

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

CRA-S-3525-SB of 2013

DATE OF DECISION: 11.01.2017.

Shankar @ Prem Chand

...Appellant.

Versus

State of Haryana

...Respondent.

CORAM: HON'BLE MR. JUSTICE (DR.) SHEKHER DHAWAN

Present: Mr. J.S. Bains, Advocate
for the appellant.

Mr. Munish Dev Sharma,
Assistant Advocate General, Haryana.

SHEKHER DHAWAN, J.(Oral)

Present appeal is directed against the judgment of conviction and order of sentence dated 12.09.2013 passed by learned Additional Sessions Judge, Karnal whereby appellant Shankar @ Prem Chand was convicted and sentenced as under:-

Name	Under Section	Sentence	In default
Shankar @ Prem Chand	Section 398 of Indian Penal Code (for short, "I.P.C.")	to undergo Rigorous Imprisonment for a period of seven years.	
	Section 25 (1B) of the Arms Act, 1959	to undergo Rigorous Imprisonment for one year and to pay of fine of ₹2,000/-.	To further undergo simple imprisonment for three months.

2. Relevant facts for the purpose of decision of appeal; that on 27.08.2012 a secret information was received by Sub Inspector Virender Singh that the appellant was attempting to rob the passers by on the main road after giving them signal to stop. The information was also to the extent

that the appellant was released on parole from Karnal jail in the year 2007 and since then he was absconding. Investigating Officer alongwith other police officials visited the spot and found that the appellant tried to stop 2-3 motorcyclists with intention to rob them, but the said motorcyclists did not stop there. The police party tried to give signal and stop the appellant, but the appellant made effort to make an escape, however, the police party chased and nabbed him. The appellant was apprehended and from his possession a country made pistol .315 bore loaded with a live cartridge, was recovered. The sketches of the pistol and the cartridge were prepared and after sealing the same, the case property was taken into police custody. Statements of witnesses were recorded and other investigation formalities were completed. The appellant was arrested.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During the process of trial, learned trial Judge framed charges against the appellant. After recording of statement of the prosecution witnesses and examination of the appellant under Section 313 Cr.P.C. and after considering the prosecution version as well as the defence evidence on record, learned trial Court held the appellant guilty and convicted and sentenced him on 12.09.2013 under Section 398 IPC and 25 (1B) of the Arms Act.

5. Aggrieved by the judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

6. Learned counsel for the appellant contended that the appellant has been falsely implicated in this case, whereas there was no such occurrence nor the appellant was apprehended on the spot while making any

effort to rob any person. There was no recovery of any country made pistol from the appellant. Learned counsel for the appellant further contended that it has come in the statement of PW4 ASI Parmod Kumar, Armourer, that there was no identification mark on the pistol, allegedly recovered from the appellant. It is a matter of common knowledge that such pistols are easily available in the market and the appellant was falsely implicated in this case.

7. Learned counsel for the appellant also contended that prosecution case is based upon the testimony of official witnesses, whereas the occurrence had taken place at a public place where there was no dearth of independent witnesses but, in fact, no independent witness was joined, which makes the prosecution case highly doubtful. More so, the story put forwarded by the prosecution witnesses, including the Investigating Officer, is unbelievable that appellant had put the police officials under terror and thereafter police party arrived on the spot after five minutes.

8. Learned counsel for the appellant also contended that as per prosecution version the appellant was on a motorcycle, but neither any such motorcycle was produced during the trial nor was identified by the prosecution witnesses. The cumulative effect is that the prosecution case is not believable and not proved before the trial Court, but still the learned trial Judge held the appellant guilty, convicted and sentenced him. So the present appeal be accepted.

9. While arguing on this point, learned State counsel contended that the pistol allegedly recovered from the possession of the appellant was duly sealed on the spot in the presence of witnesses and the same sealed parcel was received in the FSL. The Investigating Officer and other police officials had no enmity to falsely implicate the appellant in this case. They

have well stood by the test of cross-examination. Mere saying, that prosecution story is unbelievable, is no ground, but it is the testimony of the witnesses, who have deposed against the appellant before the Court, on administration of oath. More so, the appellant is facing trial in number of cases wherein he has already been convicted in nine cases and two are pending trial. The present appeal is without any merit and the same deserves to be dismissed.

10. Having considered the submissions made by learned counsel for both the parties and appraisal of record, this Court is of the considered view that it had come in the statement of prosecution witnesses that the Investigating Officer made effort to join the independent witnesses, but nobody was willing to join the investigation. Now a days, it is a common knowledge that members from general public do not come forward to be associated with the investigation proceedings especially in such like cases. The Court is to see whether the witnesses deposing before the Court are giving the truthful version and for that point, real test is the cross-examination of the witnesses. In the present case, the Investigating Officer as well as recovery witnesses were duly cross examined before learned trial Court and they have well stood by the test of cross-examination. There is no reason to disbelieve their testimony especially when they were deposing before the Court after administration of oath. As regards identification of the property, the weapon was recovered from the appellant at the spot in the presence of witnesses. The same was duly sealed on the spot after preparing sketch and the same sealed parcel was received in FSL in duly intact condition. Thereafter, the witnesses also identified the pistol in the Court at the trial stage.

11. Mere saying that the prosecution case is unbelievable, is no ground to disbelieve the entire oral as well as documentary evidence available on the file. Resultantly, the present appeal as against judgment of conviction dated 12.09.2013 is without any merit and same stands dismissed.

12. As regard to the appeal against order of sentence, learned counsel for the appellant contended that the appellant has already undergone actual sentence of more than five years which includes the period of remissions as well, and he be ordered to be released as he has already undergone substantial period of sentence.

13. Learned State counsel contended that the previous conduct of the appellant does not make out a case for release of the appellant. Having considered the matter in its entirety and the fact that the appellant has already undergone actual sentence of about five years including remissions and his previous conduct and involvement in other case, the Court is not inclined to pass order for immediate release. However, the period of substantial sentence is reduced from seven years to six years, under Section 398 of I.P.C. in this case.

The present appeal stands partly accepted, in the above terms.

(SHEKHER DHAWAN)
JUDGE

11.01.2017.

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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No