

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1774-SB-2004
Decided on : 29.08.2019

Bijender and others
Versus
State of Haryana
... Appellant(s)
... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Ms. Deepshikha Chauhan, Advocate
for the appellant(s).
Mr. S.S. Pannu, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment dated 24.08.2004 and order of conviction dated 25.08.2004 passed by Addl. Sessions Judge, Sonapat, whereby, the accused-appellant(s) were convicted and sentenced as under : -

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) in default of payment of fine(s)</i>
<i>Bijender Satish Ramesh</i>	<i>353/34 IPC</i>	<i>Rigorous imprisonment (RI) for 01 year each</i>	<i>₹ 1000/- each</i>	<i>RI for 01 month</i>
	<i>307/34 IPC</i>	<i>RI for 03 years each</i>	<i>₹ 2000/- each</i>	<i>RI for 02 months</i>
<i>Ramesh</i>	<i>25 Arms Act</i>	<i>RI for 01 year</i>	<i>₹ 500/-</i>	<i>RI for 01 month</i>

All the sentences were ordered to run concurrently.

2. Prosecution case in brief was that on 28.07.2003 at about 9:00 P.M. when a police party headed by SI/SHO Ram Kishan (PW-8) was on routine patrol duty in the area of City Gohana, Sonapat Road, the three accused-appellants were seen coming on a Bullet Motorcycle. PW-8 SI Ram Kishan signalled them to stop, but instead they fled away. On suspicion, PW-8/SI Ram Kishan chased them on his vehicle and overtook their motorcycle at a distance. At this, appellant – Ramesh, who was pillion riding fired at the police party with the pistol which he was carrying. The police party too fired back at the appellants and managed to apprehend. One pistol along with an empty cartridge and a live cartridge were recovered from the possession of the appellant-Ramesh, which were then seized and sealed vide memo Ex.PC/1. On the basis of Ruqa Ex. PF sent by PW-8/SI Ram Kishan, case FIR No. 103, dated 28.07.2003, under Sections 307/353/34 IPC & 25 Arms Act, was registered against the accused-appellants.

3. On completion of investigation, challan was presented and committed to the court of sessions. The accused-appellants were charge-sheeted for the offences under Sections 307/34 and 353/34 IPC. Accused-appellant No.3/Ramesh was also charged-sheeted for the offence punishable under Section 25 of the Arms Act. At the time of framing of charges, the accused-appellants pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined as many as 08 witnesses, besides, tendering into evidence all other relevant documents. The prosecution witnesses supported the case of the prosecution on all material facts.

5. The accused-appellants when examined under Section 313 Cr.P.C. denied all the incriminating evidence, which had come on record against them. The accused-appellants claimed false implication. The accused examined 02 witnesses in their defense who deposed that the accused-appellants were innocent

and had been falsely implicated by the police in the instant case, after picking them up from their respective houses.

6. On the basis of evidence adduced before the Ld. Trial Court and other material on record, the accused-appellants were convicted and sentenced as already detailed hereinabove.

7. At the outset, learned counsel for the appellants submitted that in view of the death of appellant No.3 – Ramesh on 08.10.2014 during the pendency of the instant appeal, she would not press the appeal *qua* him. Thus, the present appeal *qua* appellant No.3 stands abated.

8. The learned counsel for the appellants challenged the impugned judgment by contending that the Ld. Trial Court completely erred in not taking note of the fact that on the face of it, it was a case of false implication, inasmuch as, though the police party and the appellants allegedly fired at each other, strangely, nobody from either side received or suffered any injuries, which clearly proved that no such occurrence had in fact taken place. She urged that the Ld. Trial Court ought to have considered the testimonies of DW-1/Gopi Ram and DW-2/Baljit Singh, who had categorically deposed that the appellants had been picked up from their respective houses on the alleged date of occurrence and then falsely implicated in the instant case. She went on to urge that the non-joining of any independent witness at the time of apprehension of the accused-appellants and the alleged recoveries of firearm and cartridges further cast a shadow of doubt on the authenticity of the prosecution version inasmuch as if the occurrence had indeed taken place at a public place, as alleged, there was nothing which prevented the police party from joining an independent witness. It was further contended that as per the settled law the complainant could not have been the Investigating Officer (in short 'I.O.') as well. However, in the case in hand, PW-8/SI Ram Kishan was

the complainant as well as the I.O., which amounted to miscarriage of justice. She further submitted that the pistol with which PW-8/SI Ram Kishan, had allegedly fired a shot was not even sent to the Forensic Science Laboratory (for brevity 'FSL'), which created a serious dent in the case of the prosecution. She finally submitted that even assuming for the sake of arguments that the alleged occurrence had indeed taken place, no role whatsoever had been attributed to the accused-appellants No.1 & 2 (Bijender & Satish), except, for the fact that they were on the same motorcycle, as accused-appellant No.3 – Ramesh, who was assigned the main role in the entire occurrence. Hence, it was urged that the accused-appellants No.1 & 2 - Bijender & Satish could not be said to be sharing a common intention with the main accused i.e. accused-appellant No.3 – Ramesh, in committing the offence under Section 307 IPC.

9. *Per contra*, learned State counsel submitted that the prosecution witnesses supported the case of the prosecution in its entirety and there was no occasion for them to falsely depose against them in the instant case. Learned State counsel further submitted that in fact the appellants had criminal antecedents and had been involved in a criminal case a day prior to the occurrence in hand *qua* which FIR No. 102, dated 27.07.2003, under Sections 384, 506, 34 IPC too had been registered at P.S. City Gohana against them. Hence, when they were signaled by the police party headed by PW-8/SI Ram Kishan to stop, they fled away as they would have been conscious that the aforementioned FIR stood registered against them. Learned State counsel also drew the attention of this Court to the FSL Report Ex. PE, which proved that the cartridges recovered had been fired from the pistol recovered from appellant No.3 – Ramesh (since expired). He, thus, prayed for dismissal of the instant appeal.

10. I have heard learned counsel for the parties and gone through the

evidence on record.

11. Before proceeding further, it would be apposite to reproduce Section 307 IPC, which reads as under:-

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

12. On a bare perusal of the provisions of Section 307 IPC, it leaves no manner of doubt that to bring home the offence under Section 307 IPC, both *mens rea* and *actus reus* on the part of the accused *qua* murderous intent would have to be present. Presence of injury/injuries would not be necessary to attract an offence under Section 307 IPC. Whether there was a murderous intent on the part of the accused or not, would have to be gathered from the nature of weapon used in the crime and the seat of injury.

13. In the case in hand, the appellants Bijender and Satish, exhorted the appellant-Ramesh (since expired) to fire back at the police and who in fact did oblige them, though luckily it did not hit anybody. Thus, there appears no reason whatsoever to infer that 'intention' was missing on the part of the accused-

appellants No.1 & 2 (Bijender & Satish) to harm the police party. In fact, the intention of the accused-appellants is clearly discernible from the weapon which one of their companions i.e. accused-appellant No.3 – Ramesh was carrying on his person. The sequence of events leading to the occurrence in hand clinchingly shows that both 'intention' and 'knowledge' were very much present on the part of all three accused-appellants. All the three were riding together on the same motorcycle, coupled with the fact that the accused-appellant No.3 – Ramesh was armed with a pistol, which was used by him in the occurrence is a clinching circumstance which establishes the complicity of accused-appellants No.1 & 2 – Bijender & Satish in the crime. Both the appellants had the knowledge that accused-appellant No.3 - Ramesh was carrying a firearm on his person, which was used by him and that too on the exhortation of accused-appellants No.1 & 2 (Bijender & Satish). The fact that nobody was injured in the cross-firing in the alleged occurrence would be of no consequence because as already observed earlier, Section 307 IPC can be attracted even in the absence of any injury having been suffered by any person in an occurrence. The next argument of the learned counsel for the appellants that it was a case of false implication as no independent witness was joined in by the Investigating Agency is hard to digest in the absence of any previous enmity muchless any other motive having been attributed to the Investigating Agency. No doubt all the witnesses were members of the police force, but that by itself would not render the prosecution case untrustworthy enough to be discarded. In fact, the evidence adduced before the Ld. Trial Court comes across as fully credible and sufficient enough to nail the appellants in the crime in question.

14. The argument of the learned counsel for the appellants that it was a case of defective investigation and against the settled law, because the

complainant and Investigating Officer were the same. She placed reliance upon ***Mohan Lal Vs. The State of Punjab, (2018) 17 SCC 627***, which is, however, would not be applicable to the facts and circumstances of the instant case. In ***Varinder Kumar Vs. The State of Himachal Pradesh, 2019 SCC Online SC 170***, the Supreme Court has dealt at length on this issue. The relevant paragraphs are reproduced as under:

“9. The only issue surviving for consideration is with regard to the prosecution being vitiated because PW-10 was the informant as also the Investigating Officer, in view of *Mohan Lal (supra)*. The ground not having been raised at any earlier stage quite obviously, the prosecution never had a chance to contest the same. It has not even been pleaded in the appeal. Nonetheless in view of the reliance placed, we shall examine the issue.

10. In *Mohan Lal (supra)* our attention had been invited to the divergent views being taken on the issue with regard to the informant and the investigating officer being the same person in criminal prosecutions, and the varying conclusions arrived at in respect of the same. The facts in *Mohan Lal (supra)*, were indeed extremely telling in so far as the defaults on part of the prosecution was concerned. In that back ground it was held that the issue could not be left to be decided on the facts of a case, impinging on the right of a fair trial to an accused under Article 21 of the Constitution of India, observing as follows:

“25. In view of the conflicting opinions expressed by

different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

xx xxx xx xxx

12. Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society —be it the law-abiding citizen or the potential offender. ‘Human rights’ are not only of the accused but, extent apart, also of the victim, the

symbolic member of the society as the potential victim and the society as a whole.

xx xxx xx xxx

xx xxx xx xxx

15. *Societal interest therefore mandates that the law laid down in Mohan Lal (supra) cannot be allowed to become a spring board by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in Mohan Lal (supra) were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or concluded, and appeals pending all of which will necessarily be impacted.*

xx xxx xx xxx

xx xxx xx xxx

18. *The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal (supra) is not allowed to become a spring board*

for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (supra) shall continue to be governed by the individual facts of the case.”

In the instant case as well, the appellants have criminal antecedents and a day prior to the occurrence, they had been involved in a criminal case, for which an FIR too was registered against all of them. Hence, in the opinion of this Court, the investigation would not stand vitiated in the facts and circumstances of the case.

15. Resultantly, as a sequel to the above discussion, I have no hesitation that the conviction of the appellants under Section 307 IPC with the aid of 34 IPC and Section 353 IPC cannot be set aside just because they did not participate in the shooting, which took place between the police party and the appellant – Ramesh (since expired). They definitely had the knowledge that one of them i.e. appellant - Ramesh was carrying a firearm. Further, it was the appellants, who had exhorted the appellant – Ramesh to shoot at the police party. Hence, they shared a common intention with appellant – Ramesh to attempt to kill the police. All the ingredients of Section 307 IPC are present in the instant case. I, therefore, see no reason to interfere with the impugned judgment dated 24.08.2004 and order of conviction dated 25.08.2004. Consequently, the instant appeal stands dismissed. The accused-appellants are on bail. Their bail/surety bonds stands cancelled. Necessary steps be taken to secure their custody.

(MANJARI NEHRU KAUL)
JUDGE

August 29, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No