

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

**CRA-S-1690-SB of 2003.
Date of Decision: 10.08.2016.**

DINESH CHANDERAPPELLANT.

VERSUS

STATE OF PUNJABRESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Rajiv Sharma, Advocate for the appellant.

Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Dinesh Chander, assailing the judgment of conviction and order of sentence dated 19.08.2003 recorded by learned Additional Sessions Judge, Ludhiana, in Session Case No.71 dated 19.12.2002 based on First Information Report No.199 dated 22.10.2002 registered at Police Station Division No.8, Ludhiana, by virtue of which he (appellant) was sentenced as under:-

Sr. No.	Under Section	Sentence
1.	397 IPC	To undergo R.I. for 7 years.
2.	25 of the Arms Act	To undergo R.I. for 6 months and to pay fine of Rs.1000/- and in default of payment of fine, he shall further undergo R.I. for month.

It was ordered that all the sentences of imprisonment shall run

The story of the prosecution was as under:-

On 22.10.2002, Rajneesh Aneja son of Baldev Aneja, resident of 13-B Kitchlu Nagar, Ludhiana alongwith his mother Prem Lata, wife Suman Aneja and sister-in-law Sapna Aneja was present in his house when at about 11:45 a.m., a clean shaven person entered his house and on pistol point directed the ladies in the house to go in one room. He asked them to take of all their ornaments, failing which they shall be shot dead. Rajneesh Aneja tried to apprehend the robber, who with an intention to kill him, fired a shot but that hit the wall. Suman Aneja also tried to catch the robber who gave a bite on her finger of right hand and injured the same. Their shouts attracted the neighbours. Rajneesh Aneja snatched the pistol from the hand of the assailant and as the people gathered, he was apprehended.

On query, the robber (appellant) disclosed his name as Dinesh Chander son of Dulare Lal, resident of Akaipur, District Farukhabad (U.P.) at present resident of 'Pandit Da Makann' near Big Gate, Sahnewal. On receipt of information, the police reached the spot and arrested the appellant. On personal search of the appellant, three live cartridges of .32 bore were recovered from his right pocket. On unloading the pistol, an empty cartridge was also recovered. The pistol, the empty and the three live cartridges were taken into possession by the police.

Statement Ex.PA of Rajneesh Aneja was recorded by Sub Inspector Devinder Kumar and based on the same the First Information Report Ex.PA/2 was registered at Police Station Division No.8, Ludhiana. On completion of investigation and other formalities, the appellant was challaned and sent to the Court for trial.

The appellant was charge-sheeted and subjected to face trial for

commission of offence punishable under Section 397 of the Indian Penal Code (for short, "I.P.C.") and Section 25 of the Arms Act.

To substantiate the charge, the prosecution examined as many as nine witnesses namely PW1 Rajneesh Aneja, PW2 Suman Aneja, PW3 Usha Rani Clerk, PW4 S.I. Devinder Kumar, PW5 H.C. Gurmohan Singh, PW6 ASI Gurmit Singh, PW7 Constable Darshan Singh, PW8 CII Ram Saran and PW9 ASI Surinder Pal.

After closure of evidence of the prosecution, in his statement recorded under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the appellant denied the case of the prosecution and pleaded that he being the sole proprietor of M/s Dulare Lal Mahesh Chand used to collect arrears and dues from various places throughout India. In the month of October, he came to Punjab to collect dues from various persons and on account of his stay took on rent a place at village Sahnewal from Sham Lal Pandit. His munim Parmod Kumar son of Hori Lal was also with him. The appellant further stated that on 22.10.2002, his car was stolen from Sahnewal parking and when he was in the process of reporting the matter to the police at Police Station Sahnewal, the police raided his house and arrested him in this false case. Huge cash amount was taken by the police from him and his gold chain, wrist watch and gold ring were also removed from his person.

In his defence evidence, the appellant examined DW1 H.C. Gurmohan Singh.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant-accused, learned trial Court convicted and

sentenced the appellant, as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 19.08.2003 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Rajiv Sharma, learned counsel representing the appellant and Mr. Surjeet Singh Chaudhary, learned Deputy Advocate General for the State of Punjab have been heard and record perused.

Learned counsel for the appellant argued that the case of the prosecution rested solely on the testimony of PW1 Rajneesh Aneja and his wife PW2 Suman Aneja whereas there were two other persons namely Prem Lata and Sapna, mother and sister-in-law of the complainant present in the house at the time of alleged occurrence. However, they both were not examined during trial and no justified reason could be assigned for their non appearance. It was also stated by the complainant that their shouts attracted the neighbours and several people gathered at the spot. In case the appellant was apprehended by the complainant in the manner stated by him, those independent public persons who had witnessed the occurrence were undoubtedly material witnesses but none out of them was named or examined. The complainant and his wife were interested witnesses and in absence of some independent corroboration of their testimony they could not be relied upon.

The second argument of learned counsel for the appellant was that PW2 Suman Aneja stated that during the scuffle when she and her husband were trying to apprehend the appellant, he had given bite on the tip

both added that the injury of Suman was treated at C.M.C. Ludhiana. However, no medical evidence to support their version was produced by the prosecution. Lastly, learned counsel contended that it is proved from the statement of DW1 Head Constable Gurmohan Singh No.2331 that as per entry at Sr. No.36 dated 30.10.2002 in Register No.19 of Police Station Division No.8, Ludhiana, Constable Darshan Singh No.1440 was sent to Forensic Science Laboratory (F.S.L.), Chandigarh for deposit of case property i.e. one pistol .32 bore, an empty and five live cartridges and as per entry at Sr. No.30 of even date i.e. 30.10.2002 he had returned the same day at 8:05 p.m. On the contrary, Constable Darshan Singh No.320 was examined by the prosecution as PW7, who through his affidavit Ex.PM proved that he was sent to F.S.L., Chandigarh for deposit of the aforesaid case property on 31.10.2002. MHC Sodagar Ali, with whom the case property was deposited by Sub Inspector Devinder Kumar on 22.10.2002 did not step into the witness box. His non examination coupled with non appearance of Constable Darshan Singh No.1440 shatters the link evidence in the prosecution case.

Indeed, it was mentioned by the complainant in the First Information Report that his mother Prem Lata and sister-in-law Sapna were also present in the house when the occurrence took place and so is the version of PW2 Suman Aneja and none of them stepped into the witness box, but their non examination has no adverse bearing on the merits of the case. The law does not require voluminous evidence for proving commission of an offence. Only direct, substantive and quality evidence is sufficient for proving the charges levelled against an accused. The

appellant was neither known to them nor they had any link with him prior to the occurrence. The appellant entered the house of the complainant armed with a deadly weapon to commit robbery. It was fortunate for the complainant and his family that they were able to apprehend the appellant there and then despite the fact that he even fired at them.

Both, complainant Rajneesh Aneja PW1 and his wife Suman PW2, gave a detailed and crystal clear narration of the occurrence. They unequivocally stated that the appellant had entered their house armed with a countrymade pistol and on pistol point had asked the ladies of the house to take of their ornaments or face dire consequences. They also stated that when they tried to apprehend him, the appellant fired a shot towards them with an intention to kill them, but he missed the target and the shot hit the wall and they escaped. Thereafter, in the scuffle, the weapon as well as the appellant fell down. They continued grappling with him and as their alarm attracted neighbours and people started gathering, they were able to catch hold of him. The appellant was arrested by the police when on receipt of information, the police headed by PW4 Sub Inspector Devinder Kumar reached the spot. Learned counsel for the appellant failed to refer to anything in the statement of PW1 Rajneesh Aneja and PW2 Suman Aneja which could cast even a slight shadow of doubt on their credibility. The appellant did not utter a word in his statement recorded under Section 313 Cr.P.C. to state that the complainant or his wife were known to him prior to the occurrence or had any reason to depose against him falsely.

No doubt, the prosecution did not produce any medical evidence to prove the version of Suman Aneja PW2 that she had suffered a

to disbelieve the deposition of the said witnesses in the light of facts and circumstances discussed above. No major injury was suffered by either of the witnesses because of which probably they did not go for medico legal examination. As far as the bite injury on the tip of finger of Suman Aneja is concerned, that fact was stated by PW4 Sub Inspector Devinder Kumar also, but he added that the complainant had taken his wife for getting the injury dressed and there was no blood either on the clothes of the complainant or his wife or at the spot. Such being the circumstances absence of medical evidence is immaterial.

Since the appellant was apprehended at the spot, his identity was not a matter of dispute. He had himself disclosed his name, parentage and address etc. to the police.

As regards statement of DW1 Head Constable Gurmohan Singh No.2331, who produced Register No.19 of Police Station Division No.8, Ludhiana with regard to deposit of case property with the MHC by Sub Inspector Devinder Kumar and the entries relating to sending of case property to F.S.L., Chandigarh, DW1 he clarified that vide Entry No.42 dated 31.10.2002 the case property consisting of sealed parcels containing . 32 bore countrymade pistol, empty cartridges and three live cartridges were sent for deposit to F.S.L., Chandigarh through Constable Darshan Singh No.320. After deposit of the case property, he had returned and deposited the receipt with him on the same day i.e. 31.10.2002 and an entry even dated to that effect was recorded in the register. The entry dated 30.10.2002 would at the most show departure of Constable Darshan Singh No.1440 with the case property and his return to the police station on the same day. It is not in

No.1440 speak of deposit of case property by him with F.S.L., Chandigarh on that day i.e. 30.10.2002. MHC Sodagar Ali may not have been examined, but DW1 Head Constable Gurmohan Singh stated that on 22.10.2002 he was the Incharge Malkhana and the case property was deposited with him by Sub Inspector Devinder Kumar. He also stated that entry with regard to deposit of the case property in Register No.19 was only written by MHC Sodagar Ali. In view of his statement, it cannot be said that there was any breach of link in the prosecution case.

In the above premise, it is held that the evidence led by the prosecution established beyond all shadows of reason doubt that the appellant had entered the house of the complainant armed with a deadly weapon with an intention to commit robbery. Resultantly, the offence of robbery committed by him was punishable under Section 397 I.P.C. By possessing and using an illegal fire arm during the occurrence the appellant committed offence under Section 25 of the Arms Act as well.

Accordingly, the judgment of conviction recorded by learned Trial Court is upheld and as regards sentence awarded to the appellant, it appears to be adequate. Thus, there being no merit in the appeal, it is hereby dismissed.

The appellant is on bail in this case, his bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

10.08.2016.

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Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**