

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1274-SB of 2003 (O&M)
Date of Decision : January 6, 2015

Narender Singh @ Kala

..... Appellant

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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

Argued by :Mr. Saurabh Arora, Legal Aid counsel
for the appellant.

Ms. Minakshi Goyal, AAG, Punjab.

RAJ RAHUL GARG, J

This appeal is directed against the judgment of conviction dated 29.03.2003 and order of sentence of even date, rendered by Sh. G.K.Dhir, the then Additional Sessions Judge, Patiala, vide which appellant-Narender Singh @ Kala was held guilty under Section 25 of the Arms Act (for short 'the Act') for keeping in his possession .32 bore country made pistol without any permit or license. He was sentenced to undergo rigorous imprisonment for one year and to pay a fine of `250/- with default clause to further undergo rigorous imprisonment for 25 days.

The briefs facts of the case are like this: that on 08.10.2001, SI Jagrup Singh along with police officials was present in the area of village Rawas Brahmana in connection with investigation of the case under

Sections 399/402 IPC pertaining to police Station Sadar, Patiala against the accused Narender Singh etc. Raiding parties were formed. One raiding party was headed by SI Jagrup Singh, whereas the other by SI Satpal Singh. Raid was conducted at the un-inhabited brick kiln in the area of Khera Jattan. There, out of five persons two could make good their escape, whereas three were nabbed. Their names were Narinder Singh (appellant), Raju and Sonu. First of all, search of the appellant was conducted by SI Jagrup Singh as per rules. On search, a country made pistol .32 bore was recovered from the right dub of the pant worn by the accused. It was unloaded and a live cartridge was taken out from that pistol. Another live cartridge was recovered from the right pocket of the pant of the accused. Both the recovered live cartridges were made into a parcel and sealed with seal of 'JS' whereas recovered pistol was separately sealed with the seal of 'JS'. Thereafter, pistol, MO 1 and live cartridges MO 2 and MO 3 were taken into police possession vide memo. Ex.PB. Prior to that rough sketch of the pistol was prepared as Ex.PA which was signed by H.C.Karamchand and Subeg Singh as witnesses. Seal after use was handed over to Subeg Singh independent witness. Appellant was arrested. Ruqa Ex.PF was sent to the police station for registration of the case whereupon, formal FIR Ex.PF/1 was recorded. Rough site plan Ex.PG was prepared. After obtaining sanction order Ex.PH. from the District Magistrate for launching prosecution under Section 25 of the Act against the appellant, the challan was presented in the Court.

Finding a prima facie case against the appellant for committing an offence punishable under Section 25 of the Act, Sh. Gopal Arora, the

then learned Judicial Magistrate First Class, Patiala, vide order dated 12.01.2002 charge sheeted the accused for committing an offence punishable under Section 25/54/59 of the Arms Act, to which accused did not plead guilty but claimed trial.

As the offence was an off-shot of FIR No. 986 dated 08.10.2001, under Sections 399/402 IPC pertaining to police Station Sadar, Patiala, therefore, this case was sent to the Court of learned District Judge, Patiala for referring the matter to the concerned Court, whereupon the matter was sent to the Court of Sh. G.K.Dhir, the then Additional Sessions Judge, Patiala in whose Court the connected matter was pending.

After taking prosecution evidence, statement of appellant recorded under Section 313 Cr.P.C. wherein he denied each prosecution allegation and pleaded his innocence.

The defence taken by the accused-appellant is that no recovery was effected from him. He has been falsely implicated in this case. Actually, he was apprehended by the police in the presence of Manjit Singh, resident of Urban Estate, Patiala and nothing was recovered from him. The alleged recovery is planted upon him.

After hearing both the sides, learned trial Court vide judgment dated 29.03.2003 and order of sentence of even date held appellant guilty for committing an offence punishable under Section 25/54/59 of the Arms Act and sentenced him as mentioned in the earlier part of this judgment.

I have heard learned counsel for the appellant and learned State counsel, besides appraising the entire material coming on record.

It was argued by learned counsel for the appellant that the case is false case and nothing was recovered from the possession of the appellant. This very fact becomes clear from the material available on the file.

As per prosecution case, a country made pistol of .32 bore along with two live cartridges were recovered from the possession of the appellant but the cartridges were not sent to the Armour. Only pistol was produced before him. HC Kamal Kumar (PW-3), categorically stated that cartridges were not received by him alongwith the parcel of pistol. Secondly, when the pistol was produced in the Court; it was not bearing seal of 'KK'. After test, Armour had put his seal with the inscription 'KK' on the pistol but when the same was produced in the Court it was not bearing that seal. This fact goes to show that the prosecution has failed to connect the accused with the pistol which produced in the Court and even there arises serious doubt as to if the pistol produced in the Court is the same which was tested by the Armour. Not only this, even Armour (PW-3) did not fire a shot from this pistol in order to know as to if it was in working condition or not. Thus with this evidence on the file, the prosecution case cannot be said to be free from doubt.

On the other hand, it was argued by learned State counsel that since HC Kamal Kumar (PW-3) was having sufficient experience of testing of arms, therefore, even if he did not fire shot from the pistol, he could well give the report about the working condition of the pistol as has been done in this case. It was also argued that since seal on the pistol was intact when the same was produced before Armour for test. Therefore, even if the seal

impression 'KK' was not on the parcel of pistol it is immaterial. Seal impression 'JS' was very much there on the parcel when the same was produced in the Court.

It was also argued by learned counsel for the appellant that there is delay in sending the pistol for test to the Armour. The pistol in question was seized on 08.10.2001 whereas the same was sent for examination on 05.11.2001. The delay in sending the pistol for examination is fatal for the prosecution case. It was further argued by learned counsel for the appellant that in this case independent witness Subeg Singh was joined in the investigation but he has not been examined as witness. He was given up as having been won over by the accused. Had he been examined by the prosecution, the genuineness of the prosecution case would have become known. Learned counsel for the appellant further pointed out that there are discrepancies in the statements of PW-1 and PW-4. PW-1 deposed that the informer disclosed the location of the brick kiln and there was no sign board on the brick kiln, whereas, PW-4 deposed that informer accompanied them to the spot i.e. upto brick kiln. He remained with them throughout during the investigation. As per counsel for the appellant, this contradiction is a material contradiction which goes to the root of the case.

Apart from above, PW-1 deposed that there was no construction of room on the brick kiln whereas PW-4 deposed that there was a room in a depilated condition on the brick kiln.

In the light of above, learned counsel for the appellant contended that the prosecution has failed to prove its case against the appellant beyond the reasonable doubt and as such he is entitled to benefit

of doubt.

At the very outset, I would like to make a mention that the case under Sections 399/402 IPC, FIR No. 986 of 8.10.2001 was decided by the Court of Sh. G.K.Dhir, the then Additional Sessions Judge, Patiala vide judgment dated 23.07.2003. In fact, the present case under the Arms Act was to be decided along with the aforementioned case but so has not been done by the learned trial Court. The case under the Arms Act was decided in the first instance holding appellant guilty of the offence punishable under Sections 25/54/59 of 'the Act' whereas the main case under Sections 399/402 IPC was decided by the learned trial Court latter, acquitting the accused by giving benefit of doubt to them.

Office has report by placing on record photocopy of the judgment rendered in FIR No. 986 of 08.10.2001 that the accused of that case have been acquitted by giving benefit of doubt. DRR section of this Court has also reported that no case has been found registered against the FIR No. 986 of 08.10.2001, District Patiala.

In fact, right from the very beginning, the case of the prosecution does not inspire the confidence in the mind of the Court regarding genuineness of the prosecution case. The prosecution has started its case by making mention that the police party was also present in connection with the investigation of the case registered under Section 399/402 IPC against the accused Narender Singh etc. when they apprehended appellant Narender as well Sonu and Raju. In fact, the police party was not present at Bus Stand Rawas Brahmana in connection with the investigations of the case under Section 399/402 IPC but the police party

was present there in connection with checking and search of suspected persons where they received secret information against the accused including present appellant to the effect that they were making plans of committing dacoity and further that they were armed with deadly weapons.

In the case in hand, police did not talk about such information and straightway said that the police party was present in connection with the investigations of the case under Section 399/402 IPC registered at Police Station Sadar, Patiala and the accused was rounded up by him, whereas PW-1 deposed that he joined the police party headed by Jagrup Singh and they were present at Bus Stand Rawas Brahmana in connection with the case FIR No. 986 of 08.10.2001, there Subeg Singh joined the police party headed by Jagrup Singh and then they had gone to an abandoned brick kiin in the area of Khera Jattan. Thus PW-1 did not talk about the receipt of secret information by SI Jagroop Singh against the accused including appellant that they were making preparation for committing dacoity at outskirts in the area of Patiala City.

PW-4, SI Jagrup Singh, Investigating Officer, deposed that no person was checked during their stay at Bus Stand Brahmna. Even he did not depose anything about the receipt of secret information against the accused including appellant that they were making preparation to commit dacoity at the aforesaid abandoned brick kiln. He further deposed that Ruqa was sent at about 7:00 P.M. In the end of his cross-examination he deposed that Ruqa was sent at 9:00 P.M. Thus, the statement of Investigating Officer himself is contradictory on the point that as to when the Ruqa was sent to the police station for registration of the case and above all, the place where

time finds mention in the Ruqa, there is over-writing. The time to send Ruqa to the police station, gains importance when H.C.Karam Chand (PW-1) and SI Jagrup Singh (PW-4), Investigating Officer deposed that there was no electric bulb or tube at the site of brick kiln.

Under these circumstance, when there was no source of light at the brick kiln, it is not believable that as to how the police party kept on recording the proceedings of this case uptill 11.30 PM as PW-4 deposed that they remained at the spot till 11.30 P.M.

PW-4 also deposed that Keser Singh Constable, who had taken the ruqa came back at 10:00 PM on the spot. Statement of Investigating Officer is that sun had set and there was partial darkness. It is not believable that there would be partial darkness at 9:00 PM, 10:00 PM and 11.30 P.M.

Live cartridges were not sent to Armour (PW-3) for examination. Even the fire was not shot from the pistol which was sent for examination to the Armour. PW-3 has categorically stated that he did not fire shot from this pistol.

Under these circumstance, the contention of learned counsel for the appellant that prosecution has failed to prove that the pistol MO-1 was in working order, carries weight. Finding no seal with the inscription 'KK' on the pistol also fails to connect the pistol produced in the Court with this crime. Non-sending of live cartridges to the Armour for examination also makes the prosecution case doubtful.

It is of course true that the testimonies of police officials are at par with the testimonies of non-officials witnesses but it is the case in which independent witness was joined by the prosecution but later on given up as

having been won over by the accused without examining him in the Court. Had prosecution examined Subeg Singh as witness in the Court, the prosecution case would have been disclosed. The prosecution case is not free from doubt right from the very inception. The statement of Investigating Officer himself is contradictory. Recording of proceedings of the case in the darkness is unbelievable. The accused of the main case have already been acquitted. Live cartridges have not been sent to the Armour for test and the Armour did not conduct the test fire from the pistol in question and even the prosecution fails to connect the pistol produced in the Court with the pistol of this crime. As such testimonies of PW-1 and PW-4 do not inspire confidence in the mind of the Court regarding guilt of the accused.

For the above said reasons, holding that the prosecution has failed to bring home guilt against the accused beyond reasonable doubt, the judgment of conviction dated 29.03.2003 and order of sentence of even date are set aside. The appeal is accepted. Accused is ordered to be acquitted of the charge for which he was facing trial. His bail bonds and surety bonds are discharged. Fine, if any paid, is ordered to be returned to the appellant.

(RAJ RAHUL GARG)
JUDGE

January 6, 2015
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