

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

Crl. Appeal S-519-SB of 2004
Date of Decision : August 05, 2016

Khushi Ram and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Sudhir Sharma, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana

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

Convicts Khushi Ram son of Hari Chand and Rajesh son of Daya Kishan, who have filed Criminal Appeal S-519-SB of 2004 and convict Shamsher Singh, who has filed Criminal Appeal S-636-SB of 2004 alongwith Naresh Kumar, Bajinder Singh, Suresh, Ishwar Singh, Mukesh, Parveen Kumar and Kuldeep were tried for committing the offences punishable under Sections 395/397/224/225/307/353/324/120-B IPC and Section 25 of the Arms Act. During the trial of the case, accused Kuldeep died and, accordingly, proceedings against him came to an end. Similarly, accused Naresh Kumar did not appear and was declared a

proclaimed offender. Vide judgment and order dated 28.1.2004, learned Additional Sessions Judge, Karnal acquitted Suresh, Ishwar Singh, Mukesh and Parveen Kumar of the charges against them. The aforementioned three convicts as well as Bajinder Singh were convicted under Sections 307/120-B IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were further convicted under Sections 225/120-B IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. They were further convicted under Sections 353/120-B IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month. They were also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month. All the sentences were ordered to run concurrently. The period of detention already undergone by them during investigation and trial was ordered to be set off towards the substantive sentences awarded to them.

Aggrieved of their conviction and sentences, the

aforementioned appellants filed their respective appeals. Their co-convict Bajinder Singh also preferred an appeal against his conviction and sentence but the same stood disposed of as having abated vide judgment dated 7.9.2015.

The case of the prosecution has been noticed by the learned trial Court in para 3 of its judgment which is reproduced here-below:-

“The case of the prosecution, in brief, is that on 21.1.2001, ASI Mohinder Singh, Head Constables Balbir Singh and Raj Kumar from Police Line, Sonipat, had come to Ambala for bringing the under trial prisoners Rohtash and Satbir from Central Jail, Ambala, to be produced before the Additional Chief Judicial Magistrate, Sonipat on 22.1.2001. In the morning hours, on 22.1.2001 the above named police party, while taking the custody of the above named under trial prisoners from the Jail, was standing in front of Central Jail, Ambala in wait for some conveyance. In the mean while, a tempo traveller bearing registration No. DL-1CB-6553 came with passengers and stopped near the police party. The police party boarded the said vehicle alongwith the accused. When the said vehicle reached at bus stand, Pipli, Kurukshetra, the said vehicle developed some defects and its driver asked the police party to take another vehicle for its onward journey to Sonipat and whereupon, one of its occupants, who was called by the name of Kuldeep, had arranged another vehicle known as

Tata Sumo, bearing No. HR-58-T-0113, from there. Six passengers of the tempo alongwith the police party and accused had boarded the said vehicle and which was being driven by its driver Prem Chand. When the said vehicle reached at "Bastara" chowk, two of its passengers took out a pistol and at the pistol point, asked driver of the Tata Sumo to take a turn towards village Rasin and the other passengers of the vehicle started grappling with the police party in order to get the above named under trial prisoners, namely, Rohtash and Satbir free from them and ultimately they become successful in getting the accused released from the police party, though those persons were chased by the police party at some distance. And during this process of chasing one of those boys had asked Kuldeep to fire upon the police party and whereupon, said boy had fired a shot upon Mohinder Singh ASI and which had hit him on his left leg. Even the service revolver of ASI Mohinder Singh was taken away by those persons. The injured was taken to the hospital and on the statement of HC Balbir Singh, this case was registered and investigated. Accused Shamsher Singh, Khushi Ram, Rajesh and Bajinder Singh were interrogated and who made their disclosure statements and, in furtherance of their statements, they also got recovered arms and which were taken into custody. Thus, the above named accused alongwith Rohtash, Kuldeep, Sham and Satbir (proclaimed offenders) were found to be guilty for the same and, therefore, after obtaining sanction of District Magistrate for prosecution granted under

Section 25 of the Arms Act and after completion of investigation, the first challan was committed vide order dated 18.5.2001 whereas the second challan was committed vide order dated 31.10.2001 and thereafter both the challans were sent to this Court for trial of the accused.”

Having heard learned counsel for the parties and on going through the impugned judgment of conviction and sentence passed by the trial Court as well as the records of the case, this Court finds that the conviction of the appellants is well merited. The prosecution has led sufficient evidence in order to prove the various charges for which the appellants stood convicted. Under these circumstances, no case is made out for any interference in their conviction, as recorded by the learned trial Court.

Coming to the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than fifteen years. Further, no specific role of causing of any injury was attributed to the three appellants. According to the prosecution, it was on the exhortation of accused Rohtash, since declared a proclaimed offender that Kuldeep accused had fired a shot, which hit ASI Mohinder Singh on his left leg. General allegations were levelled that all the accused had grappled with the police party and taken away the service revolver of said ASI Mohinder Singh. When the appellants were heard by the trial Court on the quantum of

sentence, they had pleaded that they were having families consisting of old parents, younger brothers and sisters. They were the sole bread winners of their respective families. Further, they were not previous convicts.

As per the custody certificates already placed on record by the learned State counsel, Khushi Ram appellant had undergone a total sentence of two years, one month and twenty two days, Rajesh appellant has undergone two years, eight months and three days whereas Shamsheer Singh appellant has undergone one year, eleven months and twenty eight days. None of them is shown to be involved or convicted in any other case. They are presently on bail for the last about 11/12 years. There is no allegation that during the pendency of the appeals, they have misused the concession in any manner.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again for undergoing their remaining sentences of imprisonment. Ends of justice would be suitably met, if their substantive sentences of imprisonment on all the counts are reduced to the one already undergone by them. At the same time, the fine of Rs. 1,000/- imposed upon the appellants for the offences under Sections 307/120-B IPC can be enhanced.

Resultantly, the conviction of the appellants, namely,

Khushi Ram, Rajesh and Shamsheer Singh, as recorded by the trial Court is upheld and their substantive sentences of imprisonment on all the counts are reduced to the one already undergone by them. The fine imposed upon the appellants for the offences under Sections 225/120-B, 353/120-B IPC and Section 25 of the Arms Act alongwith their default clauses are maintained. However, the fine of Rs. 1,000/- imposed upon the appellants for the offences under Sections 307/120-B IPC is enhanced to Rs.20,000/- each. The entire amount of fine be deposited by the appellants with the trial Court within three months from today. In case, the appellants fail to deposit the same, they shall be required to undergo rigorous imprisonment for one year under Sections 307/120-B IPC. 50% of the amount of fine, when recovered from the appellants, be disbursed to ASI Mohinder Singh, as compensation.

Criminal Appeal S-519-SB of 2004 filed by Khushi Ram and Rajesh and Criminal Appeal S-636-SB of 2004 filed by Shamsheer Singh are, accordingly, disposed of.

August 05, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No