

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2326-SB-2004 (O&M)
Date of decision: 17.12.2018

Mukesh Kumar ... Appellant

versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Namit Sharma, Advocate
for the appellant.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

The instant appeal is directed against the judgment of conviction dated 02.11.2004 and order of sentence dated 03.11.2004 passed by learned Addl. Sessions Judge(Fast Track Court), Karnal wherein the accused-appellant has been convicted and sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Mukesh Kumar	307 IPC	Rigorous imprisonment (RI) for 03 years	₹ 500/-	RI for two months
	25 of Arms Act	RI for 03 years	₹ 500/-	RI for two months

Both the sentences were ordered to run concurrently.

2. The case of the prosecution in brief is that on 16.02.2004 the complainant – Krishan Lal (PW-1) got recorded his statement Ex.P1 before PW-8 ASI Roop Singh that in the year 1998 accused-appellant Mukesh

along with three others had committed rape on his niece for which a case was registered against four of them and they were arrested. But due to local pressure, a compromise was effected between the parties resulting in the acquittal of all the four persons including the accused appellant. However, the accused-appellant and his accomplices had since been nourishing a grudge against the complainant party. The complainant further stated that on 15.02.2004 at about 6:30/7:00 pm when he was returning to his house from the fields, one Ranjit Singh and Bhim Singh met him. While they were conversing with each other, the accused-appellant suddenly came to the spot from the wheat crop standing in the fields brandishing a country made pistol and raised a lalkara that he would teach the complainant a lesson for sending him to jail for six months. Soon thereafter, the accused fired towards the chest of the complainant with an intention to kill him. The barrel of the weapon, however, burst resulting in the accused-appellant himself suffering injuries instead of complainant. The accused-appellant thereafter fled away from the spot with the fire arm. The complainant along with Ranjit Singh (PW-2) and Bhim Singh chased the accused but in vain. Thereafter, they approached the village Sarpanch Jagdish Chand and other respectables and apprised them about the aforementioned occurrence, who insisted upon the complainant to effect a compromise with the accused-appellant. On the statement of complainant, formal FIR Ex.P11 for the offences punishable under Section 307 IPC and 25 of Arms Act was registered at Police Station Gharaunda, District Karnal by HC Suresh Pal (PW-6). Thereafter, the investigation was set into motion by the

investigating agency. The appellant was arrested on 17.02.2004 and in pursuance to his disclosure statement Ex.P16, a country made pistol .315 was recovered. It would be relevant to mention that the accused at the time of his arrest had an injury on the index finger of his right hand for which he was medico-legally examined at the Primary Health Centre, Gharaunda vide MLR Ex.P2. On completion of investigation, report under Section 173 Cr.PC was filed against the accused-appellant and charges were framed under Section 307 IPC and Section 25 of Arms Act to which the appellant pleaded not guilty and claimed trial.

3. The prosecution examined as many as 8 witnesses to prove its case.

4. All the incriminating material appearing against the appellant in the prosecution evidence were put to him under Section 313 Cr.PC, which he denied and pleaded innocence. In defence, the appellant examined DW-1 Jagdish Sarpanch of the village.

5. Learned counsel for the appellant has firstly challenged the impugned judgment on the ground that the learned trial Court was in grave error in not appreciating that there was a delay of 21 hours in lodging the FIR since the occurrence had taken place in the evening of 15.02.2004 at about 6.30/7.00 pm whereas the FIR was lodged only on the next day at 4.10 pm. Learned counsel for the appellant further contended that the plea of the prosecution that the Sarpanch and elders of the village were trying to get the matter compromised between the parties, could not be proved and the said Sarpanch stepped into the witness box as DW-1.

6. Learned State counsel, on the other hand, argued that in the case in hand there was enough cogent evidence on record against the appellant to establish his guilt and prayed for dismissal of the appeal.

7. I have heard learned counsel for the appellant as well as State counsel. I have also gone through the evidence and all other material available on record.

8. A perusal of the testimony of DW-1 Jagdish, Sarpanch in fact corroborates the prosecution version insomuch as he has deposed that after the said occurrence the complainant did not agree to the convening of the Panchayat and went away. This testimony of the defence witness rather goes a long way in supporting the prosecution version that not only had the occurrence taken place on 15.02.2004 but also some talks of a compromise were going on. Hence, in this background, the delay of 21 hours in lodging the FIR stands well explained.

9. Learned counsel for the appellant has vehemently argued that there was no motive on the part of the appellant to target the complainant and further drew my attention to the improbability of the prosecution version because as per the statement of complainant, Krishan Lal (PW-1) and Ranjit Singh (PW-2), the accused-appellant was carrying a pistol in his right hand when he fired at the complainant but strangely it was the appellant, who suffered an injury on his left hand while the complainant was unhurt. Learned counsel for the appellant also drew my attention to the testimony of PW-3 Dr. Nitin Kalra, who medico-legally examined the appellant and found an injury on the left index finger.

10. I have given my anxious consideration to this submission but the same is bereft of any merit. The very fact that the accused-appellant suffered a fire arm injury on his person goes a long way in establishing that he was indeed present at the time of occurrence because there is nothing forthcoming on record as to how and under what circumstances he received the said fire arm injury. Dr. Nitin Kalra (PW-3) categorically deposed that the duration of injury on the person of the accused-appellant was within 72 hours, which coincides with the time of the occurrence. The fact that the complainant did not suffer any injury is inconsequential once it is established that a fire arm had been indeed used in the occurrence. It was just providence that the fire arm which the accused-appellant was aiming burst else the complainant could have suffered fatal or some serious injury. The injury on the hand of the appellant was thus, apparently and obviously on account of the bursting of the barrel of the fire arm.

11. To justify a conviction under Section 307 IPC, it is not at all an essential ingredient that bodily injury capable of causing death should have been inflicted. If the mens rea is present and an attempt has been made then the crime would have been completed even if the same stood frustrated due to some extraneous intervention or reason. In the case in hand, the mens rea and knowledge of the accused-appellant is writ large. The bursting of the fire arm in fact frustrated the consummation of the execution of the appellant's plan.

12. In the light of the aforementioned discussion, I do not find any infirmity in the impugned judgment and order of sentence dated

02/03.11.2004 passed by the Addl. Sessions Judge (Fast Track Court), Karnal and thus, the same is upheld.

The appeal is accordingly dismissed.

The accused appellant is on bail. His bail bonds/surety bonds stands cancelled. Necessary steps be taken to secure his custody.

17.12.2018
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No