

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

CRA-S-683-SB of 2012 (O&M)
Date of decision: 09.03.2016

Pawan Kumar and another

....Appellants

Versus

State of Haryana

.... Respondent

CRA-S-648-SB of 2012 (O&M)

Dinesh Kumar and others

....Appellants

Versus

State of Haryana

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. KBS Mann, Advocate for the appellants
(in CRA-S-683-SB of 2012).

Ms. Sumanjeet Kaur, Advocate for the appellants
(in CRA-S-648-SB of 2012)

Mr. Vijesh Sharma, DAG, Haryana.

P.B. Bajanthri, J.

The appellants have questioned the validity of the sentence
passed in Sessions case No. 221 of 2010 dated 12.12.2011. The sentence is

as follows:-

<i>Name of Convict</i>	<i>Offence u/s</i>	<i>Imprisonment RI</i>	<i>Fine</i>	<i>Sentence in default of payment of fine, SI</i>
Pawan Kumar, Ravinder Kumar, Munish, Dinesh and Gaurav	307/149 IPC	5 years each	Rs.5000/- each	Six months each.
Pawan Kumar, Ravinder Kumar, Munish, Dinesh and Gaurav	25 of Arms Act, 1959	2 years each	Rs.2000/- each	02 months each.

2. Two FIRs were lodged, the present one bearing FIR No. 7 dated 19.01.2010 under Section 307 IPC and Section 25, 54 and 59 of the Arms Act Police Station Sadar Jagadhri and the 2nd one bearing FIR No. 9 dated 19.1.2010 under Section 302/307/148/149/465/468/471/506 IPC PS Chhachhrauli District Yamuna Nagar.

3. Brief story of the prosecution are that on 19.01.2010 SI/SHO Kuldeep Singh was present at police Station when VT was received from control room at police station that in the area of SHO PS Chhachhrauli some criminals had killed one person and inflicted injuries to another by shooting them and SHO Chhachhrauli is following them. The criminals are hiding themselves in the fields of village Chahro and are opening fire at the police. Upon this, SI/SHO Kuldeep Singh alongwith other police officials reached at the spot where Rajiv Miglani, SI/SHO PS Chhachhrauli was found present alongwith other police officials. In the meantime upon receipt SI/SHO P.S. Farakpur Shiv Charan Singh, SI/SHO Bilaspur Ran Singh, SI/SHO PS City Jagadhri Pawan Kumar alongwith other police officials also reached at the spot. Rajiv Miglani SI/SHO PS Chhachhrauli laid siege around the field of sugarcane and thereafter, SI/SHO Kuldeep Singh gave a warning to the criminals hiding inside the field that they had been

surrounded by the police from all sides and they should surrender before the police along with their weapons but despite that the criminals continued to fire from inside the fields. Thereafter, the police officials returned the fire and the exchange continued for about half an hour and thereafter, the firing stopped from inside the fields. In the meanwhile, persons from surrounding villages also assembled at the spot alongwith dandas and taking them along the police party commenced combing of the field and during combing with the help of these persons five persons were caught hold by the police whom the people gathered gave stone blows and upon asking the five persons disclosed their names as Pawan Kumar son of Om Parkash, Ravinder son of Rajbir, Gaurav @ Kala son of Rajbir, Dinesh son of Sat Narain and Munish @ Billu son of Sahab Singh. On their search, from accused Ravinder one country made pistol .12 bore alongwith 16 live cartridges were recovered, from accused Pawan one country made Mauser 9 mm and 3 live cartridges were recovered, from accused Dinesh Kumar one country made pistol .315 bore and two live cartridges were recovered, from accused Gaurav @ Kala one country made pistol .315 bore and two live cartridges were recovered, from accused Munish @ Billu one country made pistol .315 bore and two live cartridges were recovered. Separate sketches of pistols were prepared and the firearms alongwith ammunition were taken into police possession after sealing the same vide separate memos. Rukka was sent to the police station upon which instant FIR was registered against the accused persons. Investigation was conducted. Accused were arrested. Statements of witnesses u/s 161 Cr.P.C. were recorded. On completion of necessary investigation, challan was presented against above named accused in the court of competent jurisdiction, for their trial.

4. The Sessions Judge after perusal of evidence of PW3, PW4, PW5, PW7, PW8 and PW10 so also the version of PW1, PW2 and the FSL report Ex.PT, Ex.P6 to P18, 13 live cartridges and Ex.P22 to Ex.P32 13 used cartridges in convicting the appellants.

5. Learned counsel for the appellants vehemently contended that there were no injuries and there was no intention to murder or kill anyone and the intention was to avoid arrest from the police persons. Further it was argued that no independent witnesses were examined to support the prosecution case. All the witnesses examined are police persons. Therefore, convicting the appellants under Section 307 is incorrect. No ingredients have been brought on the record so as to convict the appellants under Section 307 IPC. Hence, sentencing them under 307 is to be set aside.

6. Learned State counsel submitted that appellants are hardcore criminals as is evident from various FIRs like FIR No. 568 dated 14.11.2013, FIR No. 9 dated 12.01.2008, FIR No.504 dated 16.12.2008, FIR No. 33 dated nil, 2009, FIR No. 09 dated 19.01.2010 and FIR No. 635 dated Nil, 2009. Therefore, the appellants are habitual offenders. Merely there was no injury on account of firing at police persons by country made pistol, intention of the appellants i.e. to kill police persons cannot be ruled out. The appellants were firing with the country made pistol indiscriminately shows that their intention to kill police persons. Hence, the Sessions Court rightly convicted and sentenced them under Section 307 read with Arms Act. He has also pointed out that appellants have not disputed their presence, arrest and recovery of country made pistols which were identified by PW10-Kuldeep Singh Investigating Officer. That apart

FSL report was also made available before the trial Court. In view of these factual aspects, contention of the appellants that no one was injured, there was no intention to kill or murder and non-examination of independent witness are not tenable and argued to not to interfere with the sentence.

7. Heard learned counsel for the parties.

8. The appellants have committed offence under Section 302 on 19.01.2010 for which FIR no. 9 on 19.01.2010 was filed and the same has attained finality in sentencing the appellants to life imprisonment. Arising out of the offence under Section 302 IPC, the police persons while making efforts to arrest the appellants, the appellants entered into sugarcane field and from there indiscriminately fired with country made pistols on the police persons. Fortunately, none of them were injured. The conduct of the appellants may be intention to kill the police persons or threatening them to go away from the place in order to escape from the police clutches. The prosecution no doubt proved that the appellants had threatened the police persons however, they have failed to prove that the appellants have committed offence under Section 307 IPC since motive/intention or knowledge of the appellants to kill police persons is not made out. Consequently, the appellants should have been convicted under Section 336 of IPC where the maximum sentence is imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both. However, the present appeals do not survive for consideration, since appellants have undergone actual sentence which are sufficient to meet Section 336 read with Section 25 of Arms Act, 1959. An extract of custody of each of the appellants who are in the prison are as follows:-

Sl.No.	Name of the appellant	Particulars	Years	Months	days
1	Pawan Kumar	Actual sentence undergone	4	4	11
		Earned remission	0	7	18
		Actual sentence (with remission)	4	11	29
2	Ravinder Kumar	Actual sentence undergone	4	6	15
		Earned remission	0	5	15
		Actual sentence (with remission)	5	0	0
3	Dinesh Kumar	Actual sentence undergone	4	7	27
		Earned remission	0	4	2
		Actual sentence (with remission)	4	11	29
4	Munish @ Billu	Actual sentence undergone	4	10	1
		Earned remission	0	1	29
		Actual sentence (with remission)	5	0	0
5	Gaurav @ Kala	Actual sentence undergone	4	4	5
		Earned remission	0	7	24
		Actual sentence (including remission)	4	11	29

9. In view of these facts and circumstances, the sentence ordered by the trial Court is modified from 307 to 336 IPC read with Section 25 of the Arms Act, 1959. Since appellants were convicted for life in FIR No. 9 dated 19.01.2010 on 10.02.2014 by Additional Sessions Judge, Yamuna Nagar, Jagadhari and the appellants are undergoing sentence in the FIR No. 9 dated 19.01.2010. The appellants intends to file application for the purpose of sentences to run concurrently, since the FIR No. 7 and FIR No. 9 dated 19.01.2010 are inter-connected. If such application is filed, the same would be considered by competent court.

10. In view of the facts and circumstances, the appeals are disposed of.

(P.B.BAJANTHRI)
JUDGE

09 March, 2016