

CRA-S-2182-SB-2004

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2182-SB-2004
Date of Decision : 18.11.2017

ANWAR

...Appellant(s)

Versus

STATE OF HARYANA

...Respondent(s)

2nd Case

CRA-S-26-SB-2005

SARAFAT

...Appellant(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Ashok Paul Batra, Advocate in CRA-S-2182-SB-2004
Mr. Bimal Maini, Advocate in CRA-S-26-SB-2005
for the appellant(s).

Mr. Vikas Malik, Deputy Advocate General, Haryana.

Anupinder Singh Grewal, J.(Oral)

By this judgment, two appeals bearing No. CRA-S-2182-SB-2004 and CRA-S-26-SB-2005 are being disposed of as common questions of facts are involved therein.

2. The appeals are directed against the judgment of the learned Additional Sessions Judge, Panipat dated 11.09.2004, whereby the accused, namely, Anwar and Sarafat have been convicted in FIR No. 398 dated 29.05.2002, registered at Police

Station City Panipat, under Sections 392, 397, 34 of Indian Penal Code (hereinafter referred to as 'IPC') and Section 25 of the Arms Act. They were sentenced to undergo rigorous imprisonment for 07 years each and to pay fine of ₹500/- each under Sections 392, 397 IPC. In default of payment of fine to undergo simple imprisonment for 06 months each. The accused Anwar and Sarafat have also been sentenced to undergo rigorous imprisonment for 02 years and 01 year respectively under Section 25 of the Arms Act and to pay fine of ₹500/- each. In default of payment of fine under Section 25 of the Arms Act, to undergo simple imprisonment for 06 months each.

3. For brevity, facts are being taken from CRA-S-2182-SB-2004.

4. The prosecution story is that on 29.05.2002 ASI Jagdeep Singh along with HC Phool Singh and other police officials were on patrolling duty. When they reached unmetalled passage (katcha rasta) from village Kutani to village Raja Kheri, they saw three persons quarreling with each other. ASI Jagdeep Singh along with other police officials apprehended both the accused. The statement of complainant-Prem Kumar was recorded by ASI Jagdeep Singh, wherein, he stated that he is a resident of Panipat and had gone to his friend Parveen Kumar on his motorcycle. While on his way back, he was stopped by two young persons and was asked to part with all his belongings. When he denied that he had anything valuable with him, one of the accused put his hand in the complainant's pocket and took out a sum of ₹200/- along with a copy of driving license. The

other accused pushed the complainant and when he fell down, both the accused tried to flee on their motorcycle. The complainant caught hold of accused Sarafat, who asked co-accused Anwar to fire a shot from his pistol. Accused Anwar thereafter parked his motorcycle and rescued accused Sarafat. In the meantime, the police party arrived there and apprehended them from the spot. After a search carried out, from the accused a .315 bore pistol was recovered from Anwar along with a spring actuated knife. A copy of driving license and ₹200/- were recovered from accused Sarafat. The information was sent to the police station and a formal FIR was recorded in this regard. Investigation was carried out. Challan was filed and the case was committed to the Court of Sessions in terms of Section 207 Cr.P.C.

5. The accused were charge-sheeted for commission of offence punishable under Section 392 read with Section 397 of IPC and Section 25 of the Arms Act, to which, they did not plead guilty and claimed trial.

6. In order to prove its case, the prosecution examined 05 witnesses including PW1 HC Surender, PW2 Prem Kumar (complainant), PW3 SI Jagdeep Singh, PW4 Sant Lal, Reader to DM, Panipat and PW5 Constable Dilbag Singh and closed its evidence.

7. The accused were examined under Section 313 Cr.P.C. and claimed false implications and did not lead any evidence in their defence.

8. After recording the statements of the witnesses and considering the entire evidence, the accused were held guilty and

convicted for the offence punishable under Section 392 read with Section 397 of IPC and Section 25 of the Arms Act and were sentenced to undergo rigorous imprisonment as mentioned in the earlier part of this judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, separate appeals have been preferred by the appellants.

10. Learned counsel for the appellants contends that the trial Court has erroneously convicted the accused even though from the evidence on record, the case of the prosecution had been severely dealt with. The complainant had totally resiled from his statement given to the police while recording the FIR. He was also the witness to the recoveries and had denied the same. The police did not involve any independent witness, although as per the prosecution case and the testimony of the official witnesses, it was evident that the place of recovery was a busy thoroughfare and several persons were passing by. Therefore, independent witnesses were available but they were not involved in the recovery. Learned counsel also contends that the appellant Sarafat had undergone an actual sentence of over 01 year, 08 months and 25 days and sentence of 01 year, 11 months and 03 days with remission on 31.03.2006 when his sentence was suspended during the pendency of the appeal. The appellant Anwar had undergone an actual sentence of 04 years, 05 months and 07 days and sentence of 05 years, 04 months and 24 days with remission out of the total sentence as on 27.11.2008 when his sentence was suspended. Learned counsel further contends

that the appellants were denied a fair trial inasmuch as while recording their statements under Section 313 Cr.P.C. The entire prosecution evidence, especially, the statements of the prosecution witnesses were not put to them which has caused serious prejudice to their case.

11. Learned State counsel states that although the complainant had resiled and had been declared hostile and was cross-examined by the Public Prosecutor, but the statements of the official witnesses by themselves would be sufficient to convict the appellants, especially, when there was no motive to falsely implicate the appellants.

12. I have heard learned counsel for the parties and have carefully examined record of the case.

13. The prosecution case is primarily based on the statement of complainant Prem Kumar. He was alleged to be the person, who was robbed of ₹200/- along with copy of his driving license. He totally resiled from the statement on the basis of which the FIR was registered. He had stated that the accused, who were present in Court, are not the persons, who had snatched ₹200/- and photocopy of driving license from his pocket on gun point. He also denied that the accused had been apprehended at the spot. The recovery of .315 bore pistol has also been denied. Although he was also a witness to recovery of the robbed articles as well as pistol and knife but he had totally denied the same. He stated that his signatures had been obtained by the police on blank papers and that he had not signed the recovery memos.

14. Further PW1 HC Surrender had also admitted in his cross-examination that when the Investigating Officer had produced the pistol before him for testing, it was not in a sealed parcel. He also admitted the butt of the pistol did not have any specific mark.

15. PW3 SI Jagdeep Singh, who was also a witness to the recovery, had admitted in his cross-examination that the place of recovery was a busy thoroughfare and several persons were passing by but no independent person was associated with the recovery.

16. The presence of independent witness for effecting recovery may not be necessary in all cases and the testimony of official witnesses could be relied upon if it is found to be truthful and trustworthy. However, in the facts and circumstances of the instant case, especially, when the complainant, who was allegedly robbed by the accused and was a witness to the recovery, has totally resiled from his statement and turned hostile, it would be unsafe to merely rely on the official witnesses in support of the recovery. The recovery was effected from busy thoroughfare and there is no independent witness.

17. For these reasons, the conviction of the appellants cannot be sustained. Consequently, the appeal is allowed and appellants/accused are acquitted of the charges framed against them.

November 18, 2017
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(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No