

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

**Criminal Appeal S-481-SB of 2005
Date of Decision: January 17, 2018**

Sanjay @ Bhola	Versus	Appellant
State of Haryana		Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Sudhir Hooda, Advocate for
Mr. Narender Hooda, Advocate
for the appellant.

Mr. Pramjeet Singh, Assistant A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellant, namely, Sanjay @ Bhola, alongwith Manoj Kumar and Rajesh was tried for committing offences punishable under Sections 398 and 401 IPC. He alongwith Rajesh was also tried for committing offence punishable under Section 25(1-B) of the Arms Act. Vide judgment and order dated 15/17.2.2005, learned Additional Sessions Judge, Rohtak, acquitted the appellant and his co-accused of the charges under Section 398 and 401 IPC. Rajesh accused was also acquitted under Section 25(1-B) of the Arms Act. However, the appellant

was convicted under Section 25(1-B) of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of fifteen days.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 11.3.2005 and his sentence of imprisonment was suspended during its pendency.

According to the prosecution, on 24.10.2002, Inspector Suresh Kumar, CIA-II, Rohtak was present on patrol and excise duty at Tilyar Lake in the area of village Garhi Bohar alongwith other police officials in a Government Jeep being driven by EHC Dariyao Singh. He received a secret information that accused persons armed with weapons were conspiring while sitting near a culvert to loot the passers-by, upon which, two raiding parties were constituted, one headed by ASI Nathu Ram and the second by HC Kulbir. The raiding party headed by ASI Nathu Ram was to take position towards west and the other headed by HC Kulbir towards north-east. While leaving the vehicle aside, the Inspector overheard the conversation of accused persons, who were conspiring to get stopped a vehicle for a lift by Rajesh. Thereafter, Manoj accused was to put a pistol

on the temple of the driver and in case the driver did not stop, then accused Sanjay would fire. Inspector Suresh Kumar asked the accused persons to surrender and police party overpowered accused Sanjay @ Bhola, who was found holding a country made pistol of .315 bore, whereas Rajesh accused was also overpowered at the spot and his search also yielded one loaded country made pistol of .12 bore from inside the right dub of his pant whereas third accused succeeded in escaping. Both the pistols were unloaded and measured and their rough sketches were prepared separately. The pistols and cartridges were made into separate parcels and sealed with seal 'SK' and were also taken into possession and the seal after use was handed over to ASI Nathu Ram. The accused, who had fled from the spot was learnt to be Manoj son of Balwan, resident of Bohar. Investigating Officer then sent a ruqa to the Police Station through Constable Ashok Kumar, on the basis of which, a case under Sections 398, 401 IPC IPC and 25 of the Arms Act was registered against the accused.

The investigation of this case was conducted by Inspector Suresh Kumar, who during the course of investigation formally arrested accused Sanjay and Rajesh. On the same day, he prepared rough site plan of the place of occurrence, got the recovered pistols and cartridges tested from Armourer and

obtained reports in this regard and also obtained sanction orders from District Magistrate, Rohtak with regard to launch prosecution under Arms Act against accused Rajesh and Sanjay, recorded the statements of the witnesses and started separate proceedings under Sections 82/83 Cr.P.C. against accused Manoj and after completion of investigation, challan against accused Rajesh and Sanjay was presented in the Court for the commission of offences under Sections 398, 401 IPC and 25 of the Arms Act. Accused Manoj, who was declared proclaimed offender was arrested by the police in another case and was produced in the Court on 28.5.2003 and after seeking permission of the Court, ASI Dayanand joined him in the investigation of this case and after completion of all the investigations, a supplementary challan was submitted in the Court against accused Manoj for the commission of aforesaid offences.

After hearing learned counsel for the parties and on going through the record, this Court finds that at the time of his arrest, the appellant was found in possession of one loaded country made pistol of .351 bore. The said weapon was examined by PW2 ASI Sat Narain, Armourer and it was found to be in working order. The prosecution examined PW1 Siri Niwas, Reader to District Magistrate, Rohtak, who proved the sanction order Ex.P2 in respect of appellant for prosecuting him under

Section 25 of the Arms Act. In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than fifteen years. When he was examined by the learned trial Court under Section 235 Cr.P.C., he had pleaded that he was married having two children and old parents to look-after.

As per the custody certificate already brought on record by the learned State counsel, the appellant has already undergone an actual period of seven months and thirteen days out of the sentence of one year imposed upon him.

Having heard learned counsel for the parties, this Court finds that no useful purpose will be served by sending the appellant behind the bars so as to undergo his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 25(1-B) of the Arms Act is upheld. His substantive sentence of imprisonment is reduced from one year to the one already undergone by him. The fine of Rs.500/- is, however,

enhanced to Rs.5,000/-. The enhanced amount of fine be deposited by the appellant in the Court of Chief Judicial Magistrate, Rohtak within three months from today, failing which, he shall be required to undergo rigorous imprisonment for three months.

The appeal is, accordingly, disposed of.

January 17, 2018

amit rana

(T.P.S. MANN)

JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No