

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

CRA-S-1003-SB-2004

Date of decision:-13.12.2017

Amarjit

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjiv Gupta, Advocate
for the appellant.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This appeal is directed against the judgment and order dated 28.4.2004 passed by learned Additional Sessions Judge, Panipat vide which accused Amarjit was convicted for an offence under Section 25 of the Arms Act, 1959 and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default thereof, to further undergo simple imprisonment for six months.

The accused-convict – Amarjit, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story as it unfolded during the

trial is that on 15.5.2000, a police party from Police Station Israna headed by SI/HO Raghbir Singh (hereinafter referred to as the Investigating Officer/I.O.) was on patrol duty, travelling in a Government vehicle and when the police party reached near Government Girls School, Mandi, then a Maruti car bearing registration No.HR09-4851 was found parked there and Naresh Kumar complainant along with Sunil, Shiv Kumar and Rishi Pal was present there; that they had apprehended accused Rakesh (since dead), Kuldeep and Amarjit; that the complainant Naresh Kumar produced before the Investigating Officer a country-made pistol of 303 bore, which had been snatched by them from the accused Kuldeep. The Investigating Officer recorded the statement of complainant wherein he stated that on the fateful day at about 7:30 p.m., he along with Sunil and Shiv Kumar was going to answer call of nature near the girls school and when they had reached near the road, then a Maruti car bearing registration No. HR09-4851 having three young men as occupants came, that one of the boys was driving the car, whereas others were sitting on the rear seat; that later on their names came to be known as Rakesh, Kuldeep and Amarjit; that the car had come from the side of Pugthala; that the driver of the car had blown the horn and inquired as to why the complainant and his companions were not giving them the way to pass their car; that the complainant replied that there was enough space to pass the vehicle, hearing that driver of the car abuse them; that accused Kuldeep alighted from the car, took out the pistol aiming the same at the complainant; that accused Kuldeep also stated that he would fire upon him, however, the complainant snatched the pistol from him; that in the

meanwhile, accused Amarjit also got down from the car and took out a pistol, however, in the process a shot was fired from the pistol which hit on his left thigh; that in the meanwhile Rishi Pal came there, who along with Sunil and Shiv Kumar apprehended the accused. In the meanwhile, the police reached there. On being checked, the country-made pistol Ex.P1 was checked and it was found to be loaded. The Investigating Officer unloaded the said pistol and prepared its rough sketch. Then the pistol along with recovered cartridge Ex.P4 was converted into separate parcel sealed with seal of the Investigating Officer having inscription 'RSB'. After use the seal was handed over to Rishi Pal PW. The parcels of the country-made pistol of 303 bore and cartridge were taken into possession vide recovery memo Ex.PD.

Personal search of accused Amarjit was conducted which resulted in recovery of country-made pistol of 12 bore Ex.P2. On being checked, it was unloaded and was found to have a missed cartridge. The Investigating Officer prepared rough sketch of the recovered pistol as Ex.PE. The said pistol and empty shell Ex.P3 were converted into separate parcels sealed with the seal of the Investigating Officer having inscription 'RSB' and then taken into possession vide recovery memo Ex.PF. Seal had been taken from PW Rishi Pal and then again handed over to him. The Investigating Officer had recorded the statement of complainant Naresh Kumar as Ex.PB and made his endorsement and sent ruqa to the police station, on the basis of which formal FIR was recorded at Police Station Israna by ASI Sube Singh, who made endorsement Ex.PB/3 over the ruqa. The Investigating Officer recorded statements of

witnesses, carried out inspection of the place of occurrence and prepared rough site plan Ex.PG and Maruti Car bearing registration No.HR09-4851 was taken into possession vide recovery memo Ex.PG/1, attested by Naresh Kumar and Rishi Pal PWs. Accused Rakesh and Kuldeep were arrested in this case. Accused Amarjit was rushed to the General Hospital, Panipat since he was in injured condition. He was referred to PGI, Rohtak. The case property was deposited with MMHC, P.S. Israna. During the course of investigation, sanction orders were obtained from the competent authority. After completion of investigation and other formalities, challan against all the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Panipat

On presentation of challan in the Court of Judicial Magistrate Ist Class, Panipat, he supplied copies of documents relied upon in the challan to all the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 307 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Panipat vide her order dated 11.1.2001 committed the case to the Court of learned Additional Sessions Judge – I, Panipat and after that the case was entrusted to the Court of learned Additional Sessions Judge, Panipat.

It is pertinent to mention here that accused Rakesh was expired during the proceedings and proceedings against him stand abated vide order dated 3.9.2002.

Learned Additional Sessions Judge, Panipat, finding that prima-facie charge for the offence under Section 307 IPC and 25 of the Arms Act was disclosed against the accused, charge-sheeted them

accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as nine witnesses, namely, Rajesh Kumar as PW1, complainant Naresh Kumar as PW2, Shiv Kumar as PW3, Inspector Raghbir Singh as PW4, Sant Lal as PW5, HC Rajinder Singh as PW6, HC Jasbir Singh as PW7, Constable Surender Kumar as PW8 and Dr.Sunil Mahajan as PW9.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that on 15.5.2000, they were coming from village Mandi on their motorcycle; that there had come a vehicle without having registration number in a rash and negligent manner; that the said vehicle had hit their motorcycle and due to this, accused Amarjit had fallen and had suffered the injuries.

Accused did not lead any evidence in defence.

After hearing arguments, Additional Sessions Judge, Panipat acquitted both accused Amarjit and Kuldeep under Section 307 IPC and accused Kuldeep was also acquitted for the offence under Section 25 of the Arms Act, whereas accused Amarjit was convicted and sentenced for the offence under Section 25 of the Arms Act as mentioned supra, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Haryana

besides going through the record.

In this case, the two very important witnesses for the prosecution happened to be complainant Naresh Kumar and Shiv Kumar. The prosecution had examined Naresh Kumar as PW2, however, he did not support the prosecution story at all and did not utter a single word, which might have constituted the incriminating circumstance against any of the accused. He rather stated that the accused present in the Court were not the same persons, who were sitting in the Maruti car and as a matter of fact such accused are not known to him and he had not seen them earlier. He stated in no uncertain terms that nothing was recovered from the possession of the accused in his presence. He was a declared hostile witness at the instance of the Public Prosecutor and Public Prosecutor was permitted to put questions to him in the form of cross-examination but lengthy cross-examination by the Public Prosecutor failed to get any reply from his mouth, which might have been favourable to the prosecution. To the similar effect is the testimony of PW3 Shiv Kumar, who was also declared a hostile witness as per the request of the Public Prosecutor and then permission was granted to the Public Prosecutor to cross-examine him but without any success in eliciting any reply favourable to the prosecution. The third witness examined by the prosecution happened to be Inspector Raghbir Singh PW4, who had stated that on personal search of accused Amarjit, a country-made pistol of 12 bore was recovered, which was loaded and when it was unloaded it was found to have a missed cartridge but if his statement is seen in entirety, it comes out that it is not safe to rely upon his testimony. In his cross-examination, he stated

that the parcel of clothes bears the seal of FSL and seals are not visible, though he gave the reason that parcels had been open on the previous date. In reply to a specific question, he admitted it has correct that there are 5-6 seals, which are in broken condition and are not completely visible. The two witnesses of recovery had not supported the prosecution story at all. Although conviction of accused can be based upon testimony of a solitary witnesses but that is subject to the condition that if it inspires confidence. However, deposition of PW4 Inspector Raghbir Singh does not pass that test and I do not find it safe to rely upon his solitary statement in absence of corroboration, to base conviction of the accused. It is to be kept in mind that as per prosecution story, the recovery had been effected on 15.5.2000, however, the accused Amarjit is shown to have been arrested on 21.6.2000. No satisfactory explanation is coming forth for the same. If Amarjit had been arrested on 15.5.2000 at the spot and recovery of country-made pistol of 12 bore alongwith a missed cartridge had been effected from him then he should have been arrested there and then at the spot, without waiting for any further time. PW4 Inspector Raghbir Singh stating that on 21.6.2000, accused Amarjit was produced by HC Rajinder Singh and he was arrested in this case, this contention does not seem much convincing. The remaining evidence adduced by the prosecution is not directly incriminating qua the accused and is only corroborative in nature.

Learned counsel for the appellant has referred to authority

Jasbir alias Banti alias Jasbir Singh Versus State of Haryana, 2011(1)

R.C.R.(Criminal) 626 by a Coordinate Bench of this Court, which was a

case of recovery of arms on the basis of disclosure statement made by the accused, however, independent witness of the recovery of pistol has not supported the prosecution case, as such recovery was not believed. It was further observed that in such a case under Section 25 of the Arms Act, when only the police officials had supported the prosecution story, it is not safe to base conviction of the accused on the basis of testimony of a solitary police official. Therefore, accused was found to be entitled of benefit of doubt.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable. The same are set aside by way of acceptance of this appeal. The appellant is acquitted of the charge under Section 25 of the Arms Act by giving him benefit of doubt.

Necessary intimation be sent to the quarter concerned.

13.12.2017

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No