

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-1693-SB of 2005

Date of Decision: 17.03.2017

Jitender alias Jitta

... Appellant(s)

Versus

The State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. B.S.Saroja, Advocate
for the appellant.

Ms. Kirti Singh, Deputy Advocate
General, Haryana for the respondent.

Shekher Dhawan, J.

Present appeal is directed against the judgment of conviction dated 9.9.2005 and order of sentence dated 13.9.2005, passed by learned Additional Sessions Judge, Rohtak, whereby appellant-Jitender alias Jitta was acquitted of the charges under Sections 120-B and 302 read with Section 34 IPC along with his co-accused, whereas he was convicted for the commission of offence punishable under Section 25 of the Arms Act, 1959 (hereinafter referred to as “the Act”) and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 1,000/-. In default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of six months.

2. Facts relevant for the decision of the instant appeal that on 16.12.2004, PW.8 Rajbir reported the matter to the police that PW.10 Dharambir Singh son of Prithvi came to him and told that his brother Baljit was shot dead. On this, Rajbir reached at the spot and found that his brother was lying dead. The matter was reported to the police. The police started the investigation. The accused were arrested. Postmortem examination of the dead body of deceased was got done. During investigation, a country made pistol was recovered. Appellant-Jitender alias Jitta made a disclosure statement Ex.P19 that he had kept concealed a pistol and one bullet in the bundle of *jawar* crop lying in his fields, which was to his exclusive knowledge. The empty was handed over to accused Ashok. Thereafter, while leading the police party, he got recovered a pistol Ex.P25 and bullet Ex.P26. The sketches of pistol Ex.P21 and of bullet Ex.P21/A were prepared and the same were taken into police custody vide memo Ex.P22. Rough site plan of the place of recovery Ex.P37 was prepared. The case property was deposited with the Moharrir Head Constable in the police station and after obtaining permission Ex.P32 from the District Magistrate to prosecute accused Jitender alias Jitta for the offence punishable under Section 25 of the Act, challan was presented in the Court.

3. During trial, the prosecution examined its main witnesses for the offences under Section 120-B and 302 read with Section 34 IPC and Section 25 of the Act. The main witnesses had not supported the prosecution case and consequently, all the accused were acquitted of the said offences, whereas appellant-Jitender alias Jitta was convicted and sentenced for the commission of offence under Section 25 of the Act.

4. Learned counsel for the appellant contended that the prosecution case has not been proved as the main witnesses relating to the alleged occurrence have not supported the prosecution case and present appeal be also accepted and appellant be acquitted of the charges under Section 25 of the Act.

5. While arguing on this point, learned State counsel contended that appellant-Jitender alias Jitta was facing trial for the offences under Sections 120-B and 302 read with Section 34 IPC and Section 25 of the Act and the instant appeal be dismissed.

6. I have considered the submissions made by learned counsel for both the parties on this point and appraised the entire evidence available on file. As per PW.16 Assistant Sub Inspector Ramphal and PW.17 Sub Inspector Kitab Singh, before whom appellant-Jitender alias Jitta got recovered one county made pistol .315 and one bullet in pursuance of his disclosure statement Ex.P19. The same were taken into possession and after sealing thereof, they were sent to Forensic Science Laboratory, Madhuban, Karnal for examination. As per the report of Forensic Science Laboratory, the said pistol was found to be in working condition. There is nothing to disbelieve the testimony of these two witnesses as regard to commission of offence under Section 25 of the Act. The sanction was obtained from the District Magistrate for prosecution of the appellant/accused. The learned trial Judge has rightly held the appellant guilty for the commission of offence under Section 25 of the Act. Thus, the appeal against the judgment of conviction dated 9.9.2005, filed by the appellant, for the commission of offence under Section 25 of the Act is without any merit and the same is

hereby dismissed.

7. As regard to appeal against order of sentence dated 13.9.2005, learned counsel for the appellant contends that as the appellant has already been acquitted of the main offences under Sections 120-B and 302 read with Section 34 IPC and also as he has already undergone actual sentence of more than eight months, he be released from custody.

8. Learned State counsel contends that there are no grounds for taking leniency on the point of sentence.

9. Having considered the submissions made by learned counsel for the parties and considering the fact that the main offences alleged against appellant-Jitender alias Jitta and his co-accused have not been proved, though the offence alleged against the appellant for having conscious possession of a country made pistol and one bullet has been duly proved and the fact that the appellant has already undergone actual sentence of eight months, certainly a lenient view on the point of sentence can be taken. Accordingly, the appeal is partly accepted and the sentence awarded to the appellant under Section 25 of the Act is modified to the extent that he shall undergo rigorous imprisonment for a period of one year and shall pay a fine of ₹ 5,000/- and in default thereof, he shall further undergo rigorous imprisonment for a period of one month.

10. As appellant-Jitender alias Jitta is on bail, he be taken into custody to serve the remaining sentence. In that case, his bail/surety bonds shall stand cancelled. The trial Court shall comply with this order forthwith under intimation to this Court. The Registry shall keep track of the submission of compliance report and put up the papers accordingly after a

period of three months.

11. Thus, the present appeal is partly accepted in above terms.

(Shekher Dhawan)
Judge

March 17, 2017
“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No