

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

308

CRA-S-2908-SB-2012
Decided on : 28.10.2017

Sandeep alias Sanju

... *Appellant*

Versus

State of Haryana

.. *Respondents*

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Vikas Kumar, Advocate for
Mr.Mohan Lal Singla, Advocate, *amicus curiae*
for the appellant.

Mr.Ravi Partap, AAG, Haryana.

Avneesh Jhingan , J. (Oral)

The appellant has faced trial in FIR No.304 dated 6.6.2010 registered at Police Station Chandani Bagh, Panipat under Sections 395, 397 IPC and Section 25 of the Arms Act, 1959.

2 Learned Additional Session Judge, Panipat vide judgment dated 13.8.2012 convicted the appellant for commission of offence punishable under Section 392 IPC and Section 25 (1B) (a) of the Arms Act, 1959. Vide order dated 14.8.2012, the appellant was sentenced to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.3,000/- under Section 392 IPC and to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.500/- under Section 25 of the Arms Act. It was ordered that the substantive sentence awarded shall run concurrently.

3 The brief facts of the prosecution case as noted by the learned

trial Court in the impugned judgment are as under:-

“The FIR No.304 dated 6.6.2010 was registered at Police Station, Chandni Bagh, Panipat on the basis of the statement made by Ravi son of Dharam Pal resident of Village Luhari, District Panipat. It was stated by complainant that on 5.6.2010, he alongwith his servant Jawahar were sleeping on the roof of the Dera situated at Village Diwana after taking meals. At about 10.30/10/45 p.m, two boys came to the roof of the Dera and over powered him. He woke up and saw that four boys had over powered Jawahar. The two boys who over powered him were calling each other by the names Banti and Sunil. They gave him slaps and fits blows. The other four boys who had over-powered Jawahar were calling each other by the names Sandeep, Bhola, Jai Pal and Sunny. They tried to tie Jawahar with the cot. Jawahar raised a noise. One of the boys named Sandeep gave two blows on the head of Jawahar from the butt of country made pistol possessed by him. The other three boys gave leg and fist blows to Jawhar. He raised an alarm whereupon the boy named Bunty pointed a knife towards him. Thereafter Sandeep who was armed with country made pistol demanded diesel from him. He pleaded ignorance. The other two boys namely Sunil and Jai Pal snatched Rs.250/-, a mobile phone make Nokia 1209 no.9050326313 from the possession of Jawahar. The other two boys namely Sunny and Bhola started the tractor after connecting trolley with it. The boy namely Jai pal and Sandeep put the hammer and iron road (Bari) into the trolley. He along with Jawahar were confined in the garage. All the six accused persons fled away from the spot alongwith tractor-trolley. He alongwith Jawahar came out of the garage. He made a phone call to his brother Anil who came at the spot and got Jawahar medically examined at Civil Hospital,

Panipat. He thus prayed for taking action against the accused persons.”

4 The challan was presented against the six accused in the court of CJM, Panipat. Section 207 Cr.P.C was complied with. The case was committed to learned Sessions Judge, Panipat vide order dated 15.9.2010.

5 All the six accused pleaded not guilty and claimed trial.

6 To support its case, the prosecution examined as many as 15 witnesses.

7 The accused while recording their statement under Section 313 Cr.P.C. denied the allegations levelled against them and claimed themselves to be innocent.

8 Learned trial Court after appreciating the evidence vide its impugned judgment and order, convicted and sentenced the accused (appellant) but all other 05 accused were acquitted.

9 Aggrieved against the said order and judgment, the present appeal has been filed.

10 The learned counsel appearing on behalf of legal aid counsel appointed for the appellant, has argued that the sentence passed by the learned trial court is unsustainable as the prosecution failed to prove the case beyond reasonable doubt. He further argued that the appellant was falsely implicated and the prosecution failed to prove the recovery of pistol and live cartridges from the possession of the appellant. He contended that PW-8 Ravi failed to identify any of the accused in the trial court.

11 On the other hand, Shri Ravi Partap, AAG, Haryana argued that the case of the prosecution has been duly proved by PWs. There is nothing on record to show that the appellant was falsely implicated. He further contended that the pistol and live cartridges were recovered vide recovery memo as per the statement made by the appellant.

12 After hearing learned counsel for the parties and going through the record, the grounds raised in appeal by the appellant cannot be accepted and are bereft of merits.

13. The prosecution produced Dr. Raghvendra Singh Medical Officer, PW-1. He proved the MLR of injured Jawahar. The site plan Ex.PC was proved by PW-3 Ved Parkash, Patwari. PW-6 ASI Dalbir Singh stated that the appellant Sandeep @ Sanju was interrogated in his presence and made a disclosure statement which was duly signed by EHC Dharamvir as attesting witness in pursuance of which a country made pistol and one live cartridge was recovered. He also proved a rough plan of pistol and live cartridge Ex.PF/1. He further stated that place of occurrence was identified by accused vide memo Ex.PL.

14 PW-8 Ravi son of Dharampal stated that on 5.6.2010 he along with Jawahar were sleeping on the roof of the Dera. Around about 10 p.m., 5-6 persons came on the roof, and caught hold of both of them. Jawahar raised resistance upon which Sandeep gave a butt blow of pistol on the head of Jawahar. He stated that they fled away after snatching Rs.250/-, Nokia mobile and took away the tractor-trolley which belonged to Dera and confined both of them in the garage. He further stated that he

did not know the name of any of the accused except Sandeep. He stated that Sandeep often used to visit the farm house.

15 PW-10 ASI, Surinder Singh, proved the application Ex.PN moved before SI Jai Narayan seeking test report of the pistol. He opened the receipt parcel, mechanically checked the pistol and he proved the report Ex.PN/1. PW-12, SI, Jai Narain, Investigating Officer stated that on 9.6.2010, he along with Inspector Subhash Chander and PW Dharampal were present at Yamuna Ghat near Hathwala, the accused who were present in the court, were over powered by the police and tractor-trolley was recovered. He also proved the disclosure statement made by Sandeep @ Sanju.

16 PW-8 Ravi specifically attributes a pistol butt on the head of Jawahar by Sandeep. The said injury is duly co-related by MLR and the statement by way of affidavit of Dr. Raghvendra Singh. He states that there was an injury [2xm x 1 cm x 1cm. over the vertex region 'simple blunt']. Both the evidence coupled with the fact that PW-8 Ravi knew the accused Sandeep and identified him in the court ensures the involvement of accused Sandeep in the incident which occurred on 5.6.2010.

17 The prosecution was able to prove the recovery of country made pistol and live cartridge on the disclosure statement made by Sandeep. It was further proved that he had no permit or licence to keep the country made pistol. The violation of provisions of the Arms Act is also proved. The disclosure statement made coupled by the recovery of pistol and live cartridges and further corroborated by the statement of

PW-8 Ravi and the doctor's statement with regard to injury itself will become admissible evidence under Section 27 of the Evidence Act, 1972. Further while committing the extortion, there was a wrongful confinement of the two persons.

18. Keeping in view of the above discussion, I find that the appellant was rightly convicted by the trial court for offence punishable under Section 392 IPC and Section 25 of the Arms Act. The presence of the appellant was duly proved at the place of occurrence and even the recovery of the weapon was also made. Therefore, judgment of conviction dated 13.8.2012 does not require any interference of this Court.

19 As far as sentence is concerned, this Court in case of **Mahabir Vs. State of Haryana, 1997 (3) RCR (Criminal) 649** has reduced the sentence to the period already undergone keeping in view the delay in trial.

20. Even the Hon'ble Apex Court in **Mukesh Vs. State of MP, 2015 (1) RCR (Criminal) 251** had reduced the sentence to the period already undergone.

21 The appellant accused is stated to be a poor person who has to maintain his old parents. He has no previous record of conviction. His sentence has been suspended vide order dated 26.2.2013. As per custody certificate, he is not involved in any other untoward incident. He has already undergone punishment awarded under the Arms Act as both sentences had to run concurrently. He has already suffered agony of protracted trial pending over 07 years. He has already suffered punishment

for illegal possession of firearm. Apart from him, all the five accused were acquitted by the trial court by giving benefit of doubt.

22 Learned counsel for the State has produced a custody certificate submitted by Shri Ashok Kumar, Deputy Superintendent of District Prison Karnal dated 27.10.2017. As per the said certificate, the appellant has undergone actual imprisonment of 2 years 8 months 23 days and with remission, he has undergone 2 years 10 months 25 days of sentence. It would further be pertinent to mention that the FIR is of the year 2010, as per the said custody certificate, the appellant is not involved in any other criminal case since 2010. Further, the sentence was suspended by this Court in February, 2013, after that also, there is no involvement of the appellant in any criminal case, as per the custody certificate. It is an indicator towards the fact that the appellant has improved and mended his ways.

23. Keeping in view the aforesaid decisions and the facts stated, the sentence imposed upon the appellant is reduced to the period already undergone by him. The fine imposed and in default thereof is upheld as such.

24 His bail bonds be released subject to payment of fine if not
already paid.

25 Accordingly, the present appeal is partly allowed.

[Avneesh Jhingan]
Judge

28.10.2017

sd

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/NO