

304-A

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

CRA-S-4059-SB of 2014 (O&M)

Date of decision: October 07, 2017

Vishal @ Kalu and another

.....Appellants

Versus

State of Haryana

.....Respondent

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

Present: None for the appellants.

Ms. Tanushree Gupta, DAG Haryana.

A.B. CHAUDHARI, J (Oral)

By the present appeal, the appellants-Vishal alias Kalu and Raj Kumar alias Jhota accused No.2 and 4 respectively, have put to challenge the judgment and order dated 31.07.2014/05.08.2014 in case SC No.44 of 2013, passed by the Additional Sessions Judge, Rewari, by which they were convicted for offences under Section 307/34 of Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo Rigorous Imprisonment of 7 years plus fine and in default of payment of fine, further undergo Simple Imprisonment for one year.

None appeared on behalf of the appellants, though, served.

Heard learned State counsel. Perused the entire evidence of the witnesses. The trial Court convicted appellant No.1-Vishal alias Kalu only on the ground that Vishal alias Kalu had recovered a pistol and the FSL report indicated that the bullet recovered from the place of the injured was found to be fired from the said pistol. This is the only

evidence about appellant No.1-Vishal alias Kalu against the ocular testimony of the two eye witnesses including the victim.

I have gone through the testimony of the two eye witnesses and the victim, namely PW8-Sunil son of Balbir Singh and PW9-Akash son of Khushi Ram. Both of them were the occupants of the Car, on which firing had taken place by means of pistol. I quote the evidence of both these two eye witnesses in relation to the actual incident, which read thus:-

1. PW8-Sunil:-

“Stated that on 09.04.2013, I along with Bhim and Akash were going on my Quanto car bearing No.HR36T-1770 towards Railway Chowk at about 6.30 p.m. I was driving the vehicle. When I reached near Jhajjar Chowk there was some jam (block) near Jhajjar Chowk hence, the speed of my vehicle got slowed down. In the meantime, two persons namely Raj Kumar @ Jhota and Sandeep Soni came on a pulsar motorcycle followed by one another motorcycle on which accused Vishal and one another accused were sitting whom I can identify on coming in front of me. Raj Kumar @ Jhota came near my vehicle and shot fired from a country made pistol from the glass pane of window of the vehicle. The fire shot cross the glass window and the bullet hit on my right hand plaster because I put my hand under plaster in front to save myself. After I turn my vehicle towards railway chowk, during that time accused made shot fires towards me. Then again I turn my vehicle towards police station City. Out of the above mentioned accused two are accused namely Raj Kumar @ Jhota and Vishal are present in the court and the fourth accused to whom I did not know at the time of incident is also present

in the court today. The accused ran away towards police station city side.....”

2. PW9-Akash:-

“I do not remember the date however, it was at about 4-5 years ago, I along with Sunil and Bhim Singh were going in quanto car at about 6/6.30 p.m. from Dharuhera Chungi towards Naiwali. The quanto car was driven by Sunil. When we reached near Jhajjar chowk there is traffic jam. Two boys namely Raj Kumar @ Jhota and Vishal came on a pulsar motorcycle. The said motorcycle was driven by Raj Kumar. There was one more motorcycle on which two more boys were sitting named Sandeep and one unknown person. Accused Sandeep stopped the motorcycle in fron of quanto car and shot fired from the window pane of car on Sunil from the pistol in his hand. The bullet hit on the palm of right hand which was having with plaster. There was jam so we took the wrong side and we had driven our vehicle towards police station City Rewari. Accused Sandeep is present in court today. (At this stage witness is suppressing the truth he may be declared hostile and public Prosecutor may be allowed to cross examine him. Request allowed.”

There are no other eye witnesses in this case. It is clear from the above evidence of Sunil that Raj Kumar alias Jhota had fired shot from the pistol. In so far as Vishal alias Kalu is concerned, what is stated is that he along with one more person was sitting on another motorcycle and nothing beyond that. However, two persons, namely Raj Kumar alias Jhota and Sandeep Soni have been named as other persons who had come on a motorcycle and firing was made by

Sandeep sitting on the said motorcycle with Raj Kumar alias Jhota. In so far as PW9-Akash is concerned, he had turned hostile. Still in his evidence, he has taken name of Raj Kumar alias Jhota and Sandeep Soni. But then, no role is ascribed to appellant No.1-Vishal alias Kalu except the fact that he was seen on another motorcycle. I do not think that considering the above testimony of two eye witnesses, appellant No.1-Vishal could be convicted, merely because recovery of pistol from him was made. Thus, evidence against Vishal alias Kalu is too weak. Hence, his conviction will have to be set aside.

In so far as appellant No.2-Raj Kumar alias Jhota is concerned, the above evidence clearly show his active participation in the crime along with main accused Sandeep Soni. It is not necessary for me to say further in the light of the above ocular testimony of the two eye witnesses in relation to Raj Kumar alias Jhota. The prosecution has clearly proved his role and the overt act on his part so also the *mens rea*. Hence, his conviction will have to be confirmed. In so far as the aspect of sentence awarded to him, I do not think that sentence can be reduced looking to the nature of offence committed by him along with Sandeep Soni. In the result, following order is inevitable:-

ORDER

- (i) CRA-S-4059-SB of 2014 is partly allowed;
- (ii) Appeal qua appellant No.1-Vishal alias Kalu is accepted and judgment and order dated 31.07.2014/05.08.2014 in case SC No.44 of 2013, passed by the Additional Sessions Judge, Rewari is set aside qua appellant No.1-Vishal alias

Kalu only and he is acquitted of the charges framed against him;

- (iii) Appellant No.1-Vishal alias Kalu be set at liberty forthwith, if not required in any other case;
- (iv) Appeal qua appellant No.2-Raj Kumar alias Jhota is dismissed and judgment and order dated 31.07.2014/05.08.2014 in case SC No.44 of 2013, passed by the Additional Sessions Judge, Rewari convicting him for the offences under Section 307/34 of IPC and sentencing to undergo Rigorous Imprisonment of 7 years plus fine and in default of payment of fine, further undergo Simple Imprisonment for one year, is confirmed and sentence is upheld.

(A.B. CHAUDHARI)
JUDGE

October 07, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No