

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

**CRA-S-2187-SB-2007 (O&M)
Date of decision: 03.09.2019**

Arvind Vikas Sharma

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Narula, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Present appeal has been filed challenging the judgment of conviction dated 11.10.2007, vide which the appellant was held guilty of offence punishable under Sections 307 & 506 of the Indian Penal Code (for short 'IPC') and Section 25 of Arms Act (for short 'the Act') and the order of sentence dated 13.10.2007, vide which the appellant was sentenced to undergo R.I. for a period of two years with a total fine of Rs.2,500/- and in default of payment of fine, to further undergo R.I. for three months, whereas two co-accused of the appellant, namely Hari Om Sharma and Nirmal Kanta

i.e. his parents, were acquitted.

Brief facts of the case are that PW6 Raj Singh-complainant, gave a complaint Ex.PF to the police authorities with the allegations that he is a resident of House No.3880, Urban Estate, Jind and his brother Satbir Singh is also residing in the same locality, i.e. House No.3558, Urban Estate, Jind. It is further stated that co-accused Hari Om Sharma, father of the appellant is residing in House No.3557, Urban Estate, Jind, which is in neighbourhood of Satbir Singh. Complainant Raj Singh and his brother Satbir Singh used to sit in front of Satbir Singh's house for a talk, during evening time and this was not liked by the appellant and therefore, the accused persons were nourishing a grudge against Raj Singh and Satbir Singh. It is further stated in the complaint that on 03.07.2006 at 10.00 p.m., when the complainant and his brother PW7 Satbir Singh were sitting in front of the house of Satbir Singh, the appellant along with his parents came there. The appellant was armed with a country made pistol. The co-accused i.e. parents of the appellant, Hari Om and Nirmal Kanta exhorted that the appellant should teach a lesson to Raj Singh and Satbir Singh, on which he put the country made pistol at the chest of Raj Singh and pressed the trigger of the same, however, the pistol did not work and Raj Singh escaped. When Satbir Singh intervened to rescue his brother and raised an alarm, other persons came there. The appellant had a scuffle with Raj Singh and the complainant received injuries on his person. In the meantime, many persons gathered there and on seeing them, the appellant fled away, while leaving

the country made pistol at the spot.

The police, thereafter, on the statement of the complainant Ex.PF, registered a formal FIR against the appellant, his father Hari Om Sharma and mother Nirmal Kanta under Sections 307, 114, 506 IPC and Section 25 of the Act. On completion of the investigation, the challan was presented under Section 173 Cr.P.C. Finding a prima facie case under the aforesaid Sections, the trial Court thereafter recorded the statement of prosecution witnesses. Thereafter, in the statement of appellant under Section 313 Cr.P.C., all the incriminating evidence was put to him. Thereafter, the trial Court, vide impugned judgment of conviction and order of sentence convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of two years, however, acquitted co-accused i.e. father and mother of the appellant, namely, Hari Om Sharma and Nirmal Kanta. The appellant has filed the present appeal challenging the impugned judgment of conviction and order of sentence.

It is worth noticing here that on 01.11.2007, while admitting the appeal, sentence of the appellant was suspended.

Learned counsel for the appellant has argued that complainant-PW6 Raj Singh, in cross-examination, has stated that application Ex.PF was written by his brother Jai Parkash, who is an employee in Haryana Roadways and the same was written inside the Police Post Civil Lines, Jind on his dictation. The pistol was checked by opening the same in the Police Post Civil Lines, Urban Estate, Jind by the police, in his presence. It is

further submitted that the version, given by eye-witness/brother of PW6, i.e. PW7 Satbir, is on a different footing and there are many contradictions in the statement made by both of them. Learned counsel has further argued that though PW6 has stated that it was the appellant, who had come out of his house with a country made pistol, which is contrary to version given in the complaint given to the police, whereas PW7 Satbir stated that the appellant along with his parents Hari Om Sharma and Nirmal Kanta came there. PW7 has further stated that after the appellant opened the fire and its trigger did not work and when he intervened to rescue his brother, in the meantime, Hari Om Sharma and Kanta also came there. Learned counsel has then referred to the version given in complaint Ex.PF to submit that the prosecution has given three different versions. In Ex.PF, the original complaint, forming basis of the FIR, it is stated that the parents have given an exhortion, upon which the appellant has put the country made pistol on the chest of PW6 Raj Singh, whereas PW6 has nowhere stated about presence of parents of the appellant and PW7 has stated that the parents of the appellant had come at the time when he rescued PW6, after the appellant has already fired.

Learned counsel for the appellant has next argued that as per the version of PW6 and PW7, the complaint was written in the Police Post Civil Lines Jind and along with the complaint, the country made pistol was also handed over to police by PW6 Raj Singh, however, as per the version given by PW4 SI Suraj Mal, Investigating Officer, on 04.07.2006, he along

with other police officials were present on patrol duty near a private hospital in Urban Estate, Jind and PW6 Raj Singh complainant met him and he gave him an application Ex.PF, on which he made the endorsement Ex.PF/1. The complainant also produced one country made pistol of .32 bore. This witness has further stated that the pistol was loaded and when it was unloaded one live cartridge was found in the chamber of the pistol. It is further submitted that version given by PW6 Raj Singh in his compliant Ex.PF and the statement made by SI Suraj Mal is contrary to the place of presentation of the application.

Learned counsel for the appellant has further argued that as per statement of PW5 HC Dharamvir, the Armourer, Police Lines, Jind, the pistol was found in working order and the cartridge was live. It is further argued that in such eventuality, version of the prosecution falls flat as if the pistol was in working condition and the cartridge was live, which according to PW4, was loaded, when the same was handed over to him by PW6 Raj Singh. In that eventuality, version given by the complainant that the appellant pressed the trigger, but it did not work, is apparently false, as the pistol was in working order. It is further argued that PW5, in the cross-examination, admitted that the pistol and cartridge Ex.P1 and Ex.P2, respectively, produced in the Court on the date of recording his statement were not in sealed parcel and therefore, identity of the pistol and cartridge is not proved. Learned counsel has further argued that in the police proceedings Ex.PF/1, the cartridge number is mentioned, however, while

appearing as a witness, PW4 SI Suraj Mal stated that he could not read the number and therefore, identity of the cartridge is doubtful.

Lounsel for the appellant has also argued that though it has come in the complaint Ex.PF that the complainant got injured, when a scuffle took place between the appellant, on one side with PW6 and PW7 on the other side, however, there is no medical evidence on record, to show that any MLR was conducted in this regard and version given by the complainant is not proved. It is thus argued that it is a case of no injury and even no MLR of the victim PW6 Raj Singh was conducted, therefore, from a bare perusal of the statements of PW6 and PW7, nothing has come on record that the appellant has made an attempt to commit murder of PW6 Raj Singh and therefore, conviction of the appellant under Section 307 IPC is not sustainable.

It is next argued on behalf of the appellant that even conviction of the appellant under Section 25 of the Arms Act is not sustainable, as the firearm was neither used nor recovered from the custody of the appellant. It is the own case of the complainant PW6 Raj Singh that the pistol was left at the place of occurrence and it was produced by him before the police, therefore, it is submitted that even the sanction granted by the District Magistrate, Jind, on 28.08.2006 under Section 39 of the Arms Act, is defective, as it is mentioned in the sanction order that .32 bore pistol and one live cartridge of the same bore was recovered by SI Suraj Mal from the possession of appellant Arvind Vikas son of Hari Om Sharma. Learned

counsel has also submitted that it is case of the complainant PW6 Raj Singh that the pistol was produced by him before SI Suraj Mal along with the complaint Ex.PF, therefore, while granting sanction by forming opinion that the pistol was recovered from the possession of appellant, is apparently against the record.

Learned counsel for the appellant has further submitted that on the same set of allegations, co-accused Hari Om Sharma and Nirmal Kanta already stand acquitted, while disbelieving the version given in the complaint Ex.PF that both of them have asked the appellant to teach a lesson to PW6 Raj Singh and PW7 Satbir.

In reply, learned State counsel has argued that from the statements of PW6 and PW7, it has come on record that the appellant, with an intention to kill PW6 Raj Singh, put the country made pistol on his chest and pressed the trigger, however, the same did not work and therefore, PW6 Raj Singh escaped unhurt. Learned State counsel has however not disputed the fact that there is no MLR of PW6 Raj Singh or the appellant on record.

After hearing learned counsel for the parties, I find merit in the present appeal, for the following reasons:-

- (a) The version given in the application Ex.PF, written by PW6 Raj Singh is that on 03.07.2006, when he and his brother Satbir were sitting outside his house, at about 10.00 p.m., Hari Om Sharma, his younger son Arvind and his wife came from their house in the street. Hari Om Sharma and his wife asked his son

that both Raj Singh and Satbir be taught a lesson for sitting in the street. Upon which, appellant came near Raj Singh and kept a country made pistol on his chest and pressed the trigger, with an intention to kill him, however, it did not work and in the meantime, PW7 Satbir tried to rescue him and appellant had a scuffle with Satbir Singh and in that process, the appellant suffered injuries on his knee and elbow. Contrary to this, PW6 Raj Singh nowhere named Hari Om Sharma and Nirmal Kanta, at first instance and only stated that the appellant had put the pistol on his chest and pressed trigger and thereafter, parents of the appellant came there. Similar is the statement of PW7 Satbir Singh, who stated that after he rescued PW6 from appellant, then his parents came out, therefore, there are number of contradictions in the original compliant Ex.PF and the statements of PW6 and PW7 regarding the presence of Hari Om Sharma and Nirmal Kanta.

- (b) PW6 Raj Singh and PW7 Satbir stated that they had written the complaint inside the Police Post Civil Lines, Jind and submitted the same along with pistol, whereas PW4 SI Suraj Mal had given a different version that when he was present near a private hospital, Raj Singh-complainant met him and move an application Ex.PF, on which police proceedings Ex.PF/1 were conducted.

- (c) As per statement of PW5 HC Dharamvir, Armour, the pistol was found in working order and the cartridge was live. Therefore, the version given by PW6 that when the trigger of pistol was pressed, it did not work, raises a suspicion about version of the complainant. Moreover, it is admitted in the cross-examination of this witness that when the pistol and the cartridge were shown, they were not in a sealed parcel and therefore, identity of these weapons is not proved beyond doubt.
- (d) In the police proceedings Ex.PF/1, it is mentioned that the cartridge bears a number, however, this fact is not proved by PW4 SI Suraj Mal, the Investigating Officer, as he has stated that he could not read the number of cartridge, which also makes the prosecution case doubtful.
- (e) As per version of PW6 and PW7, a scuffle took place between appellant and them, in which appellant sustained injuries. However, there is no medical evidence on record to prove this fact. Even as per PW6, he was never medico-legally examined.
- (f) The order passed by the District Magistrate, Jind Ex.PJ is also defective and contrary to the version given in the complaint Ex.PF, wherein it is stated that when the appellant was running away from the spot, his pistol fell down and it was taken in possession by PW6 Raj Singh and thereafter, he produced it

before PW4 SI Suraj Mal, Investigating Officer on the next day, i.e. 04.07.2008. Therefore, the opinion framed by the District Magistrate that the pistol and the cartridge were found in possession of the appellant, is factually incorrect.

For the reasons recorded above, present appeal is allowed and the impugned judgment of conviction dated 11.10.2007 and the order of sentence dated 13.10.2007 passed by the trial Court, are set aside.

Since sentence of the appellant was suspended by this Court vide order dated 01.11.2007, his bail/surety bonds shall stand discharged.

[ARVIND SINGH SANGWAN]
JUDGE

03.09.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No