

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-1811-SB of 2004

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Date of decision:17.4.2018

Kuldeep Singh alias Baji

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kanwaljit Singh, Senior Advocate with Mr. Abhishek Bajaj, Advocate for the appellant.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

Kuldeep Singh alias Baji-appellant has filed this appeal challenging the impugned judgment of conviction and order of sentence dated 13.8.2004 passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Ludhiana, whereby he has been held guilty and convicted for the offence punishable under Section 353 IPC. He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹500/- and in default thereof to further undergo rigorous imprisonment for fifteen days.

The brief facts of the prosecution case as noted down by the learned trial Court in its judgment dated 13.8.2004 are as under:-

“In brief the facts of the prosecution case are that on 12.2.2002

ASI Amar Singh along with C. Mahesh Kumar, C. Lakhwinder

Singh and PHG Gurmit Singh were going towards bus stand from Ghora Chowk in a private vehicle in connection with election duty. At about 11.45 A.M. the police party came across Kuldeep Singh alias Baji son of Kishan Singh resident of Tahli Sahib Road Raikot who was known to ASI Amar Singh. The said Kuldeep Singh at that time was armed with .12 bore double barrel gun and was accompanied by ten other persons out of which nine were having swords and one was armed with gandasi. They all were raising slogans. ASI Amar Singh informed about the prohibitory order issued by the District Magistrate under section 144 Cr.P.C. and requested them to refrain from the said act. They however did not care rather Kuldeep Singh alias Baji pointed his gun towards ASI Amar Singh with intention to kill and proclaimed that he should escape or he would fire at him. One of his companion, gave a sword blow on the person of Amar Singh but he managed to escape the said blow by stepping back. He then instructed the other police official to apprehend the accused and his companions. Thereafter accused Kuldeep Singh was nabbed whereas his companion managed to escape. While leaving they left their respective weapons. .12 bore gun which was bearing No.73005 recovered from the possession of accused Kuldeep Singh was unloaded and two live cartridges were recovered from its barrel. Search of the accused led to the recovery of

three more live cartridges which were lying in the right pocket of his pent. Accused Kuldeep Singh could not produce any licence or permit for keeping in possession the said arm and ammunition, therefore the same was taken into possession. Recovery memo was separately prepared. Nine kirpans and one Gandasi were also seized. Ruqa was drafted. It was sent to police station Raikot through Constable Lakhwinder Singh. On the basis of said ruqa case FIR No.6 dated 12.2.2002 under Section 307/353/188/148/149 IPC and 25/54/59 of Arms Act was registered against the accused. Personal Search of the accused was conducted under rules but nothing was recovered. He was disclosed about the grounds of arrest. Site plan and the memos were prepared. Statement of witnesses were recorded. On return to the police station the accused was lodged in the lock-up. On return to the police station the case property was deposited with the MHC. After completion of investigation challan against the accused was presented in Court.”

On presentation of challan, the trial Court finding prima facie case against the accused for the offences under Sections 307 and 353 IPC framed charges accordingly, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Inspector Nahar Singh, who mainly deposed regarding presentation of challan. PW-2 Sukhwinder Singh (who has been again marked as PW-1) mainly proved the scaled site plan Ex.PA. PW-3 Bhim Singh (marked as PW-2) , Clerk, D.C.

Office, M.A. Branch, Ludhiana mainly proved the copy of the order passed under Section 144 Cr.P.C. by the District Magistrate. PW-4 Bhupinder Singh Constable (marked as PW-3) mainly deposed regarding handing over the special report to JMIC etc. PW-5 HC Parminder Singh mainly proved the appointment letter and posting order of ASI Amar Singh Exs.PW.5/A and PW.5/B. PW-6 ASI Amar Singh mainly deposed the facts as per prosecution version as given above while giving brief facts of the prosecution case. PW-7 HC Mahesh Kumar, who was with the Police party of ASI Amar Singh, also deposed as per prosecution version. PW-8 HC Jugraj Singh brought the DDR register.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution but he denied the correctness of the evidence and pleaded himself as innocent. He also stated that he was arrested from his house and was falsely implicated in this case at the instance of sitting MLA of the area.

After going through the evidence and material placed on record, the learned trial Court vide impugned judgment and order convicted and sentenced the accused-appellant as stated above. Aggrieved from this judgment, the appellant has filed this appeal.

At the time of arguments, learned senior counsel for the appellant argued that the prosecution has failed to prove guilt of the accused-appellant beyond reasonable doubt. The appellant was stated to be armed with .12 bore gun, but admittedly the gun is licensed one of the appellant. He argued that at the time of election as the accused was opposing the

candidate of sitting MLA, the appellant was falsely implicated in this case by bringing him from his house. The senior counsel for the appellant further argued that even otherwise as stated by PW-3 Bhim Singh there was no prohibition to carry arms as per the order under Section 144 Cr.P.C. issued by District Magistrate. He further argued that even as per prosecution version Kuldeep Singh alias Baji was going on the road. The Police party had not placed any 'Naka'. They were also going in a jeep on the thoroughfare. It is in the evidence that public persons were also going on the thoroughfare. Therefore, he argued that no case is made out against the present appellant for the offence under Section 353 IPC as he had not obstructed ASI Amar Singh and other Police party from doing their official duty. Rather, the Police party, as per prosecution version, stopped the accused-appellant and stated that he was violating the order under Section 144 Cr.P.C. and apprehended him. Learned senior counsel for the appellant further argued that it has been stated that the accused-appellant was going with 9-10 persons but none of them was named in the FIR nor any of them had been arrested which also creates a doubt in the prosecution version.

On the other hand, learned State counsel appearing for the respondent-State argued that the case of the prosecution has been duly proved by the PWs beyond any reasonable doubt and there are no material contradictions and improvements in the statements of PWs and they have consistently deposed as per the prosecution version. The accused-appellant has obstructed the public servants from discharging their official duties, therefore, the present appellant has been rightly convicted and sentenced by

the learned trial Court and the appeal of the appellant should be dismissed.

After hearing learned counsel for the appellant and learned Assistant Advocate General, Punjab appearing for the respondent-State and after going through the evidence on record minutely and carefully, I find that the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. As per the prosecution version the present appellant was going armed with .12 gun, but admittedly, the gun is licensed one. The case of the prosecution is that the appellant was going along with 9-10 persons armed with swords and gandas. They were going on a thoroughfare. The Police party was also on patrol duty in a private vehicle. As per the prosecution version, the appellant has not obstructed ASI Amar Singh in any way in discharge of his official duty. Rather, ASI Amar Singh stopped the vehicle and asked Kuldeep Singh alias Baji regarding the order passed under Section 144 Cr.P.C. The case of the prosecution is also that the appellant pointed the gun towards ASI. The appellant has been convicted only for the offence under Section 353 IPC.

A perusal of the evidence on record nowhere shows that the appellant had obstructed the public servant from discharging his public duty. At the most the case of the prosecution is that the appellant had violated the order passed under Section 144 Cr.P.C. issued by District Magistrate but PW-3 Bhim Singh, Clerk, D.C. Office in his cross-examination has specifically admitted that vide order dated 8.1.2002, carrying of arms and ammunition was not prohibited. Therefore, carrying a gun while going on a thoroughfare was not prohibited by the District Magistrate. It is in the

evidence that it was a thoroughfare. The other people were also going on thoroughfare. There was no ban put on the public to use that thoroughfare. Therefore, even from the evidence violation of order under Section 144 Cr.P.C. is not made out. Further the case of the prosecution is that the accused-appellant was accompanied by 9-10 persons and all those persons fled away from the spot after leaving their weapons swords and gandas etc. It looks improbable and creates doubt in the prosecution version that the Police party could not apprehend any of those persons nor could identify any of those persons. Even during investigation, the names of those persons had not come in the investigation. No other person had been apprehended or arrested or challaned in this case. There is no explanation as to why those persons were not identified by Police official and as to why none of the other persons was apprehended on the spot by the Police party. Rather, it looks improbable that a person with a gun had been apprehended and the persons who left their arms on the spot and fled away could not be apprehended. There is also nothing on the record that any of the Police official chased any of the the accompanied persons. A perusal of the evidence on record shows that a reasonable doubt exists in the present case and benefit of doubt always goes to the accused.

Therefore, by giving benefit of doubt to the accused-appellant, this criminal appeal is allowed, the impugned judgment of conviction and order of sentence dated 13.8.2004 passed by learned additional Sessions Judge (Ad hoc), Fast Track Court, Ludhiana are set aside and the appellant is acquitted of the charges as framed against him.

The sentence of imprisonment of the appellant was suspended vide order dated 21.9.2004 passed by this Court and he was released on bail. As he is on bail, therefore, his bail bonds and surety bonds shall stand discharged.

April 17, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No