

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-716 DB of 2014

Date of Decision : March 17, 2015

Vinod Kumar

.....Appellant

VERSUS

State of Haryana and others

.....Respondents

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

Present : Mr. B.S. Makar, Advocate.

T.P.S. MANN, J.

The appellant Vinod Kumar, who had received injuries in the occurrence in question and, thus, a victim, has filed the present appeal for challenging the judgment dated 9.8.2012 passed by the Additional Sessions Judge, Fatehabad, whereby respondents Sandeep Kumar and Sarjeet were acquitted of the charges under Section 307 read with Section 34 IPC and respondent Sandeep Kumar under Section 27 of the Arms Act.

The case of the prosecution, in nutshell, is that on 6.1.2010 at about 3.00 p.m. when the appellant had parked his motorcycle in front of the house of Kanwarsain, he heard a noise from the house of Devi Lal to kill him and his younger brother Narender. At that time, respondent Sandeep Kumar, while armed with a gun, came there and fired a shot towards

him. The pellets hit him on his knee, thigh, abdomen, chest and left palm. Sarjeet accused, who was armed with a pistol, fired a shot towards Narender which hit on his left knee, right thigh and penis. One Ajit also fired from a gun. 5-6 persons fired gun shots from the house of Devi Lal. Meanwhile, Kuldeep son of Kanwarsain came to the spot and rescued the victim and his brothers.

The case of the two accused/respondents was of self-defence. According to them, the complainant party attacked their house with bricks and stones. They had also opened fire. Only in self-defence that Sandeep Kumar accused fired from his licenced gun.

Having heard learned counsel for the appellant and on going through the impugned judgment, it is made out that the complainant party had attacked the house of the accused by pelting stones and firing shots. They also demolished the wall of the house of Sandeep Kumar accused. Any firing resorted to by Sandeep Kumar from his licenced gun and, that too, from a distance was for the sole purpose of protecting his person and property. The pelting of brick-bats by the complainant party stands established from the photographs Exs.D1 to D6, which were taken by PW5 Sunil Kumar. During investigation of the case, two plastic wads were

recovered from the street while, two empty cartridges recovered from the vacant plot adjacent to the house of Kanwarsain, whereas two cardboard wads were recovered from the main gate. Pellet marks were observed on the wall of the gallery of the first floor of the house of Devi Lal, father of accused Sandeep Kumar. In cross-examination PW10 ASI Karan Singh admitted that the plastic and rubber wads were found on the inner side of the house of Sandeep Kumar. There were marks of brick batting on the tractor also. Even brick bats were observed lying in the house of Sandeep Kumar accused.

It may also be worthwhile to notice that though the incident had taken place on 6.1.2010 at about 3.00 p.m., the FIR came to be lodged only on 7.1.2010 at 10.15 p.m. The prosecution tried to explain the delay by coming out with the version that the injured were not fit to make statement. However, the medico-legal reports of injured Vinod Kumar and Narender revealed that they were conscious when they were brought to the hospital on 6.1.2010 at 4.30 p.m. Both the injured were medically examined, thereafter. On 7.1.2010 at 8.30 p.m., the Investigating Officer obtained opinion of the doctor, who declared the injured fit to make statement. However, the doctor could not state as to what medicine had been given to the injured which had made them unable to give

statement earlier. On 7.1.2010 at about 4.00 p.m., the Investigating Officer had taken opinion regarding the injured to be fit but even, then, the FIR was lodged at 10.30 p.m.

In view of the above, it can safely be concluded that the act of the accused in causing injuries to Vinod Kumar and Narender was in exercise of right of private defence of person and property of the accused and unexplained delay in lodging the FIR was on account of the prosecution coming up with a false and fabricated version against the two accused. Therefore, no fault can be found with the impugned judgment of acquittal.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

March 17, 2015
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