

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-4436-SB of 2013

Date of Decision: 10.12.2015

Heera Singh
.....Appellant
Versus
State of Haryana
.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Inderjit Singh, Advocate,
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

SHEKHER DHAWAN, J

Present appeal against judgment of conviction dated 25.10.2013 and order of sentence of even date passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby appellant Heera Singh was convicted and sentenced as under:

<i>Offence U/s</i>	<i>Substantive sentence</i>	<i>In default</i>
U/s 307 IPC	RI for 7 years with fine of Rs.20,000/-	In default to undergo further RI for 1 year.
U/s 25 of The Arms Act	RI for 2 years with fine of Rs.1,000/-	In default to undergo further RI for 2 months.
All sentences were ordered to run concurrently.		

2. Relevant facts of the case that on 28.03.2013 Manoj Kumar ASI along with Sandeep Kumar H.C., Mehroof Ali ASI and driver

Raj Kumar EASI were present at Amadapur road T. Point. After some time, the appellant was seen coming on foot from the side of Amadapur. While seeing the police party, the appellant tried to retrace his steps. On suspicion, the police party made an attempt to apprehend him and appellant shot fire with his pistol on the police party and they made an escape. The appellant was apprehended at the spot by the police party. On search, the appellant was found in possession of one country made pistol. Thereafter, *ruqa* was sent to the police station. FIR was recorded and after completion of the investigation, the challan was presented in the Court.

3. During trial of the case, learned trial Judge after completing various formalities including framing of charge against the accused, recording of statement of prosecution witnesses, examining of accused under Section 313 Cr.P.C. and after considering the prosecution evidence and defence version held appellant Heera Singh guilty for the commission of offences under Sections 307 IPC and 25 of the Arms Act and convicted and sentenced him thereunder.

4. As is the matter before the Court, Manoj Kumar ASI (PW-4) made statement on 28.03.2013 that the appellant was seen coming by the police party and on seeing the police party he tried to trace back his steps. He opened fire on the police party with the intention to kill them but police party made an escape Appellant was apprehended on the spot and recovery of a country made pistol, one empty cartridge and one live cartridge was effected from left pocket of trousers. The word 'KF' were written on both the cartridges. Version of PW-4 Manoj Kumar ASI was duly supported and corroborated by PW-8 Mehroof Ali HC and PW-9 Sandeep Kumar HC. PW-

1 Sadhu Ram had prepared site plan Ex.PW1/A, whereas PW-2 Arvind

Kumar had recorded the formal FIR Ex.PA, PW-3 Rajiv Inspector had prepared report under Section 173 Cr.P.C. Defence version as set up in the statement under Section 313 Cr.P.C is plea of denial.

5. Learned counsel for the appellant mainly argued that the prosecution version as it is not believable at all. More so, there is a delay in sending the special report to the police as the alleged occurrence had taken place on 28.03.2013 at 4.30 PM and special report was sent to the Area Magistrate on 30.03.2013 at 5.55 PM. More so, the complainant ASI Manoj Kumar is the main witness and he was the investigating officer as well. Legally such a witness cannot and should not have continued with the investigation proceedings. In support of his arguments, learned counsel for the appellant has placed reliance upon judgment from Hon'ble Supreme Court in case **Bhagwan Singh Vs. The State of Rajasthan, 1976 AIR (SC) 985.**

6. Learned counsel for the appellant also took the plea that the alleged occurrence had taken place at public place during peak hours i.e. at 4.30 PM and still no independent witness was joined by the police party although there was availability of some and that makes the case of the prosecution doubtful. Learned counsel for the appellant also urged that as per the prosecution case the appellant had opened fire but empty cartridge and pistol were not recovered and not sealed on the spot as per statement of PW-7. More so, the link evidence in this case is missing. Affidavit Ex.PH is defective, as para No.4 is not verified. This fact assume more importance because as per statement PW-8 seal was returned to the investigating officer after 2-3 hours while the case property was still in the possession of police party. Very purpose of handing over of seal to some other persons had been

frustrated. Learned counsel for the appellant submitted that learned trial Judge has not considered all these aspects while recording the judgment of conviction and order of sentence and the same be set aside and appeal be accepted.

7. Learned State counsel submitted that the prosecution case duly proved on the file as all the three witnesses were present on the spot and have deposed before the Court that the occurrence had taken place in the same manner. The recovery of weapon has been duly proved. Mere non-joining of independent witness does not make the prosecution case doubtful. More so, there was no reason to depose falsely and implicate the accused by the police party. It is not the case of prosecution or defence that there was any tempering with the case property.

8. Having considered the submissions made by learned counsel for both the parties and after scrutiny of record, this Court is of the considered view that certain facts have been completely ignored by the learned trial Judge while recording the judgment of conviction. First of all, as per prosecution case, PW-4 Manoj Kumar ASI is the complainant and he had conducted the investigating proceedings. In such like cases, the complainant, if any police official, who is complainant in the case, he cannot be investigating officer of the case. It is difficult to understand how in these circumstances, PW-4 Manoj Kumar ASI, could undertake investigation of the case. How could the complainant himself be the investigator?. In fact, PW-4 Manoj Kumar, being an officer, who lodged the FIR as informant or complainant and he legally could not carry out the investigation. This is an infirmity which is bound to reflect on the credibility of the prosecution case. Such a view was taken by Hon'ble Supreme Court

in Bhagwan Singh's case (supra) and an identical view was also taken by Hon'ble Bombay High Court in case Santosh Dattaram More and other Vs. The State of Maharashtra, 1992(2) MhLj 1163 and Hon'ble Andhra High Court in case Maddu Lakshmana Rao Vs. State of Andhra Pradesh, 2000(4) ALD 663.

9. More so, the prosecution case itself is not believable. As per PW-4, appellant Heera Singh was alone and he was armed with country made pistol. Simply on seeing the police party the appellant opened fire on police party and interestingly that fire did not hit any member of the police party. If the entire case is taken into correct, the investigating officer was required to take into possession country made pistol, one cartridge which was in the pocket of the accused and another empty used cartridge which was recovered from the country made pistol. All these articles could have been sent to FSL for examination. More so, these witnesses have made contradictory statements on the material points. As per PW-4 Manoj Kumar ASI, appellant had opened fire from a distance of 20 paces, whereas PW-8 Mehroof Ali ASI stated that appellant had fired from a distance from 70-80 yards. Both these witnesses have admitted in their respective cross-examination that public persons were available on the spot but in fact no public person was joined as a witness. This fact makes the prosecution case more doubtful. It is not disputed that statements of police officer are as good as statements from general public. However, in the case in hand the testimony of official witnesses are full of contradiction on material points specially in the background that prosecution case itself is not believable.

10. The prosecution case also suffers from another legal infirmity.

As per prosecution case, seal was handed over to PW-8 Mehroof Ali ASI

after and as per testimony of PW-8 Mehroof Ali ASI, seal was handed over to investigating officer after 2-3 hours only. Meaning thereby, the seal was returned to the investigating officer when the case property was still in the police custody. More so, affidavit Ex.PH is not verified properly and as such the link evidence in this case is missing.

11. However, these facts have not been considered by learned trial Judge while recording the judgment of conviction and order of sentence and these facts certainly makes the prosecution case highly doubtful. Settled law that benefit of doubt is to be given to the accused and in this case also appellant is entitled to be acquitted while giving the benefit of doubt.

12. Resultantly, the present appeal accepted and judgment of conviction and order of sentence set aside.

December 10, 2015

naresh.k.

**(SHEKHER DHAWAN)
JUDGE**