

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-1059-SB-2004
Date of Decision: 15.01.2016

Rajesh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RA Sheoran, Advocate for the appellant.

Mrs.Subhra Singh, Additonal Advocate General, Haryana

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SNEH PRASHAR, J.

The present appeal has been filed by the appellant assailing the judgment of conviction and order of sentence dated 28.4.2004 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani vide which he was convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.100/- and in default of payment of fine to further undergo simple imprisonment for a period of one month.

The facts garnered from the record are as under:-

On 19.6.2003 ASI Hari Singh alongwith his official

companion had reached near Bus Stand Dadri after investigation in case FIR No.129 of 2003. There he met Raj Kumar (complainant), an employee of liquor vend M/s Rajpal and Company, who was accompanied by one Rajesh. Raj Kumar gave to him a written complaint addressed to Station House Officer, Sadar Dadri, wherein he narrated that at about 12.00 /1.00 O'clock on that day when he (Raj Kumar) was sitting in the office of his Company, he received a telephonic message that Kashmir son of Sheo Sahai, Rajesh son of Dharam Chand, Surender son of Shubh Ram, Rajesh son of Dariav Singh and one unknown person were carrying liquor pouches in a Marshal Jeep from Dadri to Badhra. On receipt of information he alongwith Rajesh son of Suraj Bhan and Rajinder s/o Dharam Singh boarded a tralla bearing registration No.HR-61-1389 and reached near Bharvi Road Badhra Minor.

In the meantime, a Marshal Jeep, without number plate came from the side of Dadri being driven in a rash and negligent manner. They gave signal to the Jeep to stop. Rajesh son of Dariav Singh, who was sitting beside the driver, asked the driver to slow down the jeep. He also told Surender alias Subha to teach a lesson to the Contractor for stopping their vehicle. Surender @ Subha fired a shot from his pistol towards him (Raj Kumar) with intention to kill him but he fell down on the earth and saved himself. Thereafter, Rajesh s/o

Dariav Singh also fired a shot in the air. His companions Rajinder and Rajesh raised cries to apprehend the assailants, upon which the driver of the Marshal Jeep escalated the speed but after covering 4/5 acres and over taking a tralla, it struck against a tree in existence on a side of the road. All the five persons then ran away from the spot leaving the vehicle.

The written complaint with endorsement of ASI Hari Singh was sent to the Police Station, Sadar Dadri, on the basis of which formal FIR under Sections 279/ 336/ 307 of the Indian Penal Code, Section 25 of the Arms Act and Section 61 of the Excise Act was registered. Commencing investigation ASI Hari Singh reached the spot of occurrence and prepared a rough site plan of the same. The Jeep was taken in possession vide recovery memo Ex.PF. The appellant-accused were arrested. On completion of investigation, final report under Section 173 of the Code of Criminal Procedure was prepared and presented in the court of Area Magistrate, who vide order dated 6.10.2003 committed the case to the Court of Sessions for trial.

All the four accused were charged under Section 307/34 IPC; accused Kashmir was also charged under Section 279 IPC; accused Surrender under Section 27 of the Arms Act and accused Rajesh under Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial. To substantiate its allegation, the prosecution

examined PW1 Om Parkash Patwari, PW2 Bhisham Chander, Reader to District Magistrate, PW3 Raj Kumar-complainant, PW4 Mahesh, PW5 MHC Bhudev Parshad, PW6 EHC Satbir Singh, PW7 Balvinder, PW8 SI Pehlad Singh, PW9 ASI Jagphool Singh, PW10 Constable Sanjeev Kumar, PW11 ASI Hari Singh and PW12 Rajinder Singh.

After closure of evidence of the prosecution, statements of accused under Section 313 of Cr.P.C. were recorded by putting them the incriminating evidence available on record. All the accused pleaded innocence as well as false implication. Without leading any evidence, they closed their defence.

After hearing learned Public Prosecutor for the State, learned defence counsel and examining the evidence on record, the learned trial court convicted and sentenced appellant- Rajesh son of Dharam Chand under Section 25 of the Arms Act only as noticed above, whereas his co-accused were acquitted.

Feeling aggrieved by the judgment of conviction and order of sentence, appellant Rajesh filed the present appeal.

The submissions made by learned counsel for the parties have been heard and record perused.

At the very outset learned counsel for the appellant submitted that complainant Raj Kumar and the sole eye witness Rajender examined by the prosecution had not supported its case.

During their cross-examination conducted by learned Public Prosecutor, nothing incriminating against appellant Rajesh could be elicited. Another eye witness Rajesh s/o Suraj Bhan was not examined as he was given up by the prosecution. Learned trial Court merely relying on the statement of Investigating Officer ASI Hari Singh convicted and sentenced the appellant under the Arms Act, whereas there is no substantive and reliable evidence to prove recovery of pistol from the appellant.

On the other hand, learned State counsel controverting the submissions made by learned counsel for the appellant submitted that recovery of country made pistol from the appellant stood established from the deposition of the Investigation Officer and under the law conviction could be based on his solitary statement.

To prove the guilt of the appellant under Section 25 of the Arms Act, the prosecution had to prove that the appellant was found in possession of .12 bore country made pistol. The prosecution cited two public witnesses namely Raj Kumar (complainant) and his companion Rajesh in the presence of whom the pistol was allegedly recovered from the appellant and they had attested the recovery memo Ex.PE. Interestingly, PW3 Raj Kumar (complainant), who was the star witness of the prosecution, did not reiterate the story presented by it. On the pretext that he was suppressing the truth learned Public Prosecutor was

allowed to cross-examine him but to no better result. He denied that he had given any statement, as recorded in Ex.PD, to the police. Though he admitted his signatures on Ex.PD but stated that the police had procured his signatures on a blank paper. He further stated that nothing was recovered in his presence from Rajesh s/o Dharam Chand (appellant). He did not identify the appellant and his co-accused in the Court as assailants. The story of recovery of country made pistol from the appellant was also outrightly denied by him.

The other eye-witness i.e. Rajesh was not examined by the prosecution. He was given up by learned Public Prosecutor for having been won over. His non-appearance deprived the appellant of his right to cross-examine him. A Division Bench of this Court observed in **State of Punjab vs. Surjit Singh**, 2008(1) Recent Criminal Reports (Crl.), 266, that even when the prosecution alleges that a material witness has been won over by the accused, it is still necessary that such witness is produced before the court to reveal the truth.

In the above premise the prosecution was left with solitary statement of PW11 ASI Hari Singh, the Investigation Officer of the case. Although, he stated about recovery of .12 bore country made pistol from the appellant but his sole deposition not supported by the public witnesses, cannot be safely relied upon. It is not a case where there was no public witness available or despite request made by the

Investigating Officer the public persons present were not ready to join the investigation. Rather, in the case in hand, the version of Investigation Officer PW11 ASI Hari Singh was that the country made pistol was recovered from the appellant in the presence of public witnesses namely PW3 Raj Kumar and his companion Rajesh. It has already been noticed above that none of the said witnesses came forward to corroborate his version. PW3 Raj Kumar (complainant), who entered the witness box, categorically falsified the story of recovery. The other witness Rajesh was not produced/ examined by the prosecution. In said set of facts absence of independent corroboration renders the statement as well as the conduct of the Investigation Officer untrustworthy and therefore, no reliance can be placed on the same.

As a consequence to the above discussion, the instant appeal is allowed and the appellant is acquitted of the charge under Section 25 of the Arms Act. His bonds stand discharged.

15.1.2016
gsv

[SNEH PRASHAR]
JUDGE