Singh, appellants and under Sections 307, 333, 353, 225 read with Section 34 IPC against appellant Satender @ Gallad and three accused, namely Khushal Pal, Anand @ Antu and Satpal @ Fouji @ Ajay. Vide impugned judgment and order the trial Court acquitted Satpal @ Fouji @ Ajay and Khushal Pal of the charges against them. Appellant Satender @ Gallad and his co-convict Anand @ Antu were convicted and sentenced as follows:-

- (i) rigorous imprisonment for five years and to pay a fine of Rs.5,000/- each under Section 307 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of three months;
- (ii) rigorous imprisonment for three years and to pay a fine of Rs.3,000/- each under Section 333 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of one month;
- (iii) rigorous imprisonment for two years and to pay a fine of Rs.2,000/- each under Section 353 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of one month; and
- (iv) rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- each under Section 225 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

The substantive sentences of imprisonment awarded to the aforementioned two convicts were ordered to run concurrently.

Similarly, Ram Chander and Rajender Singh were convicted under Section 223 IPC and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo imprisonment for a period of 15 days.

Before proceeding any further, it may be noticed that Satender @ Gallad-appellant has already served the entire sentence of imprisonment imposed upon him. This is reflected in the custody certificate produced by the learned State counsel. In view of the same, the appeal filed by said Satender @ Gallad has been rendered infructuous.

Mr. H.S. Gill, learned senior counsel, assisted by Mr. Nitin Rampal and Mr. Rajesh Khandelwal, Advocates, has submitted that Rajender Singh as well as Ram Chander cannot be held negligent in the escape of Anand @ Antu from their custody and as such cannot be held guilty under Section 223 IPC. In this regard, he has submitted that PW4 SI Randhir Singh testified that ASI Desh Raj, who was Incharge of the escort guard, did not wait for the official van and had taken under-trial in some private van. He also submitted that though PW8 ASI Mukhtiar Singh had deposed that neither Rajender Singh nor Ram Chander had come to the armourer for taking weapons so as to escort the under-trials yet PW18 ASI Abhai Singh admitted in his cross-examination that both, Rajender Singh and Ram Chander, besides other police officials, had requested for more weapons and constables

from Police Line Officer for producing the accused but their request was declined and in such a situation, the escort guard, which was outnumbered at the time of the occurrence, cannot be held guilty for being negligent in performing their duties. It is also submitted that Constable Ramesh Chand, who had received injuries in the occurrence, had stepped into the witness-box as PW24 and stated that it was Satender @ Gallad, who had fired at him. However, in cross-examination, he testified that though the occurrence had taken place on 28.10.2006 and he was discharged from the hospital on 8.11.2006 yet it was only on 9.4.2007 that his statement was recorded by the Investigating Officer. He also stated that in the interregnum neither he tried to contact the Investigating Officer nor the Investigating Officer contacted him for recording his statement. Therefore, this long delay of more than five months in recording the statement of Constable Ramesh Chand, who was said to have borne the brunt of attack at the time of the occurrence, remains unexplained.

Learned State counsel has submitted that both Rajender Singh and Ram Chander were negligent in performing their duties as in order to take the prisoners from Gurgaon to Kishangarh Bas, they were supposed to take arms from PW8 ASI Mukhtiar Singh but on that day they did not appear before the said witness for taking weapons. It has also been mentioned that neither Rajender Singh nor Ram Chander made any attempt to prevent the escape of Anand @ Antu from their custody. They also did not step into the witness-box to contradict the prosecution case.

Having heard learned counsel for appellants Rajender Singh and Ram Chander, this Court finds that their conviction for the offence under Section 223 IPC cannot be sustained. They were part of the escort guard which was led by ASI Desh Raj. Said ASI Desh Raj, even according to the prosecution, had not waited for the driver of the van which was meant for taking the under-trials from the Court to the jail. Instead, he allowed them to proceed in a private vehicle. Said ASI Desh Raj was departmentally proceeded against as is clear from the testimony of DW2 HC Lal Chand and finding him liable for the act of default committed by him, punishment of stoppage of one increment with temporary effect was imposed upon him. Further, though from the statement of PW8 ASI Mukhtiar Singh, it is made out that none of the two aforementioned appellants had come for taking weapons but PW18 ASI Abhai Singh categorically testified in his cross-examination that both the appellants and other police officials had sought more weapons as well as personnel for performing their duty but their request was not accepted. In such a situation, they cannot be held responsible for facilitating the escape of Anand @ Antu from their custody.

The incident in question had taken place on 28.10.2006. On 8.11.2006, Constable Ramesh Chand, who had received injuries in the incident, was discharged from the hospital. However, no steps were taken either by the Investigating Officer or by Constable Ramesh Chand himself to get his statement recorded. It was only on 9.4.2007

that his statement was recorded during the investigation of the case. The explanation offered regarding the delay cannot be accepted.

In view of the above, it will not be safe to sustain the conviction of Rajender Singh and Ram Chander for the offence under Section 223 IPC.

Resultantly, the appeal, i.e. Criminal Appeal No.S-490-SB of 2010 filed by Satender @ Gallad is disposed of as having been rendered infructuous.

However, the two appeals, i.e. Criminal Appeal No.S-2961-SB of 2009 filed by Rajender Singh and Criminal Appeal No.S-2897-SB of 2009 filed by Ram Chander are accepted. Both these appellants are acquitted of the charges against them. They are on bail. Their bail bonds and surety bonds shall stand discharged.

January 27, 2015
satish

(T.P.S. MANN)
JUDGE