

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA-S-2187-SB-2004 (O&M)
Date of decision : 16.11.2017
...
SanjayAppellant

vs.

State of Haryana
.....Respondent

2) CRA-S-2340-SB-2004 (O&M)
...
Mahabir SinghAppellant

vs.

State of Haryana
.....Respondent

3) CRR-682-2005 (O&M)
...
Bhalle RamPetitioner

vs.

Sanjay and others
.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Preeti Sharma, Advocate for the appellant
in CRA-S-2187-SB-2004

Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate for appellant in
CRA-S-2340-SB-2004 and
for respondent No.2 in CRR-682-2005.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

Mr. Naresh Kaushik, Advocate for the complainant

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H. S. Madaan, J.

Vide this judgment, I propose to dispose of two appeals i.e. CRA-S-2187 SB-2004 filed by Sanjay, CRA-S-2340-SB-2004 filed by Mahabir Singh and one revision petition i.e. CRR 682-2005 filed by Bhalke Ram.

Briefly stated, the facts of the case, as per prosecution story, are that accused Sanjay, Mahabir Singh and Ajay @ Nitu being involved in FIR No. 198 dated 11.6.1999, for offences under Sections 307, 450, 148, 149 IPC read with Section 25 of the Arms Act, registered with Police Station Rai, had faced trial by Sessions Judge, Sonapat, who vide his judgment and order dated 21.10.2004, had acquitted accused Ajay, Partap, Satish, Siri Bhagwan, Dilbagh and Samunder of the charge framed against them, whereas accused Mahabir Singh and Sanjay were convicted and sentenced as follows:-

<i>Under section</i>	<i>Sentence</i>
U/s 307 IPC read with Section 34 IPC	Rigorous imprisonment for a period of 7 years and to pay a fine of Rs.3,000/- each. In default of payment of fine to further undergo rigorous imprisonment for one year.
U/s 450 IPC read with Section 34 IPC	Rigorous imprisonment for a period of 5 years and to pay a fine of Rs.2,000/- each. In default of payment of fine to further undergo rigorous imprisonment for one year.

Both the sentences were ordered to run concurrently.

Briefly stated, facts of the case as per prosecution version are that on 11.6.1999, a police party from Police Station Rai, headed by ASI Sanjiv Kumar was going in the official jeep and was on patrol duty; that when the jeep carrying police party was present

on GT Road, in front of Police Station Rai, then Siri Chand s/o Birkha Ram Bairagi, Sanjay s/o Bhalle Ram, residents of village Asawarpur came across Sanjiv Kumar ASI and told him that a shot had been fired at Bhalle Ram in his Baithak (drawing room). ASI Sanjiv Kumar reached the Baithak of Bhalle Ram, who was found to be there and his statement was recorded, wherein he stated that he is an agriculturist by avocation; he has his two sons, namely, Krishan and Manjit. At about 1.00 A.M. in the early morning hours, while complainant alongwith his two sons aforesaid was present in the Baithak, Siri Chand s/o Barkha Ram was smoking a pipe (hubble bubble) with the complainant. At about 1.15 A.M. Siri Chand went away to his fields for looking after the water. Sons of the complainant were sleeping in the drawing room and the complainant was lying on his bed. He was awake. At about 1.40 A.M. a Maruti car and a motor cycle of red colour came from the side of village and stopped on the road. From the car, Mahabir Singh, Satish, Samunder, Dilbagh, Siri Bhagwan and Partap got down. Mahabir Singh accused entered the Baithak of the complainant. At that time he was armed with a pistol, whereas remaining persons remained standing at both the doors of the Baithak. Mahabir Singh fired a shot at the complainant, while he was lying on his cot. It was so done with an intention to kill him. The shot so fired had hit left arm of the injured. The pellets also caused injuries on the right arm and right abdomen. Left hand of the injured started bleeding. Consequently, complainant raised alarm *Mar Diya - Mar Diya*, on hearing which both sons of the complainant woke up and all those persons went away to GT Road in the car and while leaving

they had taken away the motor cycle. Siri Chand also reached the spot on hearing noise. Siri Chand and Sanjay, sons of the complainant went to the police station, Rai, for lodging report regarding the incident. The police party had come to the spot. Statement of Bhalle Ram which was recorded on 11.6.1999 was forwarded to the Police Station after making endorsement, on the basis of same, the present case was registered and investigated. Sanjay, Ajay and Mahabir Singh were arrested in that case. Sanjay on being interrogated, had suffered a disclosure statement and Sanjay while in police custody, in pursuance of said statement got recovered a pistol, which was seized, after preparing a sketch. Sanction of District Magistrate was obtained and after completion of investigation, challan was prepared and filed in the Court.

On presentation of challan in the Court of Area Magistrate, copies of documents relied thereupon were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. and then finding a prima facie case, charge for offence under Sections 307, 450 IPC read with 34 IPC was framed against such accused, to which they pleaded not guilty and claimed trial.

During the course of evidence of prosecution, it examined Sube Singh, Inspector as PW-1, Inderpal Constable as PW-2, Jugal Kishore UGC as PW-3, Dharambir Constable as PW-4, Shyam Sunder Constable as PW-5, Anoop Singh HC as PW-6, Bhalle Ram – complainant as PW-7. All the additional 5 accused, namely, Samunder, Dilbagh, Satish, Siri Bhagwan and Partap Singh, were summoned, while allowing application under Section 319

Cr.P.C., such accused put in appearance and learned counsel appearing on their behalf made a statement that they have no objection if evidence of prosecution witnesses, namely PW-1 to PW-6 are read against them also.

Thereafter, the prosecution further produced Azad Singh as PW-8, Krishan as PW-9, Dr. A.S. Ahlawat as PW-10, Satbir Singh, Reader to District Magistrate as PW-11, Ramdhan Inspector as PW-12, Rajiv Kumar ASI as PW-13, Samunder Singh constable as PW-14, Inder Singh as PW-15 and Lajpat as PW-16. With that the prosecution evidence was closed.

Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against accused were put to them, but they denied the allegations and pleaded false implication. They further stated that no such occurrence took place and due to animosity in the village, they were falsely implicated in this case and the prosecution witnesses were interested one, who had deposed falsely against them.

During their defence evidence, the accused examined DW1 Abhe Singh DSP and DW 2 Ishwar Singh, Gram Sachiv, besides producing documents Exhibits DB to DE. With that the defence evidence was closed.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra. Feeling dissatisfied with such judgment of conviction and sentence, passed against them, accused Sanjay and Mahabir Singh have filed two separate appeals, as mentioned above, whereas criminal revision petition has been filed

by Bhalle Ram-complainant for enhancement of sentence of the accused-respondents.

The appeals were admitted and recovery of fine was ordered to be stayed.

I have heard learned counsel for the parties, besides going through the record of the case.

Learned counsel appearing for accused Mahabir Singh has argued that though the complainant in his statement to the police has stated that it was Mahabir Singh, who had fired upon him with a pistol hitting him on left arm, but then after registration of the FIR, the matter was enquired into and Abhe Singh, who was then posted as DSP Ganaur, had conducted an enquiry into the matter, submitting his report finding that it was Sanjay Kumar, who had fired from the pistol with the assistance of Ajay Kumar and had conspired with Mahabir Singh and Mahabir Singh accused had not fired the shot. Further more, the weapon had been recovered from the possession of Sanjay and not from Mahabir Singh. According to the prosecution, the pistol from which the shot had been fired was of .315 bore. A bullet is shown to have been recovered from the spot, whereas an empty shell from the pistol.

On the other hand, learned counsel representing Sanjay has argued that the injured has not uttered even a single word; that it was Sanjay who had fired at him. In the FIR no fire arm injury has been attributed to Sanjay, as such he has not committed any offence.

After hearing counsel for the parties and going through the record, I find that the crucial witness in this case happens to be

Bhalle Ram PW, who had received the injuries. He was in best position to say as to who was the assailant who had fired at him. In this case, he had specifically named Mahabir Singh as the assailant who had fired a shot at him causing him injuries. The Police Officer conducting enquiry would not have been in any position to give clean chit to Mahabir Singh and shifted blame to accused Sanjay, observing that it was he who had fired at the injured. The statement got recorded by the injured in the Court on oath has to be given due weightage. Such injured witness has nowhere attributed fire arm injury to Sanjay. There is no other eye witness of the incident. Even if the plea of prosecution that fire arm had been recovered from the possession of Sanjay, is believed, that does not go to show that it was he who had fired at the injured, since the injured himself claims that it was Mahabir Singh, who had fired at him. It is quite possible that after firing shot at the injured, Mahabir Singh had handed over the weapon to Sanjay, from whom it had been recovered. It stands established on the record that a bullet head of .315 bore had been recovered from the spot and as per report from FSL, the bullet is shown to have been fired from the pistol in question, which goes to show that pistol was used in the incident. Fortunately, the injured had not suffered any serious injury after being hit by the bullet, fired from the pistol. It seems that the same just grazed passed his body. If we see the medical evidence produced, then the doctor who had medico legally examined the injured had found 4 injuries on his person. Appearing in the Court as PW-10 Dr. A.S. Ahlawat, has stated that injury No.1 could be caused by a pellet. Perhaps what he meant that part of the small

metallic body. The trial Court clearly fell in error in convicting accused- Sanjay, since evidence was lacking in connecting him to the crime and to show that he had attacked the injured causing him injuries, whereas sufficient evidence is available on the record to come to the conclusion that it was Mahabir Singh, who had caused injuries to the injured. The trial Court by mis-appreciation of evidence and wrong interpretation of law had convicted and sentenced accused Sanjay. Such judgment cannot be sustained qua him.

Therefore, the appeal filed by Sanjay is accepted. The impugned judgment and order of conviction and sentence against Sanjay are set aside and he is acquitted of the charge framed against him.

Whereas, the prosecution has successfully proved its charge against the accused Mahabir Singh beyond a shadow of reasonable doubt, as regards offence under Sections 307, 450 IPC.

However, counsel for accused Mahabir Singh has pleaded that a lenient view in the matter be taken since the incident relates to the year 1999 and this accused convict has undergone the agony of trial for more than 18 years. Further more, he is a married person and his family is dependent upon him for financial support and he has no past criminal record.

Considering the facts and circumstances of the case, including the fact that fortunately no serious injury was suffered by the injured in the incident, I am of the considered view that ends of justice would be adequately met if the sentence for offence under

Section 307 IPC is reduced to 5 years in place of 7 years, whereas maintaining the part of sentence as regards payment of fine. Sentence for offence under Section 450 read with Section 34 IPC is kept intact.

In that way the appeal filed by Sanjay is accepted, whereas that of accused Mahabir Singh is accepted partly, as indicated above.

Both the appeals stand disposed of accordingly.

Accused – Mahabir Singh who is stated to be on bail in this case, is ordered to be taken into custody and made to undergo the remaining part of his sentence.

In view of the detailed discussion above, I do not see any reason to enhance the sentence imposed upon accused-convict Mahabir Singh, rather the sentence of imprisonment has been reduced as indicated above. Accordingly, finding no merit in the criminal revision petition, the same stands dismissed.

(H.S. Madaan)
Judge

16.11.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No