

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

**Criminal Appeal S-362-SB of 2004  
Date of Decision: March 16, 2016.**

|                      |        |                  |
|----------------------|--------|------------------|
| Kuldip Singh @ Deepu | Versus | .....Appellant   |
| State of Haryana     |        | ..... Respondent |

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

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Present : Mr. Nipun Vashist, Advocate as amicus curiae and  
Mr. B.K.Chaudhary, Advocate for  
Mr. Pankaj Bali, Advocate for the appellant.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

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**T.P.S.MANN, J. (Oral)**

Appellant-Kuldip Singh @ Deepu has filed the present appeal for challenging the judgment and order dated 23.1.2004 passed by the learned Additional Sessions Judge, Panipat, whereby, he stands convicted under Section 25 of the Arms Act, 1959 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for six months. The period spent by him behind the bars during investigation and trial was ordered to be set off against the period of sentence awarded to him.

The appellant was tried for committing offences punishable under Sections 452, 384, 376 and 501 IPC and Section 25 of the Arms Act on the allegations that on 19.4.2003 at about 1.30 p.m., he came to the sewing centre of the prosecutrix and on finding her alone, closed the shutter of the centre from inside and subjected her to forcible sexual intercourse at pistol point. While leaving, he threatened the prosecutrix that in case, she reported the matter to anyone, he would eliminate her. The FIR was registered on the statement made by the prosecutrix before SI Sharif Singh, who along with Constable Phool Kumar was on patrol duty and present at N.F.L. Gate, G. T. Road, Panipat. During the investigation of the case, the appellant was arrested on 21.4.2003 and on his personal search one country made pistol of .315 bore was recovered from his right dub and one live cartridge recovered from the right pocket of his shirt.

The trial Court, after going through the evidence and hearing the learned counsel for the parties, acquitted the appellant of the charges under Sections 384, 452, 376 and 506 IPC but convicted and sentenced him under Section 25 of the Arms Act, 1959, as mentioned above.

Having heard learned counsel for the parties and on going through the record, this Court finds that the conviction of

the appellant under Section 25 of the Arms Act cannot be sustained for the reasons that there is no independent corroboration to the case of the prosecution qua the recovery of the weapon and live cartridge from the appellant. PW4 HC Suresh Kumar, who was accompanying SI Sharif Singh at the time when the appellant was apprehended, testified that the place from where the appellant was arrested was New Police Lines which were under construction and a number of workers were present there. He could not state as to whether SI Sharif Singh had called any independent witness to join the investigation. He also could not state as to whose fields were nearby the New Police Lines. From these circumstances, it is made out that there was no dearth of independent witness but for the reasons best known to the Investigating Officer, no independent witness was directed to join the proceedings regarding recovery of the fire arm. It may also be noticed here that SI Sharif Singh was cited as a witness in the list appended with the final report under Section 173 Cr.P.C., being the most crucial witness as he happened to be the Investigating Officer. On going through the *zimni* orders passed by the trial Court, it is made out that summons issued to SI Sharif Singh were received back with the request that he had met with an accident and admitted in General

Hospital, Karnal, thus, unable to attend the Court. On 20.1.2014, the learned Public Prosecutor gave up PW SI Sharif Singh Investigating Officer on account of his illness and closed the prosecution evidence. In case, SI Sharif Singh was not in a position to appear before the trial Court, the learned Public Prosecutor could have made an attempt to examine him on commission. From the interim orders, it appears that no steps in that regard were taken by the learned Public Prosecutor. Rather, the learned Public Prosecutor proceeded to give up SI Sharif Singh. In the process, the defence lost its valuable right to cross-examine SI Sharif Singh and bring on record evidence to establish the plea of the innocence of the appellant. Fact remains that qua the recovery of the weapon and the live cartridge, the prosecution is relying upon the sole testimony of PW4 HC Suresh Kumar which is not corroborated by any other police officials or by any independent witness.

The alleged recovery of the pistol and live cartridge was effected on 21.4.2003. The pistol and the live cartridge were converted into separate parcels and, subsequently, sent to the Forensic Science Laboratory for their examination. Vide report dated 22.8.2003 (Ex.PX), the Senior Scientific Officer (Ballistics)-cum-ex officio Assistant Chemical Examiner to the

Government of Haryana opined that the country made pistol chambered for .38” cartridges, was a firearm, as defined in Arms Act 54 of 1959 and its firing mechanism was in working order. Before 22.8.2003, the prosecution did not have any material, from which, it could be inferred that the weapon recovered was a pistol or a firearm as defined in the Arms Act or its firing mechanism was in working order. Despite the same, in order to prosecute the appellant under Section 25 of the Arms Act, the prosecution had obtained an order of sanction from the District Magistrate, Panipat, on 17.7.2003 itself. This fact has come on the record by way of testimony of PW8 Om Parkash, Ahlmad to District Magistrate, Panipat, who after identifying the signatures of the District Magistrate, proved the sanction order Ex.PJ. As on 17.7.2003, there was no material on the record that the article recovered from the appellant was firearm. Thus, the sanction order passed by the District Magistrate was not in order. Even otherwise, the prosecution has not examined any Armourer, who could opine about the article recovered from the appellant to be a firearm.

In the main case against the appellant, the prosecution had claimed that the appellant had committed rape upon the prosecutrix after pointing the pistol at her. However, the

prosecutrix, who was examined by the prosecution as PW2 did not support the prosecution case at all. On the other hand, she testified that the appellant was not the one, who had raped her against her wishes. Similar was the position with her brother PW3 Sanjay, who testified that he never found the appellant present in the house of his sister.

In view of the above, it will not be safe to uphold the impugned judgment of conviction and order of sentence.

Resultantly, the appeal is accepted and the appellant acquitted of the charge against him. The amount of fine, if deposited by the appellant, be refunded to him.

**March 16, 2016**  
amit rana

**( T.P.S. MANN )**  
**JUDGE**