

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-1686-SB of 2004

Date of Decision : August 19, 2016

Manjit Singh

....Appellant

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. H.S. Gill, Senior Advocate with
Mr. R.K. Dhiman, Advocate
for the appellant.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellant was tried for committing offences punishable under Sections 307 and 323 IPC and Section 27 of the Arms Act. Vide judgment and order dated 6/7.8.2004, learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur acquitted him of the charges under Sections 307 and 323 IPC. He was, however, convicted under Section 336 IPC and sentenced to undergo rigorous imprisonment for a period of three months. He was also convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.200/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month. Both the substantive sentences were ordered to run concurrently. The period spent by him in detention during trial was ordered to be set off against the sentence imposed upon him.

The case of the prosecution is that on 27.11.2001, Head Constable Darshan Kumar, alongwith fellow police officials, was on duty at Bus Stand, Gurdaspur. At 6.30 p.m., a bus of Gulmarg

Transport bearing No.PB-06-1455 came and stopped there. Many passengers were standing near the bus. Gurmeet Singh, Incharge of Gulmarg Transport had a verbal dispute with Manjit Singh appellant as Manjit Singh wanted to go to Amritsar without paying the fare by claiming that he was a press reporter. Manjit Singh took out a revolver from the dub of his pant and hit the revolver on the face of Gurmeet Singh. Manjit Singh also fired two shots by taking aim at Gurmeet Singh with the intention to kill him but Gurmeet Singh ducked and, thus, was not hit. Head Constable Darshan Kumar apprehended Manjit Singh with the help of his fellow officials and also took into possession the revolver at the spot and then produced him with the revolver before SI Swinder Singh. SI Swinder Singh recorded statement Ex.PE of Head Constable Darshan Kumar and subsequently on its basis, FIR Ex.PE/2 came to be registered against the appellant at Police Station City, Gurdaspur on 27.11.2001 at 9.10 p.m. under Section 307 IPC and Section 27 of the Arms Act.

During investigation of the case, SI Swinder Singh recovered the revolver with four live cartridges and two empty shells, besides four live rounds from the holster, which were taken into possession vide memos Ex.PB and Ex.PC. A sum of Rs.2000/- was also recovered from the appellant on his personal search, which was taken into possession vide memos Ex.PD. Rough site plan Ex.PF of the place of occurrence was prepared and the statements of the witnesses were recorded at the spot.

On completion of the investigation, the police presented the challan against the appellant and the case was committed to the

Court of Sessions, where he was charged for committing the various offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Head Constable Darshan Kumar as PW1, who testified about the manner in which the occurrence had taken place.

Gurmit Singh, Adda Incharge of Gulmarg Transport Company, who was examined by the prosecution as PW2, testified that bus No.PB-06-1455 reached Bus Stand, Gurdaspur at about 6.30 p.m. and was to go further to Amritsar. There were about 10/11 persons, who were accompanied by 4/5 ladies, who were standing outside the bus and stating that they were press reporters and wanted to travel in the bus free of cost. He refused to allow those persons to board the bus. Because of this, there was an altercation and his turban got removed. However, he could not state as to who caused injuries on his forehead.

Hans Raj, who ran a Halwai shop near the gate of Bus Stand, Gurdaspur was examined as PW3. He testified that he had not seen any occurrence and he did not know anything about the accused person present in the Court.

PW4 SI Swinder Singh testified that on 27.11.2001 when he was present at Post Office Chowk, Head Constable Darshan Kumar brought the appellant with him. He also produced .32 bore revolver, which was unloaded and found four live rounds and two empty shells. He also recorded statement Ex.PE of Head Constable Darshan Kumar. On personal search of the appellant, he recovered

four live rounds from the holster tied with his belt. His arms licence was also recovered.

PW5 Dr. Sudhir Kumar deposed that on 28.11.2001 at 12.20 a.m., he medico-legally examined Gurmit Singh (wrongly described as Gurnam Singh) and found an abraded contusion 5 x 3 cm. on left side of his face just below the eye. The kind of weapon used was blunt, nature of injury was simple and probable duration of injury was within eight hours.

PW6 HC Major Singh testified that on 27.11.2001, when he was posted as MHC, SI Swinder Singh deposited the case property with him.

PW7 Constable Bishan Lal testified that he had delivered special report to the Ilqa Magistrate and higher police authorities.

PW8 Jagan Nath, Clerk, License Branch, Office of District Magistrate, Ferozepur identified the signatures of Shri H.L. Kumar, the then Additional District Magistrate, Ferozepur on license Ex.PW8/A of the appellant.

When examined under Section 313 Cr.P.C., the appellant claimed himself to be innocent and falsely implicated.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court held that the prosecution had miserably failed to bring home the charges under Sections 307 and 323 IPC against the appellant as PW2 Gurmit Singh denied the factum of the appellant firing two shots from his revolver after taking aim at him and similarly, PW3 Hans Raj, who

was another eye-witness of the occurrence flatly refused that any such occurrence had taken place. At the same time, it was held that the commission of offence under Section 336 IPC was duly proved as the appellant did a rash and negligent act by firing two shots from his revolver towards Gurmit Singh during the scuffle with him. Similarly, the appellant had contravened the provisions of Section 5 of the Arms Act by misusing the fire arm by firing it in a public place so as to endanger human life and safety of the public making him liable for committing the offence under Section 27 of the Arms Act.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that no offence under Section 27 of the Arms Act is shown to have been committed by the appellant. PW4 SI Swinder Singh, who had conducted the investigation, admitted in his cross-examination that he had not sent the weapon, live rounds and the empty shells to the Forensic Science Laboratory for the purpose of testing. He could not remember if the weapon and ammunition were got tested from the Armourer. He admitted it to be correct that in the Court file, there was no report of Armourer.

As neither the weapon in question, i.e. the revolver had been sent to the Forensic Science Laboratory nor there is any report of the Armourer on the Court file, it cannot be said that the appellant had misused the fire arm and, thus, contravened the provisions of Section 5 of the Arms Act. Thus, this Court has no other option but to acquit the appellant of the charge under Section 27 of the Arms Act. At the same time, no case is made out for any interference in

the conviction of the appellant under Section 336 IPC.

The appellant is facing the agony of criminal prosecution since the year 2001. When he was heard by the learned trial Court on the matter of sentence, he had pleaded that he was a first offender; he was a young person of the age of 26 years; and sole bread winner of his family. Under these circumstances, this Court is of the view that the appellant can be extended the benefit of probation in relation to the offence under Section 336 IPC, instead of being sentenced to undergo imprisonment.

Resultantly, the conviction and sentence of the appellant for offence under Section 27 of the Arms Act is set aside. At the same time, the conviction of the appellant under Section 336 IPC is upheld. His sentence of imprisonment for the said offence is set aside. Instead, he is ordered to be released on probation, subject to his furnishing bonds to the satisfaction of the Chief Judicial Magistrate, Gurdaspur to keep peace and be of good behaviour for a period of six months and to receive sentence as and when called upon to do so.

The appeal is, accordingly, disposed of.

August 19, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO