

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-1770-SB of 2011 (O&M)

Date of decision : May 13, 2015

Sehzad @ Kanja

..... Appellant

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajesh Lamba, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana

Criminal Appeal No. S-2086-SB of 2011 (O&M)

Sahida

..... Appellant

Versus

State of Haryana

....Respondent

Present: Mr. Jamshed Ahmed, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana

LISA GILL, J.

This judgment shall dispose of CRA No. S-1770-SB of 2011 (Sehzad @ Kanja versus State of Haryana) and CRA No. S-2086-SB of 2011 (Sahida versus State of Haryana) as they arise out of common judgment dated 17.05.2011 passed by the learned Additional Sessions Judge, Palwal.

Vide impugned judgment and order, the appellants have been convicted and sentenced to undergo rigorous imprisonment for

seven years besides pay a fine of ₹5,000/- each and further imprisonment of two months in default for the offence punishable under Section 307 read with Section 149 IPC; to undergo rigorous imprisonment for one year for the offence punishable under Section 332 read with Section 149 IPC and Section 148 and also to undergo rigorous imprisonment for six months for the offence punishable under Sections 353, 506 read with Section 149 IPC.

Prosecution was set in motion on the statement of complainant Deen Mohd. (Ex. PW10/A) on 23.06.2002. He recorded that Jahul, Sahida (appellant), Shakeel, Iqbal, Tayyub, Javed, Shokrulla, Saleem and Sehzad (appellant) are dacoits, who reside in village Alimeo. Said persons committed dacoity in the States of Gujarat, Maharashtra, Karnataka, Madhya Pradesh and Andhra Pradesh and had stolen a truck. The complainant had earlier informed the police for apprehending them as a result of which Jahul, Sahida, Shokrulla, Habib, Jamshed and Guttan had fired upon the complainant and his brother Khan Mohd. The complainant was able to escape with great difficulty though sustaining a gun shot on his leg. He had lodged a complaint in this regard in the police station but the accused were not apprehended and they threatened to kill the complainant.

He received information on 23.06.2002 at about 4.00 a.m. that the above said persons would be sleeping in Rehman's chaupal. This information was conveyed by the complainant to the police with a request to raid the said premises and arrest the accused. On receiving this information, police party reached the village at about

7.30 a.m. Complainant proceeded to the chaupal to inquire about the accused. When he reached near the chaupal, accused fired upon him and complainant hid himself. When the police party reached the spot, Jahul, Asgar, Saleem and Sahida fired from their gun and country made pistol upon the police party. Accused also threw bricks and opened an attack upon the police party with lathies/sticks. They were exhorting to kill the complainant. Police fired shots in the air and encircled the chaupal but only one accused Saleem was apprehended along with his gun. Other accused escaped from the spot by firing and running over the roofs of the houses. Due to firing, three or four police officials and a young girl from the village sustained injuries and atmosphere of terror was created by the accused, who had threatened the complainant. They attacked the police officials when they came to arrest them. He, thus, prayed that action be taken against them.

On the basis of this statement, formal FIR No. 244 dated 23.06.2002, Ex. PW14/A was registered under Sections 148, 149, 332, 353, 307 and 506 IPC and under the Arms Act at Police Station Hathin. Investigation was carried out. Rough site plan of the place of occurrence was prepared. Country made pistol .315 bore along with one live cartridge was recovered from the accused Saleem. Appellant Sahida was arrested on 02.07.2002 and Sehzaad was arrested on 30.06.2002 along with one Shakeel. Disclosure statements Ex. PC/2 and Ex. PC/3 were suffered by Sahida and Sehzaad respectively. Out of the persons named in the FIR, four (4) persons namely Jahul, Javed, Asgar and Tayyub have not since been arrested.

After investigation, challan/report under Section 173 Cr.P.C. was submitted against five accused persons including the present appellants. Out of five accused, three of them namely Shakrulla, Iqbal and Saleem were declared proclaimed offenders. Trial was conducted qua the present appellants only i.e. Sehzaad and Sahida. Prosecution examined as many as 19 witnesses to buttress its case. Accused while denying the incriminating material and evidence against them under Section 313 Cr.P.C. pleaded innocence and false implication. However, no evidence in defence was led.

Learned trial Court on examining the evidence on record, facts and circumstances of the case concluded that the prosecution had succeeded in proving its case beyond reasonable doubt qua the appellants. Consequently, trial Court has convicted them for the offences punishable under Sections 148, 307, 332, 353, 506 read with Section 149 IPC and sentenced them as mentioned above. Aggrieved therefrom the present appellants have preferred the instant appeals.

Learned counsel for the appellants vehemently argues that the trial Court has grossly erred in convicting the accused persons. It has proceeded on the basis of conjectures and surmises. The first and foremost argument of learned counsel for the appellants is that the complainant himself has not identified the accused in order to support the prosecution version. Therefore, conviction of the accused is not sustainable. It is further submitted that injuries as projected by the prosecution on various persons are suspect as no pellets have been recovered. Furthermore some of the injuries show

blackening indicating firing to have been done from a close range, which is not in tune with the ocular version. No test identification parade was conducted. Therefore, it cannot be said that identity of the accused was established in view of the complainant himself not identifying the accused. It is submitted that in view of the complainant as well as the injured witnesses namely PW11 Mehram, PW8 Alam, not supporting the prosecution case, prosecution was left with no legs to stand on. PW12, Khan Mohd., brother of the complainant Deen Mohd. was also declared hostile as he did not support the prosecution version. It is additionally argued that in any case no offence punishable under Section 307 IPC is made out as there was no intention to kill on part of the accused persons.

Learned counsel for the State while refuting the above said averments argues with equal vehemence that the appellants are habitual offenders. While referring to affidavit dated 29.04.2015 of Deputy Superintendent, District Jail, Faridabad, it is submitted that appellant - Sahida is involved in over twenty (20) cases. He has been discharged or acquitted in about seventeen (17) matters registered under Sections 395, 392, 380, 412, 379 and various other offences. He has been convicted in two cases, one under Section 399, 402 IPC and another under Sections 307, 324, 353, 186, 148, 149 IPC and 25 Arms Act. Four other cases are pending against him.

In respect to the appellant – Sehzaad @ Kanja, it is submitted that he had been convicted in a case under Section 379 IPC and another matter under Section 406 IPC is pending against him in the State of Uttar Pradesh. It is submitted that there is

overwhelming and sufficient evidence on record to show the complicity of the accused in the commission of offence. He has prayed for upholding the conviction and sentence imposed upon the appellants, who are stated to be a menace to civilized society.

I have heard learned counsel for the parties and gone through the record with their able assistance.

Perusal of the record reveals that as many as seven persons were injured in the incident which occurred on 23.06.2002.

PW1, Dr. Rekha, Medical Officer, General Hospital, Palwal, medico legally examined the above said persons and found following injuries on their persons:-

Injuries on the person of Constable Bijender Singh son of Sh. Charan Singh are as hereunder:

1. Left forearm on anterior aspect 3mm x 3mm burnt and unburnt blasted powder in skin. Circular shape tattooing of skin present. Lacerated wound 3 in number. Duration within 12 hours. Object fire arm. Advised x-ray.
2. Left knee have 5cm x 5 cm abrasion within 12 hours and object blunt. Advised x-ray. Carbon copy of MLR is Ex. PB. It is prepared and signed by me.

Injuries on the person of Constable Birender Singh son of Sh. Nand Ram are as hereunder :

1. Right upper 1/3 forearm have 4 cm x 2 cm reddish colour bruise with diffuse swelling duration within 12 hours and object blunt and advised x-ray.
2. Left forearm post aspect at middle have 1 cm x 2 cm abrasion with reddish bruise. Duration within 12 hours. Blunt object. Advised x-ray.

Carbon copy of MLR is Ex. PC which is prepared

and signed by me.

Injuries on the person of Constable Abhey Singh son of Sh. Sardar Singh are as hereunder:

1. Right leg on lower 1/3rd laterally have 5cm x 3cm bruise reddish colour with diffuse swelling. Duration within 12 hours. Object blunt and advised x-ray.

Carbon copy of MLR is Ex. PD which is prepared and signed by me.

Injuries on the person of Constable Bishamber son of Sh. Budh Ram are as hereunder:

1. On right upper chest below clavical about 3 inch 1cm x 5 cm enloghated burnt and unburnt lacerated wound with blacking and information present and tatooing within 12 hours/object firearm and advised x-ray.
2. Medical to injury no. 1. 2cm x 1 cm lacerated burnt and unburnt blasted powder in skin inflammation present and tatooing. Duration within 12 hours. Object firearm. Advised x-ray.
3. Right forearm medially at middle have 3mm x 3mm circular lacerated wound within burnt and unburnt powder in skin and inflammation and tatooing. Duration within 12 hours and advised x-ray.
4. Medially right forearm on upper 1/3rd have 3mmx 3m circular with burnt and unburnt blastic powder and skin tattooing. Lacerated wound. Duration within 12 hours. Object firearm. Advised x-ray.
5. Right little aspect of leg have 3m x 3m circular burnt and unburnt skin black tatooing. Duration within 12 hours. Advised x-ray. Object firearm. Handed over to police a packet containing shirt and pant khaki colour sealed with five seals and signed by me at one place. Carbon copy of MLR is Ex. PE.

Injuries on the person of Alam son of Sh. Ishak are as hereunder:

1. Right upper chest 3 inch below middle of clavical have 3m x 3m lacerated with inflammation circular partially burnt and unburnt blastic powder. Tatooing present not easily whipped off easily. Duration within 12 hours. Object firearm. Advised x-ray. Carbon copy of MLR is Ex. PF, which is prepared and signed by me.

Injuries on the person of Randhir Singh son of Sh. Banwari Lal are as hereunder:

1. Left forearm on anterior aspect have multiple burnt and unburnt powder in skin cause tattooing not whipped off circular lacerated wound about 3mm x 3mm in size. Duration within 12 hours. Object firearm and advised x-ray.
2. Left knee have 2 cm x 1 cm bruise raddish colour within diffuse swelling. Advised x-ray and within 12 hours. Object blunt. EX. PG is the carbon copy of MLR which is prepared and signed by me.

Injuries on the person of Mehram daughter of Sh. Bashir are as hereunder:

1. Right of middle of lower chest have 3m x 3mm lacerated wound partially burnt and unburnt powder blastic in skin causes tattooing which is not whipped off. Duration within 12 hours. Object firearm and advised x-ray.
2. Left partial have 3m x 3mm lacerated partially burnt and unburnt blast powder in skin. Tattooing present not whipped off. Duration within 12 hours. Advised x-ray object forearm.

Dr. Rekha, Medical Officer, General Hospital, Palwal has

specifically testified when subjected to cross examination that these injuries could not be caused other than by fire arms.

Much stress has been laid on the factum of the complainant Deen Mohd. not supporting the prosecution version. A perusal of his statement reveals that the incident in question has not been denied by him though while appearing before the trial Court he has only named one Jahul and Saleem and has stated that the present accused Sahid and Sehzaad were not present at the time of occurrence. Similarly injured witness Mehram who was merely 16/18 years at the time of incident deposed on 06.09.2010 before the trial Court that she knew nothing about this case though she admits having received injuries in an incident which took place about 10 years ago. She stated that she could not identify the assailants due to the crowd on the spot and further stated that the present appellants did not cause any injury to her or to any other person.

PW12, Khan Mohd., brother of the complainant Deen Mohd., did not support the prosecution version by deposing in line with his brother.

PW8, Alam, an injured witness admitted that he received bullet injuries on his chest on 23.06.2002 when firing was going on between the police and accused persons. He however, stated that injuries were received at the hands of Asgar, Saleem and Sakir. He denied that he was shot at by the appellant Sahida.

However, it is to be noticed that all the official witnesses have duly supported the prosecution version on all material aspects.

PW2, Naveen Kumar, DSP has deposed that on 23.06.2002 he

contacted SHO Hodal, SHO Police Station City as well as Sadar Palwal, SHO Hathin, SHO Hasanpur for the purpose of arresting the accused in FIR No. 244 dated 23.06.2002 registered at Police Station Hathin. He was posted as Inspector CIA Staff, Palwal. He revealed that Deen Mohd., Ali Mohd. and Khan Mohd. told that all the wanted persons were found to be present in chaupal alongwith fire arms. Deen Mohd. led the police party. When they reached near the chaupal, eight or ten persons i.e. all the accused persons including the appellants Sahida and Sehzaad were present in the chaupal and started firing at Deen Mohd. but he was not hurt. Thereafter, the police party encircled the village chaupal upon which the accused raised exhortions and attacked the police party with fire arms, pelted them with stones and sticks. Constable Bishamber, Randhir, Virender, Bijender, Abhey Singh, Mehram and Alam received gun shot injuries. Police party fired in self defence. All the accused managed to flee except accused Saleem, who was arrested on the spot alongwith .315 bore rifle. Appellant Sahida duly identified by him in Court also fired by the police party with .12 bore katta (country made weapon). Present appellants were subsequently arrested by him on 27.06.2002. He identified both the accused as having fired on 23.06.2002. Both of them had been arrested in another case under Sections 399, 402 IPC and arms recovered from them in the said case.

PW3, Bharat Singh, who was posted as SI/SHO Police Station Hodal at the relevant time has duly supported the prosecution version on all fours. PW15, Head Constable Randhir Singh was

posted as Constable at Police Station, Hathin on 23.06.2002. He has also given a graphic detail of the events as they unfolded. PW18, Constable Virender Singh, who had received injuries in the said incident completely supported the prosecution version.

PW16, Constable Bishamber, who also received injuries in the incident as well as PW9, Abhey Singh, EHC 530 CIA Staff Palwal an injured witness have supported the prosecution version on all counts.

Perusal of the record reveals that all the official witnesses have duly corroborated the ocular version. Medical evidence on record is in consonance with the ocular version given by these witnesses. Fact that the complainant and another private witnesses may have been prevailed upon by the accused persons cannot be a ground to set aside the conviction of the appellants. There is nothing on record to show that the official witnesses had any axe to grind against the accused persons or held any grudge against them. Admittedly, this is a case where the names of all the accused had figured prior to the incident. It is not as if the names of the appellants were introduced at a later stage. They very much figured at the initial stage in the FIR itself. Argument that the accused were soft targets being involved in other cases is misconceived and fallacious one. Similarly plea that failure to hold a test identification parade is fatal to the prosecution is rejected in the facts and circumstances of this case.

Discrepancies as sought to be projected in the statements of some of the witnesses in respect to arrest of three

accused at the spot namely Sahida, Ganga and Saleem instead of just Saleem, is an argument noticed only to be rejected.

It is the specific case of the prosecution that it was Saleem who was arrested on the spot on 23.06.2002. No benefit can be derived from the statement of PW7, Ali Mohd. to suggest that it was accused Sahida, Ganga and Saleem who were arrested. A careful perusal of the statement reveals that Ali Mohd. has deposed that the police that reached the spot on 23.06.2002 but thereafter returned back because the accused persons had fired upon them.

Similarly, contention on behalf of the appellants that recovery of the arms was infact not effected from the present appellants in the present case, therefore, they cannot be connected with the offence in question is untenable in the peculiar facts and circumstances.

It has been duly proved by the prosecution on the basis of clear and cogent evidence that the appellants were indeed a part of group which had fired upon the police party and attacked with stones and lathies in which a number of persons including members of the general public were injured. They have actually participated in the said attack. Prosecution has succeeded in proving its case beyond reasonable doubt qua the appellants for the offences as charged.

At this stage, learned counsel for the appellants submits that the sentence imposed upon the appellants is excessive and it should be reduced to that of having already undergone. I find no ground whatsoever to interfere in the quantum of sentence imposed upon the appellants. They have been rightly convicted and sentenced

by the learned trial Court vide impugned judgment and order dated 17.05.2011 which calls for no interference.

Consequently, both the appeals are dismissed.

Since sentence imposed upon appellant – Sehzaad had been suspended by this Court, Chief Judicial Magistrate, Palwal is directed to take appropriate steps for taking him in custody for serving rest of the sentence.

(Lisa Gill)
Judge

May 13, 2015
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