

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-220-SB of 2010

Date of Decision: 14.12.2017

Raja alias Rajesh and Others
... Petitioner(s)

Versus

State of Haryana
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Ms. Swati Batra, Advocate (Amicus Curiae)
and Mr. Nishant Arya, Advocate for
Mr. S.K.Verma, Advocate
for the appellants.

Mr. Satish Saini, Deputy Advocate General
Haryana for the respondent.

Shekher Dhawan, J.

Present appeal against the judgment of conviction and order of sentence dated 21.11.2009, passed by the learned Additional Sessions Judge, Jind, whereby all the three appellants, namely Raja alias Rajesh, Mandeep and Sunil were convicted and sentenced as under:-

<i>Name of the appellants</i>	<i>Section</i>	<i>Sentence awarded</i>
<i>Raja alias Rajesh, Mandeep and Sunil</i>	<i>307 read with Section 34 IPC</i>	<i>To undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs.10,000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for a period of six months each.</i>
<i>Raja alias Rajesh, Mandeep and Sunil</i>	<i>25 of the Arms Act, 1959</i>	<i>To undergo rigorous imprisonment for a</i>

		<i>period of three years each and to pay a fine of Rs.3,000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for a period of three months each.</i>
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Facts relevant for the purpose of decision of present appeal that on 16.1.2009, Raj Singh, Sub Inspector of police along with Constable Hawa Singh and E.H.C.Abhey Ram had gone to District Jail, Kurukshetra for escort duty, to produce accused Shish Pal in the Court. From Karnal Jail Suryavir son of Balram, injured in this case and his co-accused, Devinder and Pardeep were taken from the jail as all of them were to be produced in the Courts at Jind and reached District Courts, Jind. After producing them in the Court, when they were going to sit in the vehicle along with the above mentioned accused, who were in police custody and were at a distance of about ten paces from the Sessions Court. Three young boys, who were armed with country-made pistols i.e. *kattas* opened fired. One shot each was fired upon Suryavir from the weapons each accused person. One bullet hit on the right side of nipple of Suryavir and crossed and Suryavir fell down. While falling down, Suryavir disclosed the name of assailants as Rajbir alias Raja, Sunil and Mandeep. Injured Suryavir was taken to hospital for treatment and all the assailants fled away from the spot along with their respective weapons. Suryavir was referred to PGIMS, Rohtak as his condition was serious and the matter was reported to the police.

During investigation, accused persons were arrested; weapons

used for commission of offence were recovered and after obtaining medicolegal report of Suryavir and completion of investigation proceedings, challan was presented in the Court for trial.

During the trial, the learned trial Judge completed various proceedings of the trial including framing of charges against accused persons under Sections 307, 148 read with Section 149 IPC, 353, 120-B, 216 read with Section 149 IPC and Section 25 of the Arms Act, 1959 (hereinafter referred to as “the Act”) and recorded the statements of prosecution witnesses. The learned trial Court considered the prosecution evidence; the statements of accused under Section 313 Cr.P.C. and defence version. After considering the prosecution as well as defence version, the learned trial Court held the prosecution case to be based on statement of prosecution witnesses and documentary evidence including FSL Report as well and convicted and sentenced the appellants as above and hence, the present appeal before this Court.

Learned counsel for the appellants, while arguing on the point of innocence of the accused persons in the present incident, contended that prosecution case is not believable at all. To be fair, learned counsel for the appellants contended that there might have been some incident but the involvement of none of the appellants in the present incident has been proved as per law. The entire version as put forwarded by the prosecution right from the date of recording of first information report and version put forwarded by the informant-Sub Inspector Raj Singh (PW.1) and injured himself, namely Suryavir (PW.5), the prosecution case is quite contradictory which cannot be believed at all. The accused persons denied their

involvement in the incident in their respective statements, recorded under Section 313 Cr.P.C. and defence version was duly supported by two defence witnesses, which had been completely ignored by the learned trial Judge. Learned counsel for the appellants further contended that appellant No.1-Raja alias Rajesh has undergone one year, two months & six days, appellant No.2-Mandeep has already undergone six years, nine months and ten days and appellant No.3-Sunil has already undergone seven years, five months & two days out of the total sentence of ten years rigorous imprisonment each awarded upon them.

Learned counsel for the respondent-State, while arguing on these points, contended that prosecution case is proved on the basis of statements of all the three prosecution witnesses, which proved the involvement of all the three appellants, who were arrested in this case and their respective weapons were recovered during investigation. Even FSL Report (Ex.PS) suggests that the weapon recovered from the custody of appellant No.3-Sunil was actually used for causing injury to Suryavir.

It is settled law that the witnesses may depose falsely but the document and scientific evidence cannot be disbelieved on the basis of minor contradictions as pointed out by learned defence counsel.

While arguing on these points, learned counsel for the appellants contended that prosecution version itself is not believable on account of delay in lodging of FIR because the alleged incident had taken place on 16.1.2009 at 10.30 a.m. and FIR was recorded after delay of seven/eight days, though the informant was none else but Sub Inspector of police. However, learned counsel for the respondent-State contended that

delay in itself is not a ground to throw away the prosecution case, rather the same put the Court to greater care and caution to scrutinize the entire evidence and to see whether delay has been well explained.

Having considered the submissions of the learned counsel for the parties and taking into consideration the first informant report (Ex.PW/2) and the statements of all the material witnesses, namely Sub Inspector Raj Singh (PW.1), Head Constable Abhey Ram (PW.7), who was member of the escort party and injured Suryavir (PW.5), there are certain contradictions in the statements regarding who had actually fired upon Suryavir. But in totality of the circumstances, it stands established on record, which find support from the statement of prosecution witnesses, that Suryavir was fired upon with the pistol and there was one injury on his chest. The learned trial Court could not ignore the fact that in such circumstances, it became really very difficult for the victim to identify the person who actually opens fire and at the best, victim can name some person who were actually present on the spot and what had happened in the present case. Suryavir had given the correct version that Mandeep and Sunil were present and one of them had fired a shot upon him. According to this Court, that is quite natural version of the injured in such like cases of firing incident. Sub Inspector Raj Singh (PW.1) though made contradictory statement on some points but he has specifically stated that these three appellants were present on the spot and firing was done by them. Similar is the statement of Head Constable Abhey Ram (PW.7). There is absolutely no reason to disbelieve the testimony of all these three witnesses who had no enmity to depose falsely against the accused persons, whereas the prosecution case is otherwise proved on the

basis of FSL report (Ex.PS) and recovery of weapons i.e. three country-made pistols and out of them one was recovered from appellant-Sunil having been used for causing injury to Suryavir. Defence version is just a plea of denial as put forwarded in the statements of accused under Section 313 Cr.P.C. and statement of defence witnesses have been rightly discarded by learned trial Court. The learned trial Court has already discussed all these points while recording the judgment of conviction. Thus, present appeal as regard to judgment of conviction, being devoid of any merit, stands dismissed.

As regard to order of sentence, learned counsel for the appellants contended that appellants have already suffered much agony of law. The appellants were awarded ten years rigorous imprisonment and as regard to allegations and prosecution version against appellant Raja alias Rajesh, he had not fired upon Suryavir and even Suryavir had not named him and at the best, allegations against him can be said to be under the Act, though such a weapon was never used. Learned counsel for the respondent-State pointed out that recovery of pistol itself is a heinous offence under the Act and three weapons were recovered, out of which one was used and all of them were present at the spot. So, no case is made out for reduction of sentence of the appellants.

Having considered the facts and the entire material available on the file, this Court is of the considered view that appellant No.2-Mandeep has already undergone six years, nine months and ten days and appellant No.3-Sunil has already undergone seven years, five months & two days out of the total sentence of ten years rigorous imprisonment awarded upon them.

However, appellant No.1-Raja alias Rajesh's case is certainly on different

footings and as regard sentence also, his case is being dealt with separately from his co-appellants. The ends of justice would be met suitably in case the sentence, awarded upon the appellants, is reduced to the period already undergone by them.

Resultantly, with the aforementioned modifications in the impugned order of sentence, the instant appeal stands partly allowed. Appellants are directed to be released forthwith, if not required in any other case.

(Shekher Dhawan)
Judge

December 14, 2017
“DK”

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