

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. S-913-SB of 2010 (O/M)

Date of Decision : 28.1.2015

Parveen

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Namit Sharma, Advocate, (Legal Aid Counsel),
for the appellant.

Mr. Chetan Sharma, Assistant A.G. Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest? Yes.

-. -

-. -

KULDIP SINGH, J.

This judgment shall dispose of CRA No. S-913-SB of 2010, challenging the judgment of conviction and order of sentence dated 20/21.1.2010, passed by the learned Additional Sessions Judge, Fast Track Court, Bhiwani, vide which accused/appellant Parveen was convicted under Sections 307, 452 IPC and under Section 25 of the Arms Act, 1959. He was sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 1,000/-, in default thereof, to undergo further simple imprisonment for one month under Section 307 IPC. The accused/appellant was also sentenced to undergo rigorous imprisonment 1 year and to pay fine of Rs. 250/-, in

default thereof, to further undergo simple imprisonment for 7 days under Section 452 IPC. The accused/appellant was further sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 500/-, in default thereof, to undergo further simple imprisonment for 15 days under Section 25 of the Arms Act, 1959. All the sentences were directed to run concurrently.

Before the trial Court, 4 persons, namely, Pawan son of Gibhu Ram, Parveen son of Baljeet (present appellant), Mahabir @ Kala son of Chandu Lal and Daya Chand @ Suttar son of Mohar Singh were sent for trial by SHO, Police Station Bhiwani. Accused Pawan was declared a proclaimed offender on 12.1.2010, whereas accused Daya Chand @ Suttar was declared a proclaimed offender on 19.9.2007 and only two persons, namely, Parveen and Mahabir @ Kala faced the trial. As a result of the trial, accused Mahabir @ Kala was acquitted, whereas accused Parveen was convicted and sentenced as aforesaid.

Brief facts of the case are that on 1.3.2007, a telephonic information was received from Police Post General Hospital, Bhiwani, regarding admission of injured Pawan Sharma due to gun shot injuries. A police party headed by Sub Inspector Sube Singh reached General Hospital, Bhiwani. There, they were informed that Pawan Sharma (injured) has been referred to PGIMS, Rohtak. Then, Sub Inspector Sube Singh alongwith police officials visited PGIMS, Rohtak, where injured Pawan Sharma was declared unfit to make the statement. Again, on 2.3.2007, they (police) sought the opinion of the

doctor and the injured Pawan Sharma was still declared unable to make the statement. On 3.3.2007, again the injured was found unfit to make the statement. Therefore, the police recorded the statement of Purshotam Sharma, a cousin brother of the injured Pawan Sharma. Purshotam Sharma stated that his cousin brother Pawan Sharma runs a dairy at Kont Road, Dadri Gate, Bhiwani. On 1.3.2007, at about 7:00/7:30 PM, when he was present at the shop, some unknown persons entered the shop and fired shots upon Pawan Sharma with intention to kill him and thereafter fled away. During the course of investigation, all the accused were traced and challaned.

The accused were chargesheeted under Sections 307 and 452 read with Section 34 IPC. Besides, accused/appellant Parveen was chargesheeted under Section 25 of the Arms Act, 1959. The accused pleaded not guilty and claimed trial.

To prove its case, prosecution examined injured Pawan Kumar (PW1) Vishnu (PW2), Complainant Purshotam Sharma (PW3), SI Raghbir Singh (PW4), Dr. Dara Singh (PW5), Inspector Satya Pal (PW6), ASI Shri Krishan (PW7), Bhisham Chander, Reader to District Magistrate, Bhiwani (PW8), Head Constable Janak Raj (PW9), Dalbir Singh, Draftsman (PW10), Inspector Sube Singh (PW11), ASI Jagmal Singh (PW12), Constable Wazir Singh (PW13), EHC Mahender Singh (PW14), SI Mahabir Singh (PW15), Dr. Vikas Kathuria (PW16), EHC Rishi Ram (PW17), DSP Suresh Kumar (PW18), Dr. Renu Goyal (PW19) and closed the evidence.

When examined under Section 313 Cr.P.C., the accused

denied the evidence led against them as incorrect and stated that they are innocent. At the stage of defence evidence, accused Pawan absconded and was declared a proclaimed offender. Accused Parveen and Mahabir @ Kala did not lead any evidence in defence.

After hearing learned Public Prosecutor for the State, learned counsel for the accused and going through the file, the learned Additional Sessions Judge, Fast Track Court, Bhiwani, acquitted accused Mahabir @ Kala of the charges framed against him, whereas accused Parveen was convicted and sentenced as detailed above.

I have heard learned counsel for the accused/appellant, learned Assistant Advocate General for the State and have also carefully gone through the file.

As per the statement of Dr. Dara Singh (PW5), on 1.3.2007, he had medico legally examined Pawan Kumar (injured) and found following injuries on his person :-

- “1. A lacerated wound 2.5 x 2.0 cm on the right side of the abdomen above the umbilicus. Fresh blood was oozing out. Advised ultrasound abdomen, surgeon's opinion.
2. Lacerated wound 2.5 x 1.0 cm. with blackening on the side left mid axillary line anterior-laterally. Fresh blood oozing out. Advised ultrasound abdomen and surgeon's opinion.”

The probable duration of injuries was within six hours. The opinion regarding the kind of weapon was taken from the Ballistic Expert. He further stated that there is blackening on injury No. 2.

Therefore, injury No. 2 from the gun shot injury cannot be ruled out.

Dr. Vikas Kathuria (PW16) proved the operation of injured Pawan Kumar patient showing that there was damage to the interior parts of the body and that the gun shot had penetrated deep in the body.

Pawan Kumar (injured), while appearing as PW1, stated that on 1.3.2007, at about 7:00/7:30 PM, he was present at his dairy shop, situated in Kaunt Road, Bhiwani. He was selling ghee to Vishnu. Three persons came on a motorcycle. Out of them, one was Parveen (present appellant) and others were Daya Chand @ Suttar and Mahabir @ Kala. Accused Parveen and Daya Chand @ Suttar came in the shop. Thereafter, accused Parveen fired a gun shot, which hit the left side of his abdomen. Accused Daya Chand @ Suttar fired another gun shot, which did not hit him (injured Pawan) and he fell down. Accused Mahabir @ Kala was standing near the motorcycle. He (injured) identified accused Parveen and Mahabir @ Kala in the Court. He further stated that on 24.2.2007, accused Parveen had demanded a ransom of Rs. 1,00,000/- through mobile phone and he did not pay the ransom. It is due to this reason that he has been shot at by the accused.

Vishnu (PW2) also stated that injured Pawan Kumar was shot by accused Parveen, which hit in his abdomen and that the shot fired by accused Daya Chand @ Suttar did not hit Pawan Kumar (injured). He also identified third accused Mahabir. Their examination-in-chief was conducted on 30.11.2007 and their cross-

examination was deferred due to death of nephew of Shri K.K. Guraya, Advocate, for the accused Parveen. However, when their cross-examination was conducted after about one month i.e. on 27.2.2008, they were changed men. Vishnu stated that he was not present at the time of occurrence and he does not know Pawan, Parveen and Mahabir. Injured Pawan Kumar also stated that he had made the statement on the last date as the police had threatened him that if he did not support the prosecution case, he will be involved in a false case. He stated that the incident had infact taken place, but so many persons gathered there, due to which he could not recognize the person. He does not know accused Parveen.

I am of the view that the assailants belonged to a gang, which was demanding ransom. Though, Vishnu (PW2) and Pawan Kumar (injured/PW1) had witnessed the occurrence, but as their cross-examination was deferred on account of death of the nephew of the counsel of one of the accused, therefore, accused got about four weeks' time and they were able to win over the witnesses. I am of the view that their statements made in the examination-in-chief is trustworthy and their denial in cross-examination, conducted after four weeks, is to be ignored. Purshotam Sharma (PW3) also stated that three persons had come on a motorcycle and shot at Pawan Kumar (injured).

Inspector Satyapal (PW6) stated that he had recorded the statement of complainant Purshotam Sharma (Ex.PA). He had visited the spot and prepared the rough site plan (Ex.PJ). One empty

cartridge and one led were recovered from the place of occurrence, which were sealed and were taken into possession through recovery memo Ex.PK.

HC Janak Raj (PW9) stated that on 12.5.2007, accused Parveen had suffered a disclosure statement (Ex.PN) and in pursuance to his statement, he got recovered one .315 bore country made pistol from his house at Laxmi Nagar, Dhana Road, Bhiwani. The rough sketch of the said pistol (Ex.PO) was prepared and the said pistol was taken into possession through recovery memo Ex.PP.

Dalbir Singh (PW10) Draftsman, proved the site plan.

SI Mahabir Singh (PW15) stated that on 12.5.2007, he had interrogated accused Parveen, who had suffered a disclosure statement (Ex.PN) and got recovered one country made .315 bore pistol, which was used in the crime. He also proved other formalities of the investigation.

In this case, there is a scientific evidence in the shape of the report of the Forensic Science Laboratory (FSL). The report of the FSL (Ex.PB) makes it clear that one empty cartridge case of .315 bore and one fired bullet of .315 bore were fired from .315 bore country made pistol recovered from accused Parveen. It is to be noted that the gun shot had pierced through the body of the injured Pawan Kumar and injury No. 2 is the entry wound. The gun shot lead had fallen at the spot and was recovered. The fact that, one .315 bore country made pistol used in the crime, was recovered from the house of accused Parveen at his instance and that one cartridge case

and one used cartridge found at the spot were found to have matched the pistol goes to show that it was accused Parveen, who had fired the gun shot at Pawan Kumar (injured). In this way, the scientific evidence also confirmed that the accused Parveen was involved in the crime.

Learned counsel for the accused/appellant has argued that the complainant Purshotam Sharma (PW3) as well as Vishnu (PW2) had turned hostile during cross-examination.

The effect of same has already been discussed above. The site plan has been proved by the investigating officer. Even the draftsman has also proved the site plan. I also do not agree with the contention of the learned counsel for the accused/appellant Parveen that the non-joining of an independent witness at the time of investigation is fatal to the prosecution case. The accused was interrogated. He is a gangster involved in ransom. Therefore, nobody would like to join the police investigation against him. Thus, there is no illegality or infirmity in the judgment and order dated 20/21.1.2010, passed by the learned Additional Sessions Judge, Fast Track Court, Bhiwani.

Accordingly, I do not find any merit in the present appeal. The same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

28.1.2015
sjks