

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-513-MA-2016
Decided on: 30.11.2017

Harbans Singh

.... Applicant

Versus

Jagsir Singh @ Seesa and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Jatinder Pal Singh, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

The applicant-Harbans Singh has filed the present application under Section 378(4) of the Code of Criminal Procedure 1973 (for short 'Cr.P.C') seeking leave to appeal against the impugned judgment of acquittal dated 29.10.2015 passed by learned Addl. Sessions Judge, Ferozepur, for short 'Trial Court' acquitting respondent Nos. 1 to 5 for the offences punishable under Section 307, 336, 148 read with Section 149 IPC and Section 25 of the Arms Act.

2. The brief facts of the case are that on 03.11.2012 the complainant-applicant got recorded his statement before the police that he is having 8 acres and 5 kanals of land at Basti Waloor Wali. It was further alleged that he has two sons and both of them were married and the said land is in the ownership of his wife, namely, Mukhtiar Kaur. Bhupinder Singh alias Sahba son of Rattan Singh had borrowed ₹ 15 lacs on interest from the complainant for

running commission agency shop and he gave him a cheque for an amount of ₹ 15 lacs drawn on Bank of India. The cheque was presented for encashment but the same was dishonored on account of insufficient funds and consequently complainant filed a complaint against said Bhupinder Singh which is still pending in the learned Trial Court and the court has issued warrants against him on account of the pendency of the complaint. Bhupinder Singh had threatened him to withdraw the complaint. At about 3.30 p.m. on 03.11.2012 complainant along with his son-in-law Mahavir Singh was sitting on the ridge of their field and his son Sukhwinder Singh was cultivating the fields with a tractor then at that time Bhupinder Singh @ Sabha came in an Indica Car bearing No. DL-3C-AC-3326 and there was another car also of white-colour make I-20 which was stopped nearby. Bhupinder Singh came from Indica Car armed with double barrel 12 bore gun, Sandeep Singh armed with 12 bore rifle, Gurjant Singh armed with 15 bore rifle and Rattan Singh armed with a baseball bat came out from I-20 Car along with four unidentified persons and they were armed with sticks (sotas). Rattan Singh gave a lalkara that they be taught a lesson for demanding ₹ 15 lacs and for filing the complaint against them. Then in the meanwhile Bhupinder Singh fired a shot from 12 bore rifle towards him and his son-in-law Mahavir Singh with an intention to kill them but they laid down on the ground and saved themselves. Upon this his son Sukhwinder Singh stopped the tractor and came down from it. Then Sandeep Singh fired a shot from his 12 bore rifle towards the complainant and his son with the intention to kill them but his son saved himself and took a shelter behind the tractor. Gurjant Singh started firing from .315 bore rifle. All three of them raised alarm Marta-Marta. Upon hearing the same his son Balwinder Singh also came at the spot and on seeing him the

accused fled-away from the place of occurrence with their respective weapons but they left the Indica Car at the spot.

3. The motive behind the occurrence is the loan taken by Bhupinder Singh for an amount of ₹ 15 lacs as discussed above. On the basis of the above statement an FIR No. 114 dated 03.11.2012 under Section 148, 307, 336 & 506 read with Section 149 of the IPC and Section 25 of the Arms Act was registered at P.S. Kulgarhi.

4. Thereafter, on 11.10.2013 the supplementary statement was got recorded by the complainant with regard to two unidentified persons who were accompanying the accused at the time of occurrence and their names were disclosed as Sukhdev Singh @ Sukha and Jagsir Singh. After usual investigation the report under Section 173 Cr.P.C. was submitted by the Police and thereafter the case was committed to the Sessions Court, the offence under Section 307 IPC being exclusively triable by the Court of Sessions. Learned trial Court prima-facie found the commission of offences under Section 307, 336, 148 read with Section 149 IPC and Section 25 of the Arms Act and framed the charges against them to which they pleaded not guilty and claimed trial. However proceedings were separated as far as accused Sukhdev Singh @ Sukha is concerned as he remained absent from the proceedings of the trial and was declared proclaimed offender.

5. Prosecution in order to prove its case examined eight witnesses and brought on record the documentary evidence. While recording statement under Section 313 Cr.P.C. all the incriminating circumstances appearing against the accused were put to them but they denied the same and claimed innocence being falsely implicated. No evidence was led by the accused in their defence.

6. Learned trial Court after taking into consideration the entire material available on record and hearing both the sides acquitted respondent Nos. 1 to 5 as the prosecution has failed to prove their guilt beyond reasonable doubt.

7. Hence the application for seeking leave to appeal.

8. Learned counsel for the applicant has argued that impugned judgment of acquittal is patently illegal and the same has been passed without taking into consideration the material available on record which clearly proves the guilt of the respondent Nos.1 to 5 for the charges levelled against them.

9. Heard learned counsel for the applicant and perused the record of the case.

10. Complainant-Harbans Singh while appearing as PW-1 has repeated the whole incident as stated in his complaint dated 03.11.2012. As per the allegation of the prosecution there was no injury to the complainant party. Although during investigation the empty cartridges of 12 bore and 315 bore were recovered and taken into possession vide memo No. Ex. P1 & P.2 but no injury alleged to have been caused to any one on account of alleged firing attributed to the respondent Nos. 2, 3 & 5 namely Sandeep Singh, Bhupinder Singh & Gurjant Singh respectively. Indica Car bearing No. DL-3C-AC-3326 was also taken into possession vide memo Ex. P4. PW-2 Sukhwinder Singh who is claiming to be an eye-witness has also supported prosecution case as well as the allegation made in the complaint. PW-3 Mahavir Singh, who is the son-in-law of the complainant has been declared hostile. PW-4 Deepak Gupta has deposed regarding the sale of I-20 Car to Bhupinder Singh son of Rattan Singh. Certificate of temporary registration is Ex.PW-4/A. PW-6 Pardeep Kumar, Clerk, Tehsil Office has produced the

record pertaining to the arms licence in favour of Rattan Singh son of Charan Singh regarding 315 bore rifle.

PW-8 S.I. Sudesh Pal Singh, Investigation Officer proved that five empty cartridges of 12 bore and four cartridges of 315 bore were taken into possession vide recovery Memos Ex. P-2 & P-3 respectively and the Indica Car was also taken into possession vide Memo Ex. P4.

11. Rattan Singh was arrested on 22.11.2013 and suffered a disclosure statement Ex. P8 and pursuant thereto he got recovered baseball bat which was taken into possession vide Memo Ex. P-9. PW-8 has deposed that 315 bore rifle along with fifteen live cartridges were recovered from accused Bhupinder Singh and the same were taken into possession vide Memo No. P-14. But there is no evidence on record to prove that the gun has been used in firing a shot as alleged by the prosecution. None of the guns has been sent to the laboratory for proving the factum that any shot was fired from those guns. Even there is no evidence on record to prove any mark of fire arm shot or that occurrence has taken place as narrated by the complainant. It has come in the testimony of PW-8 Investigating Officer that he has not enquired regarding the ownership of Indica Car nor he has seen car during trial. This witness has also admitted that neither any document with regard to 12 bore gun nor gun was recovered during investigation. It has further been stated by PW-8 that 315 bore rifle and empty cartridges were not accepted by the Forensic Science Laboratory but there is no evidence to prove the same. Be that as it may there is no material on record to connect the alleged gun and empty cartridges taken into possession during investigation. And thus the prosecution has failed to prove that the alleged gun was used in the firing in the alleged occurrence. Even PW-3 Mahavir Singh who happens to be the

son-in-law of the complainant also did not support the prosecution case for the reasons best known to him and he specifically stated that the accused present in the Court did not attack him. And he further stated that he does not know whether the accused had attacked his father-in-law and brother-in-law. There is no allegation by the complainant that PW-3 being his son-in-law was not having any cordial relations with the complainant or he has been won-over by the accused. Consequently the learned trial Court has rightly come to the conclusion that the empties cartridges which have been taken into possession are not connected with the alleged 315 bore gun. Even the accused respondent-Bhupinder Singh has claimed that an agreement to sell dated 15.10.2010 was executed in favour of Gurjant Singh by the complainant but complainant denied the same as forged and fabricated.

12. At the same time learned trial Court in Para-24 of its judgment has observed as under:-

“During the pendency of the litigation qua the complaint, as per complainant, he had received the amount of ₹ 10 lacs, and a sum of ₹ 5 lacs as per him, is lying deposited. He has categorically stated that a compromise had been arrived in the Hon'ble High Court with accused Bhupinder Singh”.

13. There is no evidence on record to prove the ownership of Indica Car nor the same was recovered and even as per the prosecution case the I-20 Car was not in a working condition. There is no recovery of 12 bore gun.

14. Thus in the present case the learned trial Court after minute scrutiny of the evidence available on record has rightly acquitted the accused namely, Jagsir Singh, Sandeep Singh, Bhupinder Singh, Rattan Singh, Gurjant Singh of the offences under Sections 307, 336, 148 & 149 IPC and also rightly

acquitted the accused Bhupinder Singh, Sandeep Singh and Gurjant Singh of the offence under Section 25 of the Arms Act by giving benefit of doubt. The application is, accordingly, dismissed and leave to appeal declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

30.11.2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No