

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

Criminal Appeal S-276-SB of 2003

Date of Decision : November 30, 2016

Mandeep		Appellant
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Jitender Dhanda, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J.

This appeal has been filed by Mandeep against the judgment and order dated 18/22.1.2003 passed by learned Additional Sessions Judge (Adhoc) Hisar.

Vide impugned judgment and order, learned trial Court convicted the appellant under Section 307 IPC and sentenced him to undergo rigorous imprisonment for four years and to pay a fine of Rs.500/- and in default of payment fine, to suffer further rigorous imprisonment for six months. He was also convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years. The substantive sentences of imprisonment were ordered to run concurrently.

According to the prosecution, on 17.11.2000 complainant Rajesh Punia submitted an application to the police stating therein that on that day at about 5.00 p.m., he was coming on motor-cycle from Hisar to his house in village Satrod Khurd.

On the way, near the village school, the appellant alongwith two companions was seen standing. When he reached near them, the appellant picked up his gun and fired a shot, which went passed his shoulder. When the appellant tried to fire the second shot, one of his companions caught hold of him and, thus, the second shot went in the air. Consequently, the complainant was saved. The appellant had fired shots at him in order to commit his murder. The appellant had also telephoned at his house to know as to when he was expected to reach there. However, he waylaid him in order to murder him. At that time, Dharam Pal of village Satrod Khurd and many other persons were playing cards there. Apprehending danger to his life, the complainant prayed that he be protected and the case be registered against the culprits.

On the basis of the application submitted by the complainant, DDR No. 16 dated 17.11.2000 at 7.30 p.m., was incorporated. Subsequently, the police after due verification registered FIR No. 886 dated 19.11.2000 at Police Station Sadar Hisar, under Sections 285/506/307 IPC.

It is also the case of the prosecution that Assistant Sub-Inspector Kanwal Singh visited the place of occurrence on 21.11.2000 and inspected the same. He then went to the bus stand from where the appellant was arrested and the double barrel gun, two empty cartridges and two live cartridges were recovered from him. Statements of various witnesses were recorded. The scaled site plan of the place of occurrence was prepared by Raju, Draftsman and on

completion of investigation, final report under Section 173 Cr.P.C. was submitted. The case was, thereafter, committed to the Court of Sessions, where the appellant was charged for the offences under Sections 307 and 506 IPC and also under Section 27 of the Arms Act, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses.

PW1 Head Constable Hans Raj and PW3 Constable Kulbir Singh, who were formal witnesses, tendered in evidence their respective affidavits.

PW2 Raju, Draftsman, proved the scaled site plan of the place of occurrence prepared by him.

PW4 Sub-Inspector Ami Chand testified regarding registration of formal FIR.

PW5 Head Constable Om Parkash proved the copy of DDR No. 16 dated 17.11.2000.

PW6 Nar Singh, Licence Clerk, proved arms licence in the name of appellant for a double barrel gun.

PW7 Rajesh Punia complainant deposed in terms of the application submitted by him to the police, on the basis of which, FIR was later on registered.

PW8 Dharam Pal, who was an eye witness of the occurrence supported the testimony of PW7 Rajesh Punia.

PW9 Dhup Singh testified that he had witnessed the arrest of the appellant.

PW10 Assistant Sub-Inspector Kanwal Singh, who was the Investigating Officer testified about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the appellant denied the allegations of the prosecution. He stated that he had been falsely implicated in this case due to rivalry in connivance with Jai Singh, Sarpanch.

In defence, the appellant did not lead any evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court convicted and sentenced the appellant under Section 307 IPC and Section 27 of the Arms Act.

Having heard learned counsel for the parties and on going through the evidence available on record, this Court finds that while submitting written complaint Ex.PD before the police on 17.11.2000, complainant Rajesh Punia did not mention anywhere about the enmity, which he had viz-a-viz the appellant. He had only stated that after hatching a conspiracy the appellant had tried to kill him by firing twice but he had a narrow escape. However, in his cross-examination, he testified that the appellant had fired at him because of enmity as the appellant's father had contested the election but lost. Subsequently, even the uncle of the appellant had also contested the election but also lost. In both the elections, the complainant had supported the rival party and, therefore, the appellant had developed enmity as he wanted to take revenge for losing the election. During his cross-examination, the complainant testified that he had not

mentioned in his application Ex.PD that the appellant had fired at him as his father had lost the election of Sarpanch against one Jai Singh. He had also not mentioned in application Ex.PD that subsequently the uncle of the appellant had also contested election but had lost. He had also not written in the application Ex.PD that in both the elections he had supported the rival party and, therefore, the appellant had developed enmity with him and wanted to take revenge of defeat in the election. He further deposed that Jai Singh, against whom, the father of the appellant had contested the election about ten years ago was his brother in relationship. Even the uncle of the appellant had contested the election against said Jai Singh but that was 8/9 years earlier to the present occurrence. He went on to add that he was not a voter being a minor. If that be the background, which provided motive to the appellant to fire at the complainant, it also provided an opportunity to the complainant to come up with a false plea of being assaulted by the appellant. As per the prosecution, the appellant had fired twice at the complainant but the first shot missed him as it went past his ear while the other shot was fired in the air as one of the companions had caught hold of the appellant. It was the case of the complainant before the trial Court that firing was resorted to from a distance about twenty feet. The appellant was armed with a 12 bore double bore gun. The firing would have resulted in the pellets' spreading and it was highly unlikely that the complainant would have escaped unhurt despite being fired at and, that too, twice by the appellant. The complainant also deposed that he had not informed the

Sarpanch of the village or any respectable of the village about the occurrence nor taken his mother to the Sarpanch to give the information regarding the occurrence. He also testified that the scene of accident was not photographed by the police. He also could not state whether the police had recovered any cartridge or pellet at the spot on 19.11.2000 or whether the police had searched for any sign of pellet marks on wall, door, etc. at the spot. All this shows that no such firing, as alleged by the prosecution was resorted to by the appellant.

In order to lend corroboration to the testimony of PW7 complainant Rajesh Punia, the prosecution examined PW8 Dharam Pal, who deposed that the appellant had fired twice at the complainant but the complainant escaped as it did not hit him. Said Dharam Pal is none else but the uncle of complainant Rajesh Punia. He also admitted about appellant's father contesting election of Sarpanch against Jai Singh. Therefore, no implicit reliance can be placed upon his testimony.

Further, on the basis of written complaint Ex.PD submitted by the complainant on 17.11.2000, the police did not register the FIR immediately against the appellant. Rather, only DDR No. 16 dated 17.11.2000 was recorded on the basis of the written complaint Ex.PD, as the circumstances were found to be suspicious. It was only on 19.11.2000 that FIR Ex.PD/1 came to be recorded.

It is true that in the report Ex.PJ of the Forensic Science Laboratory, Haryana, Madhuban, it stands mentioned that 12 bore fired cartridge cases Marked C1 and C2 had been fired from right and

left barrel, respectively, of 12 DBBL gun. However, the said fired cartridge cases were not recovered from the spot. On the other hand, it is the case of the prosecution itself that when the appellant was arrested, he had produced 12 bore DBBL gun, two fired cartridge cases and two live cartridges besides his arms licence valid upto 1.4.2002. Under these circumstances, it is difficult to hold that the shots were allegedly fired by the appellant at the complainant.

In view of the above, it can not be said with certainty that the occurrence in question had taken place as alleged, rather, because of previous enmity it can safely be concluded that the prosecution has come up with a make believe case that the appellant had fired twice at the complainant but both the times he had missed that target. Under these circumstances, extending the benefit of doubt to the appellant would be in order.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set-aside and the appellant is acquitted of the charges against him.

November 30, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No