

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CRA-S-621-SB of 2004 (O&M).
Date of Decision: 20.10.2016.**

SATNAM SINGH @ SATTU

....APPELLANT.

VERSUS

STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Navjeet Singh, Advocate for the appellant.

Mrs. Aditi Girdhar, Legal Aid Counsel.

Mr. Neeraj Sharma, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Satnam Singh @ Sattu assailing the judgment of conviction and order of sentence dated 21.02.2004 recorded by learned Additional Sessions Judge (Adhoc) Fast Track Court, Ludhiana, in case bearing First Information Report No.12 dated 07.01.2001 under Section 25 of the Arms Act, 1959 (for short “the Act”) registered at Police Station Jagraon.

As per story of the prosecution, the appellant alongwith some other persons was apprehended on 07.01.2001 by the police party headed by ASI Harbans Singh while acting under the directions of Inspector Baldev Singh, S.H.O., Police Station Jagraon, who alongwith his official companions had conducted a raid in pursuance of the secret information received by him that the appellant and his companions, armed with deadly

weapons, were present near drain bridge of village Sohian and were making preparation to commit decoity. A case vide First Information Report No.7 dated 07.01.2001 under Sections 399/402 of the Indian Penal Code (for short, "IPC") had been registered against the appellant and his co-accomplices at Police Station Jagraon. After arrest personal search of the appellant was taken by ASI Harbans Singh and a .32 bore countrymade pistol was recovered. On unloading the pistol, a live cartridge of the same bore was taken out. On further personal search of the appellant, three live cartridges of the same bore were recovered from the trouser worn by him. The case property was packed in a sealed parcel and was taken in possession and the instant case under Section 25 of the Act, 1959 was got registered against the appellant.

On completion of investigation and other formalities, the appellant was challaned and sent to the Court for trial.

The appellant was charge-sheeted under Section 25 of the Act, to which he pleaded not guilty and claimed trial. The prosecution examined as many as six witnesses. After closure of evidence of the prosecution, statement of the appellant under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") were recorded by putting to him the incriminating evidence available on record. He pleaded innocence and false implication.

Analyzing the evidence available on record and the submissions made by learned Addl. Public Prosecutor and learned counsel representing the appellant, learned trial Court convicted and sentenced the appellant to undergo rigorous imprisonment for one year and to pay a fine of

Act. In default of payment of fine, he was to further undergo R.I. for three months.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 21.02.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Navjeet Singh, learned counsel representing the appellant, Mrs. Aditi Girdhar, legal aid counsel and Mr. Neeraj Sharma, Assistant Advocate General for the State of Punjab have been heard and record perused.

At the very outset, learned counsel for the appellant submitted that the appellant and his co-accused, against whom the allegation of the prosecution was that they were making preparation for committing decoity when they were apprehended by the police party and a case vide First Information Report No.7 dated 07.01.2001 under Sections 399/402 IPC was registered against them at Police Station Jagraon, were acquitted of the said charges by learned Fast Track Court, Ludhiana on 20.02.2004. Learned State counsel conceded the aforesaid fact of acquittal of the appellant in case under Section 399/402 IPC and produced certified copy of the judgment dated 20.02.2004 of learned Fast Track Court, Ludhiana passed in the said case. Admittedly, no appeal was preferred by the State against the said judgment.

Acquittal of the appellant indicates that the story of the prosecution, as presented by it leading to arrest of the appellant and his co-accused, was not believed by the trial Court in the case registered under Section 399/402 IPC and therefore, giving the accused in that case the

Inspector Baldev Singh, S.H.O., Police Station Jagraon, on receipt of a secret information that the appellant and his co-accused named in First Information Report No.7 dated 07.01.2001, were present near drain bridge of village Sohian and being armed with deadly weapons were making preparations to commit decoity was held to be doubtful. When the facts and circumstances in which the appellant was alleged to have been arrested were found to be untrustworthy, the story of recovery of the fire arm from the appellant during that occurrence can also not be said to be free of doubt.

Otherwise also, the case of the prosecution is full of infirmities which leave no scope to rely on the testimony of the police officials on whom alone the case of the prosecution rested. PW6 Sub Inspector Harbans Singh was alleged to have taken personal search of the appellant in the presence of PW1 Head Constable Sukhwinder Singh, when allegedly a .32 bore countrymade pistol loaded with a live cartridge of the same bore and three other live cartridges of .32 bore were recovered from the appellant. PW1 Head Constable Sukhwinder Singh stated that he was posted in Police Post Hathur which was under Police Station Sadar, Jagraon when he was called to join the police party by the S.H.O. On the contrary, PW6 Sub Inspector Harbans Singh very categorically stated that no police official except for officials from Police Post Chowkiman were called. In his statement, he also did not mention that he had apprehended the appellant and had taken his personal search in the presence of PW1 Head Constable Sukhwinder Singh. It is also not in his statement that the recovery memo Ex.PW6/A prepared by him was attested by Head Constable Sukhwinder Singh. In other words, from the statement of PW6 S.I. Harbans Singh the

occurrence becomes doubtful.

The presence of PW1 Head Constable Sukhwinder Singh is doubtful not only because of omission of his name in the statement of PW6 Sub Inspector Harbans Singh but also from his own statement. He stated that the constable, who had taken the ruka for getting the First Information Report registered, had returned at the spot at about 9:30 p.m. whereas PW6 Sub Inspector Harbans Singh stated that the constable, who took the ruka, returned at the spot at 7:00 p.m. PW1 could not state the source of light in which the writing work was done during the night time. On the other hand, PW6 stated that the writing work was done by him upto 7:00 p.m. during day light itself. Apart from there being strong inconsistency in the statement of PW1 and PW6, the statement of PW6 is also untrustworthy for the reason that the occurrence had taken place in the month of January when it is winter season and it becomes dark even at 5:30 p.m. So he could not have done the paper work during daylight.

The identity of the weapon recovered could also not be established by the prosecution. PW6 stated that he packed the recovered pistol and the live cartridges in a sealed parcel but as per his own admission he neither kept a sample seal nor mentioned in the ruka the name of the witness to whom the seal after use had been handed over. It means his version of preparing a sealed parcel of the recovered weapons was not true.

In addition to the above, it needs to be mentioned that PW6 admitted that the police party had travelled to the spot in a blue coloured Tata-407 which was brought by the MHC from Jagraon Tempo Union. His statement clearly implies that the vehicle in which the police party had come

was present with the police party at the spot. However, neither the driver nor any other person from the adjoining area was joined in investigation. In the given facts, it is indeed not safe to rely on the solitary testimony of the police officials.

As a consequence to the above discussion, I conclude that the evidence of the prosecution is not at all consistent, cogent and worth reliance. Finding that the prosecution had failed to prove its charge against the appellant, the appeal is accepted, the judgment of conviction and order of sentence dated 21.02.2004 recorded against the appellant are set aside and the appellant stands acquitted of the charge levelled against him. His bail/surety bonds stand discharged.

(SNEH PRASHAR)
JUDGE

20.10.2016.
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	No