

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-No.873-SB OF 2005
DATE OF DECISION : 3rd MAY, 2017

Ajaib Singh SHO

.... appellant

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Bipan Ghai, Senior Advocate with
 Mr. Paras Talwar, Advocate for the appellant.

 Mr. Sumeet Goel, Advocate, Retainer Counsel for CBI.

 Mr. Sidakmeet Sandhu, AAG, Punjab.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 29.04.2005 passed by Additional Sessions Judge (Adhoc), Patiala by which appellant-Ajaib Singh ASI was convicted and sentenced as under Section 307 IPC for five years plus fine of ₹500/- and for offence under Sections 353, 224 IPC and 27 of Arms Act to undergo imprisonment for a period of one and half year each, the present appeal was preferred by him in this Court.

2. Briefly stated, the prosecution case is that he was working as SHO and was prosecuted in criminal case SC No.16T of 2001/11-2-2000 for offence under Section 364 IPC for abduction of one Sukhmander Singh and had appeared in the Court in the said trial on the date of judgment in that case on 07.02.2003. The trial Court namely Sh. A. K. Singla, Additional Sessions Judge, Patiala pronounced the judgment holding him guilty of offence under Section 364 IPC and convicted and

sentenced him to undergo rigorous imprisonment for ten years plus fine of ₹500/-. The appellant Ajaib Singh was sitting in the Court hall. No sooner he heard the judgment of conviction he started running away from the Court premises but was held by HC Gurcharan Singh. The appellant however, fired shot from .38 bore official revolver which was with him at that time in which HC Gurcharan Singh was injured but then he was overpowered and was arrested and FIR was registered against him under Sections 353, 307, 224 IPC and 27 of the Arms Act. The chargesheet was filed in the trial Court. The prosecution examined the witnesses including the injured witness and closed his case. The trial Court heard the arguments and thereafter convicted the appellant as aforesaid. Hence this appeal.

3. In support of the appeal learned senior counsel for the appellant submitted that no independent witnesses from the Court premises was examined to prove the case and only interested witnesses were examined and therefore, the trial Court should not have relied on the version of interested witnesses. Learned senior counsel for the appellant then contended that the appellant had deposited the revolver with the police Niab constable and therefore there was no question of firing from the revolver. The learned senior counsel for the appellant then contended that the prosecution had miserably failed to prove its case. In the alternative he submitted that out of the sentence awarded by the trial Court the appellant has already undergone sentence of five years and thereafter he was admitted to bail by this Court on 25.08.2005. The appellant is an old person of 75 years of age and has undergone more

than sufficient sentence. He, therefore, prayed for reducing the sentence to the one already undergone by him.

4. *Per contra*, Mr. Sumeet Goel, learned counsel for the CBI has vehemently opposed the appeal preferred by the appellant. He contended that the appellant clearly had taken the law in his hand and the appellant, being the member of disciplined force, was not supposed to behave in the manner he had behaved after the conviction was pronounced by the trial Court. The award of conviction by the trial Court is to maintain the rule of law. The appellant should not have used his official revolver to fire and thereafter run away from the Court premises instead of surrendering to the Court. At any rate, the appellant had intention to run away by attempting to commit murder of the officials who were surrounding him. Eventually he could not succeed. The offence is very serious in relation to the offence in the Court premises. Therefore, his sentence cannot be reduced in this case. He, therefore, prays for dismissal of the appeal.

5. Heard learned counsel for the rival parties at length. I have seen the entire evidence tendered by the prosecution and the reasons given by the trial Court for recording the conviction of the appellant.

6. It would be appropriate to note that the appellant was prosecuted in Sessions case No.16T of 2001/11-2-2000 for commission of offence under Section 364 IPC and was convicted by the trial Court. The said case related to the appellant allegedly abducting one Sukhmander Singh from his house, heading police party and the CRPF personnel in the days of insurgency in the State. The appellant had

preferred appeal CRA-S-No.600-SB of 2003 against the said judgment and order of conviction dated 07.02.2003 in this Court. I have simultaneously decided the said appeal and I have found that the appellant was not found guilty of the commission of offence under Section 364 IPC and therefore he has been acquitted by this Court by the judgment and order of even date. This Court has held in the said appeal that as a police officer Incharge, it was his duty to carry out searches and also interrogate the suspected people involving in the terrorist activities in the State. Therefore by no stretch of imagination it could be said that Sukhmander Singh was taken with him in the custody by way of abduction as it was his duty to make searches and interrogate or arrest the people whom he found involved in suspicious terrorist activities. It was, therefore, wrong to say that he had abducted Sukhmander Singh since it was the part of his duty as aforesaid. This Court had also held that the evidence of the prosecution was insufficient to bring home the guilt of the appellant Ajaib Singh as that prosecution as it did not have any satisfactory evidence after Sukhmander Singh was allegedly taken away from his house. This Court has also found that there was evidence to show that Sukhmander Singh was involved in terrorist activities during the days of insurgency and that was deposed by two witnesses. It has been further found by this Court that Sukhmander Singh had as stated by PW-9 visited Param Pita Shah Satnam Singh Ji, General Hospital, District Gurusar Moria, District Sri Ganga Nagar (Rajasthan) on 19.11.1998 and OPD register entry as Sr. No.60 of 19.11.1998 Exhibit DF was duly proved by DW-12 Sahdu Ram Duggal. That means

Sukhmander Singh had visited that hospital after about six years of his missing. This Court had, therefore, extended the benefit of doubt to the appellant Ajaib Singh in that case.

7. Keeping in mind the aforesaid order of acquittal, it would be appropriate to now proceed to record findings in the present appeal.

8. Insofar as challenge to the conviction by the appellant is concerned, I find that there is satisfactory evidence on record to uphold the conviction of the appellant for the offences under Sections 353, 307, 224 IPC and 27 of the Arms Act. The prosecution examined the injured witness PW-7 HC Gurcharan Singh. It was PW-7 who received the fire arm injury due to the shot fired by the appellant in order to run away from the Court premises he having heard about his conviction in the case of abduction as discussed above. The trial Court has discussed the evidence of PW-7 HC Gurcharan Singh and has even quoted the same in para 14 of the impugned judgement. I quote the relevant portion from para 14 which reads thus:

“But there is no ground to disbelieve the injured HC Gurcharan Singh who deposed on oath in the operative part of his evidence as under:-

“As soon as myself and HC Jasbir Singh took accused Ajaib Singh in custody Ajaib Singh took his service revolver and fired on me with intention to kill me, when shot of the revolver hit me in my right shoulder. Then Ajaib Singh

accused ran away from the spot but
accused now present in Court was
apprehended by HC Jasbir Singh and
Naib Court Darshan Chand with the
help of other officials. Due to injury I
fell down on the place where I received
the injury”

9. It is then seen that the trial Court also found that the Naib Court Darshan Chand appeared as PW-1 in the Court and he clearly corroborated the evidence of PW-7 Gurcharan Singh. The trial Court discussed the evidence of Darshan Chand in para 15 which I quote hereunder:

“15. The above version of PW7 HC Gurcharan Singh who has withstood the test of cross-examination is cogent and convincing and is supported by concerned Naib Court Darshan Chand who appeared as PW1 and supported the same version as under:-

“When I was handling over accused Ajaib Singh to HC Gurcharan Singh and HC Jasbir Singh the accused took out his service revolver and fired a shot towards us. The fire of the revolver of the accused hit at the right shoulder of HC Gurcharan Singh and the accused

Ajaib Singh had run away towards new
Court complex.”

10. The evidence of these two witnesses has not been shaken in the cross-examination and in my opinion, therefore the ocular evidence of these two witnesses has rightly been relied by the trial Court.

11. It is then seen that there is further corroboration to the prosecution by way of medical evidence. The prosecution examined PW-5 Dr. Pardeep Singh who deposed about the injuries sustained by PW-7 Gurcharan Singh. Following is the evidence from para 10 and 11 of the judgment of the trial Court:

“10. xxx..... xxx..... xxx..... Dr. Pardeep Singh PW-5 has observed as under about the injuries received by the injured/stamped witness HC Gurcharan Singh and he observed as under:-

“1. Entry wound caused by a fire arm weapon measuring 1x1 cm. lying in front of right shoulder, 6cm. from lateral end of right clavical, 6cm above interior axillary fold with corresponding tear. Present on jacket and shirt and burns were present upon jacket tear. Abrated collar was present and blackening was also present. Bleeding present.

2. Redish abrasion 4x3 cm. vertically present on front right arm.

8cm below injury no.1 and 20 cm above right cubital forssa with underneath bullet was palpable. Advised X-ray and orthopedic and surgical observation for injury no.1 and 2.

I handed over to police.

1. A sealed packet containing a jacket and a shirt with one seal.
2. Sample seal, copy of MLR.”

11. The above medical evidence is further supported by Dr. Jatin Garg PW 16 who brought the X-ray report of the injured Gurcharan Singh and proved his X-ray report and carbon copy of the same Ex.PW16/A and he observed Radio Dense shadow stimulating a bullet which was seen in the soft tissues of the right upper arm. So this medical evidence is corroborating each other as per version of Dr. Jatin Garg.”

12. It is thus clear that the prosecution case has been fully established that the appellant had having heard about his conviction in the other case with intention to run away from the Court premises fired shot from his official revolver and therefore he was clearly guilty of the offences for which he was charged. I do not find any fault with the order of conviction of the appellant for the offences aforesaid and confirmed his conviction.

13. Now coming to the award of sentence, it is seen that the trial Court awarded sentence of five years to the appellant. However, I find that there are mitigating circumstances in the present case to reduce the sentence to the one which the appellant has already undergone. The first reason is that this Court in CRA-S No.600-SB of 2003 found the appellant not guilty of the offence under Section 364 IPC in Sessions Case No.16-T of 2001/11-2-2000 and has also acquitted him. It is because of the conviction that was recorded on 07.02.2003 the appellant got scared and in order to run away from the Court premises, fired a shot. But the appellant was then caught by the police officials. Thus the cause or the reason for his agitation was his conviction in said case and this Court has found him not guilty of the offence under Section 364 IPC. Apart from that, the appellant has undergone about half of the sentence as awarded to him and that is why he is on bail during the pendency of the appeal. The period of about 12 years has already passed from the date of conviction in the present case. The appellant was of the age of 60 years on the date of filing of the appeal. Taking the lenient view in the matter, I think looking to the mitigating circumstances as set out above that the sentence should be reduced to the one which he has already undergone. In the result, I make the following order:

ORDER

- (i) CRA-S-No.873-SB OF 2005 is partly allowed.
- (ii) The impugned judgment and order of conviction dated 29.04.2005 for offence under Sections 307, 353, 224 IPC and 27 of the Arms Act, are confirmed.

(iii) The order of sentence dated 29.04.2005 vide which the appellant was sentenced to undergo imprisonment for five years, is set aside and modified and the appellant is sentenced to undergo the sentence which he has already undergone.

3rd MAY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned : *Yes* *No*

Whether Reportable : *Yes* *No*