

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

CRA-D-1775-DB-2014

Date of decision :January 28, 2016

Ram Chander

.....Appellant

Versus

State of Haryana & Others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Deepak Choudhary, Advocate
for the appellant.

GURMIT RAM, J.

1. This appeal is preferred by the abovesaid appellant (complainant) against the judgment dated 16.07.2014 passed by the Court of learned Sessions Judge, Fatehabad in criminal case bearing FIR No.195 dated 21.09.2012 under Section 307 read with Section 34 of the Indian Penal Code ("IPC"-for short) and Section 25 of the Arms Act, 1959, Police Station Bhuna vide which the accused Virender @ Binder and Kulbir @ Bablu (respondents No.2 and 3 herein) were acquitted of the charges framed against them in this case by granting them benefit of doubt.

2. The case of prosecution before the learned trial Court in brief was that on 15.09.2012, complainant-Ram Chander presented an application

Ex.P4 before the police of Police Station Bhuna. This application was to the effect that complainant is owning four acres of land adjacent to road situated nearby village Dehman. He is keeping his residence in his said land by raising construction of a house, whereas his other entire family has been residing in the village. He is also running a poultry farm in his said land. Yesterday at about 7/7:30 p.m., his son Baban came to him for calling him to take dinner. When he just proceeded to his house for taking dinner, then from the opposite side there came one Maruti car in which Virender @ Binder, Kulbir @ Bablu, Sher Singh @ Dariya Singh and one more person were sitting. They struck one side of their vehicle against him and attempted to crush him. He saved his life by jumping into pit. Then this vehicle stopped and abovesaid Virender @ Binder and Kulbir @ Bablu alighted from the vehicle. Virender @ Binder who was armed with a pistol fired a shot upon him with intention to kill him, but it did not hit him. They also uttered that they will tell him as to how to depose in the Court. On raising alarm by his son Baban, abovesaid two persons ran away from the spot. They did not come out of the house throughout the night due to fear. Today he consulted the matter with his entire family and presented the said application for taking legal action against abovesaid Virender @ Binder and others.

On receipt of this application, ASI Devi Lal visited the spot of alleged occurrence, but no witness corroborating the version of complainant was found. On verification, it was found that cases are pending between both the parties. The subject matter of this application was found to be susceptible and as such, a DDR was recorded in the Police Station, Bhuna.

On further verification accused Virender @ Binder and Kulbir @ Bablu

abovesaid were found involved in the alleged occurrence. So the instant case was registered against them. Site plan of the spot of occurrence was prepared after inspecting the same. Statements of witnesses were recorded. Accused Virender @ Binder was apprehended in this case on 02.10.2012. During interrogation, he suffered disclosure statement regarding his own involvement as well as of accused Kulbir Singh @ Bablu in the alleged occurrence. Further he also deposed that after the alleged occurrence, he got concealed a .315 bore country-made pistol used in this occurrence and an empty shell of same bore in his residential house of which he had exclusive knowledge. Further he also disclosed that he had kept concealed a Maruti car used in this occurrence in the cattle yard of his house. Thereafter, he led the police party to the disclosed places and got recovered abovesaid country-made pistol and empty shell of .315 bore as well as the Maruti car by making demarcation as per his disclosure statement. The recovered pistol and empty shell were converted into a parcel and the same was taken into police possession vide a memo. Maruti car was also taken into police possession vide a different memo. Accused Kulbir @ Bablu was apprehended in this case on 14.10.2012. He also suffered a disclosure statement during interrogation regarding his own involvement as well as of his co-accused Binder in the alleged occurrence. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, who further committed the same to the Court of learned Sessions Judge, Fatehabad for trial after making compliance of the provisions of Section 207, Cr.P.C..

3. Finding a prima facie case punishable under Section 307 read with Section 34, IPC and Section 25 of the Arms Act against the accused,

they were charge-sheeted accordingly to which they pleaded not guilty and claimed trial.

4. During trial of the case, the prosecution examined as many as eleven witnesses in all to prove its version.

5. Then both the accused were duly examined as per provisions of Section 313, Cr.P.C. and they denied the entire incriminating evidence brought against them during trial of the case. Further they pleaded their innocence and false implication in this case at the instance of the complainant in connivance with the police.

6. The learned trial Court after hearing learned counsel for both the parties and going through the record as well acquitted both the accused of the charges under Section 307 read with Section 34, IPC and Section 25 of the Arms Act by giving them benefit of doubt vide the impugned judgment.

7. The complainant being not satisfied with the impugned judgment has come up with the instant appeal before this Court. Record of learned trial Court was also requisitioned. Learned counsel for the complainant was heard. Record was also perused with his assistance.

8. Learned counsel for the appellant has contended that both PW-4 Ram Chander-complainant and PW-6 Baban eye-witnesses of the alleged occurrence had deposed consistently that both the accused (respondents No.2 and 3 herein) had tried to run their Maruti car over the appellant with an intention to kill him (Ram Chander-complainant), but learned trial Court has miserably failed to appreciate this fact correctly and properly. The learned trial Court acquitted both the said respondents on the basis of mere conjectures and surmises and as such, the impugned judgment qua their

acquittal is not tenable in the eyes of law. Then it is also his contention that alleged country-made .315 bore pistol and an empty shell of same bore allegedly used in the commission of crime were got recovered by accused Virender @ Binder as per his disclosure statements and as such, the same could have been used against present respondents No.2 and 3 for holding them guilty in this case. Then he also referred to the report of Forensic Science Laboratory Ex.P26 wherein it was reported that on examination, the alleged pistol was found to be in working order and the alleged cartridge was fired from this pistol and not from any other fire arm.

9. Now we deem it proper to have a glance of the prosecution evidence in brief for the proper appreciation of above contentions of learned counsel for the appellant.

In this connection, complainant-Ram Chander (PW4) deposed that on 14.09.2012 at about 7/7:30 p.m. he was going to his house for taking dinner, there came a Maruti car from the side of village, in which Binder, Bablu and Sher Singh alongwith one unidentified person were sitting. The driver of this Maruti car struck the same to him and attempted to run over him. He got rescued himself by jumping into a pit. When this vehicle stopped at the distance of about 20 paces, then accused Binder and Bablu came out of it. Binder, who was armed with a revolver fired a shot upon him with an intention to kill him, which anyhow did not hit him since he laid down in the pit. Said accused persons (now respondents No.2 & 3) also uttered that they will teach them a lesson for deposing in the Court, since there were many cases pending between both the parties. This incident was witnessed by Baban son of the complainant. On the next day, complainant (appellant) presented application Ex.P4 before the Police for taking action

against the aforesaid assailants.

Son of the complainant namely Baban appeared as PW-6 who also supported the version of prosecution as narrated by his father Ram-Chander (PW-4).

SI Pardeep Kumar was the Investigating Officer in this case, who appeared as PW-11. On the relevant date, he was posted as SHO, Police Station Bhuna. On verification, he found the version of complaint true against accused Virender @ Binder and Kulbir @ Bablu (now respondents No.2 and 3). He made his endorsement Ex.P22 on the DDR No.27 dated 15.09.2012 on the basis of which FIR Ex.P23 was recorded. He also visited the spot of occurrence and prepared rough site plan Ex.P25. Further he arrested accused Virender @ Binder on 02.10.2012, who during interrogation suffered disclosure statement Ex.P14 regarding concealment of one country-made pistol .315 bore and one live cartridge in a room of his residential house and of one Maruti 800 vehicle parked in the cattle yard near his house. Thereafter he led the police party as per his disclosure statement and got recovered one .315 bore country-made pistol alongwith one live cartridge. The rough sketch Ex.P15 of country-made pistol was prepared. Then he also proved the recovery memo Ex.P16 vide which said pistol, live cartridge and Maruti car were taken into police possession. Ex.P18 was the rough site plan of the place of this recovery and Ex.P21 was registration certificate of this maruti car. Then he also stated that the arrest of accused Kulbir Singh @ Bablu was made on 14.10.2012, who suffered his disclosure statement Ex.P9 during interrogation regarding his involvement in the present occurrence. Further he obtained the sanction order under Section 39 of the Arms Act from District Magistrate and

recorded the statements of witnesses under Section 161, Cr.P.C.. On completion of investigation, he prepared the report under Section 173, Cr.P.C..

As per statement of PW-3 Bhavnesh Kumar, Reader to District Magistrate, Fatehabad sanction order Ex.P3 was passed by the District Magistrate, Fatehabad on 30.11.2012 for prosecution of accused Virender @ Binder for the offence punishable under Section 25 of the Arms Act.

Then as per the affidavit Ex.P11 of HC Rajpal Singh PW-8, he was posted as MHC in Police Station Bhuna on 27.11.2012 and on that date, he handed over one duly sealed parcel of .315 bore pistol and an empty shell of the same bore to EHC Bhadar No.617 for depositing the same in the office of Forensic Science Laboratory, Madhuban.

Abovesaid EHC Bhadar Singh No.617 appeared as PW-2 and tendered his affidavit Ex.P2 as a part of his statement. Vide this affidavit, he also corroborated the fact that he received one duly sealed parcel containing .315 bore country-made pistol and an empty shell of the same from MHC Rajpal on 27.11.2012 and deposited the same in the office of DFSL Madhuban on the same date. Then after the examination, this laboratory submitted its report dated 28.01.2013 (Ex.P26), which also corroborated the fact that the country made pistol allegedly recovered in this case along with an empty shell of .315 bore was deposited in the office of this laboratory on 27.11.2012. So in the light of abvoesaid affidavits Ex.P11 and Ex.P2 of PW-8 and PW-2 respectively and report of FSL Ex.P26, it can safely be concluded that the country-made pistol of .315 bore allegedly used in this case remained in the custody of this Forensic Science Laboratory from 27.11.2012 onwards till 28.01.2013. So in this situation,

statement of PW-3 Bhavnes Kumar, Reader that SHO produced the pistol in question along with the case file before District Magistrate, Fatehabad for obtaining the sanction order Ex.P3 on dated 30.11.2012 does not seem to be correct one. It can also be concluded that the alleged recovered pistol of this case was never produced before District Magistrate at the time when the alleged sanction order Ex.P3 was obtained from him on 30.11.2012. If for arguments sake, the above statement of PW-3 is to be taken as true, then the abovesaid both the affidavits Ex.P2 and Ex.P11 as well as report Ex.P26 of Forensic Science Laboratory are to be held either as fabricated or procured one.

10. Then it was the case of prosecution that one country-made pistol of .315 bore and an empty shell of same were got recovered by accused Virender @ Binder as per his disclosure statement Ex.P14 and the same were taken into police possession vide a memo after converting the same into a parcel. Then PW-11 SI Pardeep Kumar the IO in this case had deposed that accused Virender @ Binder had got recovered the said country-made pistol along with one live cartridge of .315 bore. So his statement in this regard that accused got recovered a live cartridge of .315 bore is contrary to the story of prosecution, as it was the stand of prosecution from the very beginning that accused got recovered empty cartridge of .315 bore along with alleged country made pistol of .315 bore.

11. Then it was plea of the complainant as PW-4 that he saved his life by jumping into a pit. The depth of this pit as stated by him in his cross-examination was about 4/5 feet. It seems very strange that the complainant did not suffer any kind of injury while jumping into such a deep pit in order to save his life from the clutches of the accused.

12. Then in this case the alleged occurrence took place on 14.09.2012 at about 7/7:30 p.m. and the matter in this regard was reported to the police on the next date in the evening at about 4:30 p.m. vide application Ex.P4. So there was delay of 20/21 hours in lodging the report with the police qua this occurrence regarding which there was no explanation at all on the part of prosecution. Then it also came in the statement of PW-4 Ram Chander-complainant that before presenting the application Ex.P4 before the police, he consulted this matter with his entire family. So as such the possibility of false implication of accused (respondents No.2 and 3 herein) in this case after due deliberation and consultation cannot be ruled out.

13. Then motive as alleged by the prosecution behind this occurrence was that complainant Ram-Chander was the witness in the several cases stated to be pending against the accused (now respondents No.2 and 3 herein), but in his cross-examination as PW-4 he stated that he was not a witness in any of the said cases against said respondents. Then it is also to be noted that initially when application Ex.P4 was presented before the police by the complainant, then the genesis of alleged occurrence was found to be suspicious, since many cases were found to be pending between the complainant and aforesaid respondents. Then it also came in the cross-examination of PW-11 SI Pradeep Kumar that alleged Maruti car was not in the name of accused Virender @ Binder and Kulbir @ Bablu. He does not know as to who was the registered owner of this vehicle. So the fact as to how this vehicle came in the possession of accused remained as a mystery which fact was never investigated by the Investigating agency during the investigation of this case. Then registered

owner of this vehicle was neither associated during investigation of this case nor he was arrayed as an accused.

14. In the light of above discussion, there is nothing on record to warrant any kind of interference in the impugned judgment of trial Court. So this appeal is found to be meritless and as such it stands dismissed and disposed of accordingly.

Copy of this judgment be sent to the quarter concerned for information and compliance.

28.01.2016
Gaurav Sorot

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE