

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-644-DB of 2010

Date of decision : 26.4.2017

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Rajinder @ Raju

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Raman Chawla, Advocate for the appellant

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

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H. S. Madaan, J.

This appeal is directed against judgment dated 19.4.2010, passed by the Court of Additional Sessions Judge, Hisar, vide which he had convicted accused Rajinder @ Raju for offences under Sections 186, 353, 307 IPC and Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), and order dated 21.4.2010, sentencing the accused - convict as follows :-

U/s 186 IPC	To undergo rigorous imprisonment for two months and to pay fine of Rs.500/-. In default of payment of fine to undergo further rigorous imprisonment for ten days.
U/s 353 IPC	To undergo rigorous imprisonment for 1 year and to pay fine of Rs.2,000/-. In default of payment of fine to undergo further rigorous imprisonment for 1 month.
U/s 307 IPC	To undergo rigorous imprisonment for 5 years and to pay fine of Rs.5,000/-. In default of payment of fine to undergo further rigorous imprisonment for 3 months.
U/s 15 of NDPS Act	To undergo rigorous imprisonment for 12 years and to pay fine of Rs.1.5 lacs. In default of payment of fine to undergo further rigorous imprisonment for 18 months.

The substantive sentences were ordered to run concurrently.

The accused – convict, who is appellant before this Court, prays that the appeal be accepted, the impugned judgment of conviction and order of 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 28.2.2008 a police party from Police Station Agroha, headed by SI/SHO Khyali Ram (hereinafter to be referred as 'the Investigating Officer/IO'), in a Government vehicle bearing registration No. HR 39-A-2733, driven by EHC Naib Singh, was present at Agroha Chowk in connection with patrolling and crime detection. There the Investigating Officer/IO received a VT message from Ashok Kumar Sheoran, Additional S.P., near Durjanpur Mor to the effect that a canter make Eicher bearing registration No. RJ-10GA-494 was coming towards Agroha Chowk whereas one Bolero vehicle bearing registration No. HR-18H-0106 was ahead of said Eicher and one Esteem vehicle bearing registration No. HR-08-8448 was behind the said canter and the canter was suspected to be carrying poppy husk and he was asked to lay barricades to intercept the vehicles for purpose of checking. Barricades were laid and from the side of Hisar the abovesaid three vehicles came, the Investigating Officer/IO signalled those to stop but the vehicles tried to flee after breaking the barricades. The police party headed by the Investigating Officer gave them a chase. Sh. Ashok Kumar Sheoran, Additional S.P., with a police party and Parhlad Singh SI with a policy party also started chasing the vehicles. All the three aforesaid vehicles turned towards Village Kuleri and thereafter towards Village Sabarwas and from Sabarwas towards the *kacha* path, leading to the fields of village Sabarwas. When the police parties came near the aforesaid vehicles, the occupants of the vehicles started firing on the police party with intention to kill, in response thereto the police party also returned the fire. During exchange of fire, one bullet hit windscreen

of the Bolero jeep, bearing registration No. HR-20-1947 which was of Additional S.P. and two bullets fired by police hit on the Bolero vehicle No. HR-18H-0106 of the police on its rear glass screen. Thereafter, the occupants of the vehicles left two vehicles, canter and Bolero on the spot and tried to flee. Three persons from the Esteem car, two persons from the Canter and seven persons from Bolero came out and fled from the spot while firing at the police party. Esteem vehicle was also taken away. The Investigating Officer/IO had fired five shots from his pistol and his gunman Dharampal fired six shots from his carbine, Sh. Ashok Kumar Sheoran, Additional S.P., fired eight shots from his revolver pistol and other officials also fired from their respective weapons, in total 50-60 shots were fired by police parties. One person was apprehended at the spot and on being enquired he disclosed his name as Rajinder @ Raju son of Hanuman, resident of Badopal, accused in the present case. He further gave names of elopees as Subhash, Ramesh, Himmat, Amar Singh, Sunil, etc. Additional S.P. disclosed his identity to Rajinder @ Raju accused and directed the Investigating Officer to search the vehicles, who accordingly did so. During the search of Eicher canter bearing registration No. RJ-10GA-0494, 25 jute bags were recovered from the cabin. On checking, chura post (poppy husk) was found in the bags. Two samples of 100 grams each were separated from each bag and on weighment each bag was found to be containing 39 kgs 800 grams poppy husk. Sealed parcels of the samples were prepared and residue lying in the bags were also sealed with seal of Investigating Officer/IO having inscription 'KR'. Additional S.P. also

affixed his seal bearing monogram 'RB' on sample and residue case property and kept his seal with him, whereas the Investigating Officer/IO handed over his seal to ASI Ram Bhaj. The entire case property alongwith samples, seal impressions and both vehicle Eicher canter and Bolero were taken into possession vide memo Exhibit P-14, which was attested by Ram Bhaj, ASI and HC Puran Chand. Sh. Ashok Kumar Sheoran, Additional S.P., also attested the memo. *Ruqa* Exhibit P-11 was sent through Constable Rajbir for registration of case on the basis of which FIR Exhibit P-12 was recorded by ASI Ramesh Chander. Rajender @ Raju - accused was arrested and proceeding was done at the spot.

During interrogation, Rajinder @ Raju accused suffered a disclosure statement Exhibit P-15 to the effect that he could point out the place i.e. Bhilwara Theka and he could also get arrested the remaining accused, which was signed by accused and attested by ASI Ram Bhaj and HC Puran Chand. The Investigating Officer prepared rough site plan Exhibit P-68.

After completion of investigation at the spot, all fifty samples alongwith 25 bags containing residue poppy husk with canter No. RJ-10GA-0494 were produced before Illaqa Magistrate for certification of inventory. Illaqa Magistrate inspected the case property and thereafter passed order. Thereafter, the case property was deposited with Moharrir, Judicial Malkhana except 25 parcels of samples, which were deposited with MHC of Police Station Agroha and thereafter dispatched to FSL, Madhuban.

Accused Subhash was arrested on 17.5.2008. Accused Sunil

(declared juvenile) was arrested on 28.5.2008. Accused Amar Singh was arrested on 30.5.2008. Accused Ramesh was arrested on 6.9.2008. Himmat Singh could not be arrested and was declared a proclaimed offender on 8.10.2008.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Hisar.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Hisar, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. and then finding that offences under Sections 332, 353, 186, 307 IPC, 25 of Arms Act and 15 of the NDPS Act, were exclusively triable by the Court of Sessions, as such, case was committed to the Court of Sessions Judge, Hisar and it was entrusted to the Court of Additional Sessions Judge, Hisar.

The Additional Sessions Judge, Hisar on finding that prima facie charge for offence under Sections 186/353/307 IPC and Section 15 of the NDPS Act was disclosed against the accused, charge for said offence, was framed against the accused, to which they pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution. However, accused Sunil was declared juvenile vide order dated 30.10.2009 and prosecution was directed to submit supplementary challan before Principal Magistrate, Juvenile Justice Board. Hisar.

During the course of its evidence, the prosecution examined, as many as 10 PWs, i.e. PW-1 EHC Krishan Kumar, PW-2 Ramesh

Kumar MHC, Police Station Agroha, PW-3, HC Sadhu Ram, SP Office, Hisar, PW-4 SI Hawa Singh, Special Staff, Hisar, PW-5 ASI Ramesh Chander, PW-6 SI Jeet Singh, Incharge CIA Hisar, PW-7 ASI Ram Bhaj, PW-8 SI Khyali Ram, Investigating Officer/IO, PW-9 SI Karan Singh, CIA Staff, Hisar and PW-10 A.K. Sheoran, Superintendent of Police, Special Task Force, Range Hisar and Rohtak.

The Public Prosecutor tendered in evidence, report of Chemical Examiner Exhibit P-73 and thereafter closed the evidence of the prosecution.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the same stating that they are innocent and have been falsely involved in this case. All the accused have taken up the plea that they have been falsely implicated by the police due to political enmity in the village; that they were not present and were arrested much prior to the dates shown of their arrest. During their defence evidence, the accused examined six witnesses, i.e. DW-1 Krishan, DW-3 Krishan Lal, DW-4 Sharvan Kumar, DW-5 Suman, Constable, Police Station Badhra, District Bhiwani, DW-6 Jagdish Chander, Ahlmad to the Court of Sh. Naresh Kumar, Additional Sessions Judge, Bhiwani and DW-7 Balwant Rai, Ahlmad to the Court of CJM, Panipat.

Thereafter the defence evidence of the accused was closed.

After hearing arguments, the trial Court acquitted accused Rajesh, Subhash and Amar Singh, by giving them benefit of doubt.

However, the trial Court convicted and sentenced accused - Rajinder @ Raju as mentioned above, which left him aggrieved and he has filed the present appeal praying that the impugned judgment of his conviction and sentence be set aside by way of acceptance of appeal and he be acquitted of the charge framed against him.

We have heard learned counsel for the appellant-accused, learned Assistant Advocate General, Haryana, for the State, besides going through the record and we find that there is no merit in the appeal.

From the oral as well as documentary evidence adduced by the prosecution, it comes out that accused was found in conscious possession of the contraband and recovery was effected from him observing the necessary rules and regulations. Learned defence counsel could not point out violation of any mandatory provision, while apprehending the accused, effecting recovery from him and carrying out other ancillary proceedings. The very fact that when the police party had laid picket, the vehicle carrying contraband and two other accompanying vehicles did not stop, rather broke the barricades and the occupants therein resorted to firing at the police party, goes to show that occupants were aware of the contraband being transported and they wanted to avoid their apprehension and the seizure of contraband being transported by them. That clearly amounted to obstructing the police officials from performing their official duties and an attempt to intentionally cause death of such police officials. The firing of shots at the police party goes to show the intention of the occupants including the accused to cause death of

the police officials. The accused had been apprehended at the spot and it was he who had disclosed the names of those persons who had fled away as Subhash, Ramesh, Himmat, Amar Singh, Sunil, etc. Since the contraband was being transported in a canter, Section 42 of the NDPS Act is not applicable, rather Section 43 of the NDPS Act, which deals with power of arrest in public place and while contraband is in transit, is applicable. It also comes out that no tampering with the case property had taken place and the samples had been sent to the office of Chemical Examiner with seals intact. From the report of FSL, Exhibit P-73, it comes out that samples were of poppy husk. The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law and there is no illegality or infirmity therein. The conviction of the accused – appellant is upheld.

However, regarding sentence part, keeping in view the facts and circumstances of the case, young age of the accused, his financial position, he having a family comprising three minor children and being stated to be the sole bread winner of his family, we find that there is some scope for reduction in the sentence. Accordingly, the order of sentence passed by the trial Court is modified and accused is sentenced to undergo rigorous imprisonment for 10 years instead of 12 years, earlier awarded under Section 15 of the NDPS Act and fine imposed upon him to the tune of Rs.1.5 lac is reduced to Rs. 1 lac and in default of payment of fine, he is to undergo further rigorous imprisonment for 18 months. His sentences of imprisonment and fine for the offences under Sections 186, 353 and 307 IPC alongwith their

default clauses are maintained. All the substantive sentences of imprisonment are ordered to run concurrently.

Accordingly, the appeal is allowed partly.

	(T.P.S. Mann) Judge	(H.S. Madaan) Judge
26.4.2017		
chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No