

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

**CRA-S-752-SB of 2004.
Date of Decision: 07.12.2016.**

FARRUKAPPELLANT.

VERSUS

STATE OF HARYANARESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Sachin Mittal, Advocate for the appellant.

Mr. Surender Pal Singh, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

Appellant Farukh was held guilty, convicted and sentenced for commission of offence punishable under Section 25 of the Arms Act, 1959 (for short “the Act”) vide judgment of conviction dated 10.03.2004 and order of sentence dated 11.03.2004 recorded by learned Additional Sessions Judge, Gurgaon, in case based on First Information Report No.135 dated 24.04.2002 registered at Police Station Punhana.

Precisely, the story of the prosecution was that on 23.04.2002 at about 10:30 p.m., complainant Lukman, being the conductor alongwith his brother Ahmad, who was the driver, after loading 180 bags of mustard

belonging to one Dinesh in truck No.HR-38B-2858 owned by Baljit Singh,

had started from Sikri (Rajasthan) for Delhi. At about 12:30 in the night, when they were going from Dondal to Manota, they were forced to stop by a white Maruti car, out of which one person alighted from the rear seat and asked them to give a screw driver and in the meantime other occupants of the car except the driver also got down. Two out of the said persons dragged the complainant from the truck and another, who was wearing red shirt, put a countrymade pistol on the ear pit of Ahmad and dragged him from the driver seat. They were belaboured with a threat of being killed in case they raised shouts. Three of the assailants took the truck towards village Manota and the other two including the person wearing red shirt, forcibly made the complainant and Ahmad to sit in the car and they were taken to the fields at a distance of 3 killas and were pushed out of the car. Their person was searched and Rs.100/- were snatched from the complainant. After tying their hands and legs they were left and the assailants fled in their car towards village Manota hurling threatenings.

In the morning, the passersby being attracted by their alarm came and untied them. The driver (Ahmad) went to inform the truck owner and the complainant reported the matter to the police. On the basis of the statement of the complainant, a formal First Information Report (Ex.PC/1) was registered. During investigation, on 11.05.2002 the truck in question loaded with 180 bags of mustard alongwith accused Hakam was captured but the remaining assailants succeeded in escaping. Ultimately, after arrest of all the accused and after completion of investigation, final report under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") was presented before the Court for trial.

The appellant alongwith other accused was charge-sheeted under Section 395 read with Section 397 of the Indian Penal Code (for short, "IPC") and the appellant was also charge-sheeted under Section 25 of the Act, to which they pleaded not guilty. The trial was completed in due process of law. Considering the evidence led by the prosecution and in defence by the appellant-accused and the submissions made on their behalf, learned trial Court acquitted the appellant-accused under Section 395 read with Section 397 IPC, but convicted the appellant under Section 25 of the Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

Feeling aggrieved by the impugned judgment of conviction dated 10.03.2004 and order of sentence dated 11.03.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Sachin Mittal, learned counsel representing the appellant and Mr. Surender Pal Singh, Deputy Advocate General for the State of Haryana have been heard and record perused.

As per allegation of the prosecution, the appellant alongwith his companions committed dacoity by snatching a truck loaded with 180 bags of mustard from the complainant and at the time of dacoity the appellant was armed with a countrymade pistol of 315 bore with one live cartridge of the same bore. A First Information Report No.135 dated 24.04.2002 under Section 395 read with Section 397 IPC and Section 25 of the Act was registered against the appellant and his co-accused. After trial of the case, the accused including the appellant were acquitted of the charges levelled against them under Section 395 and 397 IPC. In other

words, the testimony of the police officials, on whom rested the main allegation of the prosecution for which the appellant was apprehended, was disbelieved by the Court. In other words, the story that the appellant alongwith his companions committed dacoity on pistol point was held to be not trustworthy. Therefore, the allegation that a countrymade pistol was recovered from the appellant at the time of his arrest is also not free of shadow of doubt.

In addition to the above, it is the case of the prosecution that the police party reached village Manota at about 3:00/4:00 p.m. and received a secret information, which led to arrest of the appellant from a tea shop in the village. Needless to say that at such hour of the day it was not difficult for the police to join some independent public witness at the time of taking personal search of the appellant after his arrest. PW3 Constable Parhlad Singh explained that they tried to join independent witness but nobody came forward, whereas PW12 Sub Inspector Narender Singh, the Investigation Officer stated that there was no other person present at the tea shop. However, it could not be denied that the shopkeeper was present and available to the police and was a natural eyewitness to arrest etc. of the appellant. No explanation was given for not joining him in investigation. The contradictory explanation of the witnesses only shows that independent public witnesses were available to the police but they were intentionally not joined in investigation. On this ground also, the testimony of the police officials is rendered doubtful.

Otherwise also, from the evidence adduced by the prosecution a strong doubt arises with regard to recovery as well as identity of the case

the same bore from the appellant. PW4 Head Constable Mahabir Singh (Armourer), who mechanically tested the pistol admitted in his cross-examination that the weapon was not in a sealed cover when it was produced before him for testing. He also admitted that there was no seal affixed on the pistol or on the cartridge as an identification mark. PW12 Narender Singh was the Investigation Officer who arrested the appellant on 26.09.2002. He stated that the pistol loaded with a live cartridge was recovered from his possession. It is not in his statement that the weapon recovered from the appellant was packed by him in a sealed parcel and a slip containing all the required particulars of the case of which it was the case property, was affixed on the pistol. His inaction to comply with the process of law not only raises a doubt about recovery but also makes it doubtful that the weapon produced for mechanical examination before the Armourer was the same, if at all it was recovered from the appellant.

It is further important to mention that it has come in the statement of PW11 Balbir Singh, Reader to D.M., Gurgaon that the weapons i.e. the pistol and the accused were not produced before the District Magistrate at the time of grant of sanction for prosecution of the appellant under the Arms Act. PW11 stated that only on the basis of the police file and the challan papers produced by the Investigation Officer, the sanction was granted by the District Magistrate. Needless to say that the sanction given in such a casual manner had no value in the eyes of law.

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 under

appeal is accepted, the judgment of conviction dated 10.03.2004 and order of sentence dated 11.03.2004 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

07.12.2016.
jitender sharma

Whether speaking/ reasoned :	Yes
Whether Reportable :	No