

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Criminal Appeal No.562-SB of 2005

Date of Decision: 03.04.2017

Rakesh

..Appellant

versus

State of Haryana

..Respondent

CORAM: HO'NBLE MR.JUSTICE RAMENDRA JAIN

Present: Mr. Bahadur Singh, Advocate, for the appellant.

Mr.Gaurav Bansal, Assistant Advocate General, Haryana.

RAMENDRA JAIN, J.

The appellant Rakesh along with his four accomplice was booked under Sections 148/307/149 IPC and 25 of the Arms Act, vide FIR No.76 dated 18.8.2001 at Police Station Bound Kalan, falling in District Bhiwani. Out of them, one Kalu (accused) was declared as Proclaimed Offender, whereas three others, namely, Sant, Lalit Kumar and Yogesh were acquitted and the appellant Rakesh alone, though, was acquitted under Sections 148,307 and 149 IPC, but was held guilty under section 25 of the Arms Act and was sentenced to remain in custody from 03.01.2002 to 17.04.2004, i.e., the period for which he had already undergone vide impugned judgment of conviction and order of sentence dated 31.01.2005 passed by the learned Additional Sessions Judge (Fast Track Court), Bhiwani.

Learned counsel for the appellant contended that no independent witness was associated at the time of recording of alleged confessional statement, Ex.PS or effecting recovery of alleged country made

pistol .12 bore vide recovery memo Ex.PS/3 from the conscious possession of the appellant and thus, the same is doubtful. Further, when the plea of the prosecution with regard to the main offence is not believed by the trial court and the appellant has been acquitted under sections 148, 307 and 149 IPC, in that eventuality, he could not have been convicted under section 25 of the Arms Act. In support of his arguments, learned counsel for the appellant has placed reliance upon the decision rendered in Ashwani Kumar @ Babbi and others versus The State of Punjab, 1999 (1) CLJ (Criminal) 215.

I have given my thoughtful considerations to the submissions made by the learned counsel for the appellant and the learned State counsel.

The alleged occurrence of causing injuries to Bhollu son of Malkhan took place on 17.8.2001. The arrest of the appellant was made on 07.12.2001, i.e, after more than three and half months when he was on police remand in another case FIR No.372/2001 under sections 395/397/365/120-B/34 IPC of Police Station Connaught Place, New Delhi. Admittedly, Bhollu-injured did not appear as a witness in this case to depose against the appellant or any of his alleged accomplice as he was declared as a Proclaimed Offender in some other case and eventually, non-bailable warrants were ordered to be issued against him, which could also not be executed. Finally, on 17.5.2004, a report was received about his death. Even the prosecution did not examine any of the independent witnesses, though it had named two witnesses, namely, Manjeet and Satender, who were also finally given up by the prosecution. Hence, it is a case of no evidence against the appellant or his accomplice and, thus, they have rightly been acquitted of charges under Sections 149, 307 and 148

IPC. A perusal of the alleged disclosure statement, Ex.PS and recovery memo Ex.PS/3 clearly show that the prosecution did not associate any independent witness during investigation.

In Ashwani Kumar's case (supra), the prosecution story qua the main offence against the accused was not believed and thus, in that eventuality, the accused were ordered to be acquitted under Section 25 of the Arms Act. In the instant appeal, the appellant was acquitted in the main offence, but was convicted under section 25 of the Arms Act. The argument of the learned counsel for the appellant that the approach of the learned Additional Sessions Judge (Fast Track Court), Bhiwani, in convicting the appellant under section 25 of the Arms Act, is erroneous, finds favour with this court in the light of the observations made in the judgment, referred to above.

Since, as discussed above, it is a case of no evidence and the alleged recovery is not effected in the presence of any independent witness, therefore, it is a fit case of acquittal of the appellant under section 25 of the Arms Act. The appeal is, accordingly, allowed. The impugned judgment of conviction and order of sentence dated 31.01.2005 recorded under section 25 of the Arms Act by the learned Additional Sessions Judge (Fast Track Court), Bhiwani is set aside. Resultantly, the appellant Rakesh is acquitted of the charge under section 25 of the Arms Act.

03.04.2017
VK

(RAMENDRA JAIN)
JUDGE

- | | | |
|----|---------------------------|--------|
| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable | Yes/No |