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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1639-SB-2004
Date of Decision : October 25th, 2016

Raj Singh alias Babbu Appellant

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present:- Mr. Rahul Jaswal, Advocate for
Mr. Vivek Thakur, Advocate,
for the appellant.

Mr. Yogesh Kumar Gupta, AAG, Punjab
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 17.04.2004 passed by learned Additional Sessions Judge (Fast Track), Kapurthala whereby the appellant-accused was convicted under Section 25 of Arms Act and was sentenced as under:-

Under Section	Sentence	In default
25 of Arms Act	to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.500/-	to further undergo Rigorous Imprisonment for a period of 2 months

2. Relevant facts for the purpose of decision of this appeal; that on

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26.07.2003 police party headed by SI Satnam Singh was on patrolling duty. On receipt of secret information, appellant-accused was apprehended and on search, one country-made Revolver of .38 bore was recovered from the trouser of the appellant. Four live cartridges were also recovered from the appellant. Police completed various proceedings of investigation. The case property was taken into police custody after sealing the same. Accused-appellant was arrested.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned trial Judge completed various proceedings of trial including framing of charge against the accused; recording of statement of prosecution witnesses; examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, the trial Court held the appellant-accused guilty and convicted and sentenced him vide judgment and order dated 17.04.2004.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

6. Learned counsel for the appellant mainly contended that the prosecution version itself is not believable as no independent witness was joined and the recovery was effected in the presence of police officials alone. The alleged recovery was effected from public place where there was no dearth of public witnesses. Even the Investigating Officer has not made any effort to join any independent witness which speaks that the prosecution case itself is not believable, rather he has been falsely implicated in the case.

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Learned counsel for the appellant also contended that the appellant has already undergone the actual sentence of 1 year and 1 month against the total awarded sentence of rigorous imprisonment for 3 years under Section 25 of Arms Act.

7. Learned State counsel while arguing on this point contended that the learned trial Judge has rightly placed reliance upon the testimony of Investigating Officer. More so, the witness to the recovery has deposed all the material facts regarding alleged recovery from the appellant. Both the witnesses have well stood by the test of cross-examination. The testimony of prosecution witnesses of this case can not be disbelieved merely because of the fact that these witnesses are official witnesses. They had no enmity with the appellant to depose falsely against him. The present appeal is without any merit and the same be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that recovery of country made Revolver of .38 bore from the appellant stands proved in this case on the basis of testimony of HC Raman Kumar (PW-1) and HC Balwinder Singh (PW-2). Both the witnesses were cross-examined at length during the trial and there was nothing to disbelieve their testimony. Law on the point is settled that official witnesses are as good witnesses as witnesses from the general public if they stand by the test of cross-examination. More so, no enmity has been attributed or proved against these official witnesses for false implication of the appellant. The prosecution case otherwise, is also proved from the fact that alleged

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recovery was effected in the wee hours i.e. at 4.00.am where availability of general public is not expected at such distant place. So, there was no reason to disbelieve the testimony of the official witnesses who were otherwise present for patrolling duty. Learned trial Judge has rightly placed reliance upon the testimony of these two witnesses apart from documentary evidence available on the file. The present appeal is without any merit on the point of conviction and the same stands dismissed.

9. However, as regard to the order of sentence, this Court certainly inclined to look into the point that appellant was sentenced to undergo 3 years Rigorous Imprisonment and against the awarded sentence he has already undergone the actual sentence of 1 year and 1 month. More so, he is facing protracted trial of more than 12 years in this case. So, ends of justice would be met suitably if the sentence awarded to the appellant is ordered to be reduced to the period of imprisonment already undergone by him in custody, during investigation and trial of the case. Ordered accordingly.

10. The appeal is partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 25th, 2016

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No