

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

**CRA-S No.1337-SB of 2004
Date of Decision: 25.11.2017**

Kulwant Singh @ Kanta Appellant

Vs

State of Haryana Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Mayuri Lakhanpal Kalia, Legal Aid Counsel &
Mr. Namit Sharma, Advocate
for the appellant.

Mr. Siddharth Sanwaria, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Appellant Kulwant Singh @ Kanta has preferred this appeal against the judgment of conviction dated 13.03.2004 and order of sentence dated 16.03.2004 passed by Addl. Sessions Judge (Fast Track Court) Karnal vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.500/- along with co-accused Balbir Singh for the offence under Section 397 IPC and in the event of default he was to undergo further rigorous imprisonment for a period of six months. Appellant was also sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- under Section 25 of the Arms Act. In the event of

default, he was to further undergo rigorous imprisonment for a period of six months. Both the sentences were ordered to run concurrently.

[2]. Prosecution story started with the allegations that on 25.03.2003, ASI Baljinder singh along with other police officials was present at Chowk Prem Nagar, Karnal on patrolling duty. Baljinder Singh son of Surinder Singh came there and got his statement recorded that he was running a provisional store in New Prem Nagar, Karnal and his uncle, who was residing with him had constructed a house outside his house which was given on rent to Jasvinder Singh, who was running an electric shop. On 25.03.2003, at about 1.30 a.m., his wife had gone to bathroom and saw from the light of bathroom that shutter of the shop of Jasvinder Singh was half opened. She got the complainant woke up. Complainant got Charanjeet Singh woke up and then he along with Charanjeet Singh went to the shop of Jasvinder Singh. Two persons were inside the shop. They rushed out. One of them was having a stereo in his hand and other person was having a pistol. The person who was having pistol fired at Charanjeet Singh, which hit on his right hand. The complainant also disclosed identification mark of the accused, who fired at Charanjeet Singh. He was of wheatish colour, tall and smart aged about 35-40 years. Injured Charanjeet Singh

was taken to Civil Hospital, Karnal. After providing first aid, he was rushed to PGI, Chandigarh.

[3]. The case was registered under Sections 392, 394, 397, 459 IPC and 25 of the Arms Act. Police investigated the case and recorded the statements of the witnesses under Section 161 Cr.P.C. On 26.05.2003, when ASI Sat Pal along with other police officials was present near Meerut Chowk, Karnal, the accused Kulwant Singh was apprehended. On 27.05.2003, the accused made a disclosure statement to the effect that in the night of 25.03.2003, he along with co-accused Balbir Singh @ Neeta had committed theft in the electric shop in New Prem Nagar, Karnal. Deck was stolen from the shop. The pistol with which he had fired was kept concealed in the briefcase in his house. In pursuance of the disclosure, the accused got the country made pistol (.12 bore) along with one live cartridge recovered from the disclosed place. Sketch of the pistol was prepared. Pistol and one live cartridge were taken into police possession in a sealed parcel. Co-accused Balbir Singh was arrested on 30.05.2003. He also made disclosure statement on 31.05.2003 and in pursuance of his disclosure statement, he also got recovered the deck which was stolen from the shop. The deck was also taken into police possession vide separate recovery memo. On 02.06.2003, the booty was

identified by the complainant after coming to the police station. After the investigation, the police filed the challan

[4]. After finding *prima facie* case for commission of offence punishable under Section 397 IPC and 25 of the Arms Act, the accused were chargesheeted. The accused pleaded not guilty and claimed trial.

[5]. The prosecution in order to prove guilt of the accused examined Dr. Rajinder Kumar Bajoria as PW-1, Complainant Baljinder Singh as PW-2, Charanjeet Singh injured as PW-3, Jasvinder Singh as PW-4, Head Constable Suresh Kuma as PW-5, Head Constable Ramesh Chander as PW-6, Dr. Gautam Biswas as PW-7, Constable Lakhwant Singh as PW-8, Constable Vir Shakti Singh as PW-9, Head Constable Satish Kumar, Armourer as PW-10, Sub Inspector Baljinder Singh as PW-11, ASI Raj Pal as PW-12, Constable Surender Singh as PW-13, ASI Satpal CIA II, Karnal as PW-14 and Vinod Kumar, Ahlmad to District Magistrate, Karnal as PW-15.

[6]. Prosecution also produced incriminating material on record and thereafter statements of the accused were recorded under Section 313 Cr.P.C and the entire incriminating material was put to the accused in their statements. The accused pleaded false implication and led defence evidence by way of

examining Sanjay Kumar as DW-1.

[7]. After considering the material on record, the trial Court convicted and sentence the accused in the manner as shown in the preceding part of the judgment.

[8]. Injured Charanjeet Singh was examined by Dr. Rajinder Kumar Bajoria, Surgeon-cum-Orthosurgeon on 25.03.2003 in General Hospital, Karnal. As per medico legal examination of Charanjeet Singh, lacerated bleeding wound 5cm x 5cm with blackening of its margin and clot of blood in its center was found over the right fore arm in its uppermost part (medical aspect). 20 lacerated wounds of varying size of 0.5 cm x 0.5 cm to 0.6 cm x 0.6 cm all around injury No.1 with blackening of edges in an area of 15 x 15 cms were also found. There was swelling of right elbow joint and upper part of right forearm. The injury was kept under observation and was opined to be caused by fire arm and duration was stated to be 6 hours.

[9]. Complainant Baljinder Singh got his statement recorded that he was running a provisional store in New Prem Nagar, Karnal and adjoining to his shop there was a shop of Jasvinder Singh in which he was running electric musical store. In the night of 24/25.03.2003 at about 1:30 AM, he came to know shutter of the shop was half opened. He woke up

Charanjeet Singh and both went to the shop and saw that two persons were inside. One had stolen a deck and the other person was carrying pistol. Charanjeet Singh gave a danda blow to the person who has stolen the deck from the shop. While running the person who was having the pistol in his hand, fired at Charanjeet Singh which hit him on his right hand. The witness identified both the accused present in the Court.

[10]. PW 3 Charanjeet Singh also deposed in the same manner that he had a shop in New Prem Nagar, Karnal which he had given on rent to Jasvinder Singh, who was running an electric and musical store in the shop. On the night of 24/25.03.2003 at about 1:30 AM, Baljinder Singh got him to wake up and told him that some one had entered in the shop of Jasvinder Singh. Thereafter, both went to the shop and saw that two persons had entered the shop. One of them had stolen a deck and other person was having a pistol. He gave a danda blow to the person who was having a deck. While running from there, the other person fired upon him with pistol, which hit on his right hand. The accused ran away from the place of occurrence.

[11]. Similarly, prosecution got recorded statement of Jasvinder Singh who had gone to CIA Staff, Karnal and

identified his stolen deck. He also proved identification memo Ex.PF and he took the deck on superdari from the Court vide Ex.P1.

[12]. HC Suresh Kumar PW-5 remained associated in the investigation of the case which was conducted by SI Baljinder Singh. HC Ramesh Chander PW-6 also remained associated with the investigation of the case along with ASI Satpal. When the accused appellant Kulwant Singh was apprehended on 27.05.2003, he made a disclosure statement in respect of country made pistol. The disclosure statement Ex.PH was prepared and recovery was effected on 28.05.2003 in respect of country made pistol .12 bore along with one live cartridge from the brief case kept by the accused in his house in Ram Nagar, Karnal.

[13]. Dr. Gautam Biswas PW-7 Associate Professor, Plastic Surgery, PGI, Chandigarh testified that the injured Charanjeet Singh was referred to PGI on 25.03.2003 with the alleged history of gun shot injury on right forearm. The injury diagnosed was having wound on the dorsal aspect of the right forearm with fracture of ulna with ulnar nerve injury. Injured was operated by Orthopeadic and plastic surgery was done on 27.03.2003. Subsequently the injured was discharged from the hospital on

05.04.2003. Report Ex.PJ was proved by the witness which was prepared and signed by Dr. Deepak Shetty, Senior Resident Plastic Surgery, PGI, Chandigarh.

[14]. Constable Lakhwant Singh PW-8 was a witness of link evidence to the effect that on 22.04.2003, Randhir Singh Mohrir Malkhana Head Constable had handed over a sealed parcel containing empty cartridge vide RC No.33 for depositing the same in the office of Forensic Science Laboratory, Madhuban for testing. The needful was done by the witness and he handed over the receipt to Mohrir Malkhana Head Constable. The witness stated that so long as the parcel remained with him, the same was intact.

[15]. Constable Vir Shakti Singh, PW-9 was a Draftsman who had visited the place of occurrence and at the instance of the complainant, he prepared the scaled site plan Ex.PH.

[16]. Head Constable Satish Kumar, Armourer PW-10 had deposed that on 03.06.2003, ASI Satpal CIA-II, Karnal had produced before him a sealed parcel containing one pistol of .12 bore along with one live cartridge of the same bore for testing. After testing the same with the help of gages, the pistol was found to be in working condition. The witness proved the report as Ex.PK.

[17]. SI Baljinder Singh PW-11 proved the prosecution story from 25.03.2003 onwards, when he was present along with police officials on patrolling duty at the chowk of Prem Nagar, where complainant Baljinder got his statement Ex.PE recorded. After recording the statement, the same was read over to the complainant and after admitting the same he put his signatures. The Investigating Officer made his endorsement Ex.P-2 on the complaint and sent the same to the Police Station for registration of the FIR. Thereafter investigation was done.

[18]. ASI Raj Pal PW-12 had deposed that on 28.03.2003, he was posted in the police post, Ram Nagar, Karnal. He visited PGI, Chandigarh and moved application Ex.PM to the doctor for obtaining opinion in respect of fitness of the injured Charanjeet Singh.

[19]. Constable Surender Singh PW-13 was the witness of link evidence, who had handed over the special report of the case to the *Illaq Magistrate* and senior officers.

[20]. ASI Sat Pal PW-14 deposed that on 26.05.2003, he was posted in CIA-II staff, Karnal and the accused Kulwant Singh was apprehended on 27.05.2003, who in his disclosure statement admitted his complicity in the office and in pursuance of his disclosure statement, he got recovered the pistol.

[21]. from the prosecution story, the trial Court considered two points for determination. Firstly, whether in the intervening night of 24/25.03.2003, both the accused committed the offence of robbery in the shop of Jaswinder Singh while armed with deadly weapon and caused grievous injury to Charanjeet Singh? Secondly, whether on 28.05.2003, the accused/appellant got recovered the country made pistol .12 bore along with one live cartridge from his house in his possession?

[22]. The trial Court after considering the material on record, convicted and sentenced the accused/appellant along with co-accused Balbir Singh in the manner as stated in preceding part of the judgment.

[23]. Learned counsel for the appellant argued that the accused/appellant was not named in the FIR and there was no identification parade got conducted by the police. There was darkness outside the shop as streetlight was not lit up. The identification of the accused for the first time in the Court was of no consequence. Learned counsel relied upon **Kanan and others vs. State of Kerala, 1979 SC 1127** and **State of M.P. vs. Ghudan, (2003) 12 Supreme Court Cases 485** in the aforesaid context.

[24]. Learned counsel by relying upon **Kishanpal vs. State of Rajasthan, 2002(3) R.C.R. (Criminal) 507** contended that the weapon of offence was not sent for forensic examination, therefore, there was nothing on record to implicate the appellant.

[25]. On the other hand, learned State counsel submitted that the accused/appellant was a habitual offender of the offences of like nature. As per custody certificate, in FIR No.299 dated 26.06.2002 under Sections 457/380 IPC, P.S. City Karnal, the appellant was convicted and sentenced to the period already undergone vide judgment and order of sentence dated 16.08.2004. In another case bearing FIR No.503 dated 24.10.2002, under Sections 457/380 IPC, P.S. City Karnal, the appellant was convicted and sentenced to the period already undergone vide judgment and order of sentence dated 17.02.2005 passed by JMIC, Karnal. In another case bearing FIR No.340 dated 27.10.2002 Under Sections 457/380/411 IPC, P.S. Civil Lines Karnal, the appellant was convicted and sentenced for the period already undergone by him vide judgment and order of sentence dated 13.04.2005 by JMIC, Karnal. In FIR No.505 dated 27.10.2002 under Sections 457/380 IPC, P.S. City Karnal, the appellant was again convicted and sentenced to the period already undergone vide

judgment and order of sentence passed by the JMJC, Karnal. In FIR No.341 dated 27.10.2000 under Sections 380 IPC P.S. Civil Lines, Karnal the appellant was also convicted and sentenced to the period already undergone by him vide judgment and order of sentence dated 06.01.2004 by the Court of JMJC, Karnal. In one case bearing FIR No.509 dated 28.10.2002 under Sections 357/380 IPC, P.S. City Karnal, the appellant was acquitted by the Court of ACJM, Karnal on 27.09.2005.

[26]. It has also been argued by the learned State counsel that the co-accused Balbir Singh also filed CRA-S No.300-SB of 2005 and during pendency of the appeal, he had completed the entire period of sentence and was released from jail on 05.12.2008 after expiry of rigorous imprisonment of 7 years including the benefits of undertrial period and earned remissions.

[27]. I have considered the submission made by learned counsel for the parties.

[28]. Perusal of the record shows that PW-2 Baljinder Singh complainant had appeared in the witness box and he deposed that he was running a provisional store and adjoining shop was given by his uncle to Jaswinder Singh, in which he was running an electric and musical store. In the night of 24/25.03.2003 at

about 1.30 a.m., he came to know that shutter of the shop of Jaswinder Singh was half opened. He woke up Charanjeet Singh. Both went to the shop and saw that two persons were inside the shop. One had stolen the deck and other was carrying pistol. Charanjeet Singh gave a *danda* blow to the person, who had stolen the deck from the shop. The person carrying pistol fired a shot at Charanjeet Singh, which hit on his right hand. Witness identified both the accused present in the Court and specifically stated that accused Kulwant Singh was wearing a blue shirt and fired a shot from the pistol at Charanjeet Singh. Other co-accused was wearing green shirt, who had stolen the deck from the shop. The witness has categorically stated that he saw both the accused as electric bulb was lightening inside the shop and light was emitting from it and even Charanjeet Singh had given *danda* blow to the accused, who had stolen the deck and other accused who was armed with pistol fired a shot on Charanjeet Singh. The witness had identified the accused in the light coming out from inside the shop.

[29]. The quality of the evidence is to been. The purpose of test identification parade is to corelate the evidence of the eyewitness. When substantive evidence of the witness is trustworthy, then in every case there is no necessity of holding

any test identification parade. The evidence of identification in the form of PW-2 was considered sufficient by the trial Court to establish the identity of the accused and thereafter identification in the Court on the basis of eyewitness count was considered just and appropriate to the prosecution case. PW-2 Baljinder Singh and PW-3 Charanjeet Singh, who was injured have identified both the accused present in the Court and they were identified at the spot with their mark of identification. Therefore, argument of learned counsel for the appellant that in the absence of test identification parade, the prosecution story should have been discarded, is held to be non-existent in respect of the occurrence which took place during the intervening night of 24/25.03.2003.

[30]. The FIR came to be registered at 10.15 a.m. During the intervening time, the injured was taken to hospital and from where, he was referred to the PGI, Chandigarh. PW-2 Baljinder Singh and Investigating Officer remained busy with the injured. As per statement of PW-2, they took Charanjeet Singh to Civil Hospital, Karnal in the night itself and after first aid, he was referred to the PGI, Chandigarh. Baljinder Singh PW-2 being an eyewitness remained busy in providing treatment to the injured and, therefore, the lodging of FIR at 10.15 a.m. cannot be held to be inordinately delayed.

[31]. In pursuance of the disclosure statement made by the accused, recovery was got effected after due demarcation by the accused. Since there was no previous enmity between the accused and the complainant, therefore, there was no occasion for the police to falsely implicate the accused in the instant case. The link evidence was established from the report Ex.PX of FSL, Madhuban that the used cartridge recovered from the place of occurrence was opined to be fired from the country made fire arm. In pursuance of disclosure statement Ex.PH, the accused got recovered the country made pistol Ex.P-6 and one live cartridge Ex.P-7.

[32]. Even if there was some faulty investigation in not subjecting the pistol and cartridge to FSL, but the said omission cannot itself demolish the entire prosecution case where other attending features of complicity of the accused have been proved on record. The recovery got effected by the accused is hit by Section 27 of the Evidence Act. The recovered properties were duly identified by Jaswinder Singh.

[33]. The testimony of defence witness i.e Dharam Singh DW-1 was found to be not trustworthy inasmuch as that the story set up by the witness in respect of co-accused Balbir Singh having been employed by him as driver on his tractor was

not found to be trustworthy because the witness had admitted that he had not moved any complaint to higher authorities in respect of false implication of Balbir Singh, when he was allegedly picked up by the police on 20.05.2003.

[34]. Non-production of receipt of the deck in respect of ownership was of no consequence when the same was found to have been stolen by the accused and thereafter in disclosure statement the same was recovered from the possession of the accused Balbir Singh vide memo Ex.PH/5. The deck was duly identified by Jaswinder Singh PW-4. The minor discrepancies are bound to creep in with the passage of time. Such discrepancies in ocular version of the witnesses cannot affect the credibility unless and until such discrepancies are vital in nature. In the present case, the discrepancies are only on minor issues. Otherwise, recovery was established on record that too after disclosure statement of the accused person. There cannot be any mathematical niceties in corroboration of evidence and minor variances cannot render the entire prosecution story unbelievable. The minor discrepancies which are trivial in nature cannot obliterate the established and proved evidence on record.

[35] The accused/appellant was identified by PW-2 and

PW-3 on the spot in the light coming out from the shop. Thereafter the accused were identified in the Court, therefore, even if the weapon of offence was not sent for FSL, the material collected by the prosecution and matching configuration of the used cartridge found on the spot was sufficient to connect the culpability of the accused viz-a-viz. recovered weapon from him and disclosure statement made by the accused showing his complicity in the occurrence and causing fire arm injury to the injured.

[36]. In view of material on record the factum of not holding of test identification parade cannot be taken to an instance of drawing any adverse inference against the prosecution as the testimonies of PW-2 and PW-3 are sufficient to prove the identity of the accused, who were identified in the light of bulb coming out from inside the shop and subsequently the accused were duly identified in the Court with reference to their clothes. The disclosure made by the accused/appellant ultimately led to recovery and same was hit by Section 27 of the Evidence Act. Perusal of past history of the accused/appellant shows that he was habitual in committing such type of offences.

[37]. In view of material on record, I do not consider this case to be fit enough for any interference as the prosecution

has brought on record sufficient material to prove the guilt of the accused to the hilt. This appeal is found to be totally devoid of merits and the same is accordingly dismissed. The accused/appellant is on bail, he be taken into custody to undergo his remaining part of sentence.

November 25, 2017

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No