

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRA-S-1469-SB of 2006.
Date of Decision: 10.05.2019.

Sanjay alias SanjuAppellant.

Versus

State of HaryanaRespondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Raj Partap Singh Brar, Advocate (Amicus Curiae)
for the appellant.

Mr. D.K. Mittal, Deputy Advocate General, Haryana.

Shekher Dhawan, J.

Present appeal is against the judgment of conviction dated 14.07.2006 and order of sentence dated 15.07.2006 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani, in case F.I.R. No.237 dated 08.12.2004 registered under Sections 399/402 of the Indian Penal Code (for short, 'IPC') and Section 25 of the Arms Act, whereby appellant Sanjay alias Sanju son of Pyare Lal was convicted and sentenced as under:-

Offence	Sentence Awarded	Fine	In default
Section 25 of the Arms Act.	Rigorous Imprisonment for a period of one year	Rs.1,000/-	Rigorous Imprisonment for a period of two months

2. Facts relevant for the purpose of decision of the present appeal; that on 08.12.2004, while Ram Avtar, Inspector of CIA Staff, Bhiwani alongwith Sri Bhagwan Sub Inspector, Head Constable Balbir,

EHC Navrattan, was present on patrolling duty, secret information was received to the effect that 5/6 persons, armed with weapons, were preparing to commit decoity in Sector 23 in a Kothi. Police party was constituted and all the accused persons were apprehended while they were preparing to commit decoity. A loaded countrymade pistol and one cartridge were recovered from the appellant and one iron rod and *Lathis* were recovered from co-accused, which were taken into police custody and after completion of investigation proceedings, challan was present before the Court for trial.

3. During trial, learned trial Judge completed various proceedings of the trial including framing of charge against the appellant-accused, recording statements of prosecution witnesses, examination of accused under Section 313 Cr.P.C., recording statements of defence witnesses and after considering the prosecution evidence and defence version held the appellant guilty and convicted and sentenced him for commission of offence under Section 25 of the Arms Act whereas acquitted him for commission of offence under Sections 399 and 402 IPC, on the ground that the prosecution evidence was not reliable.

4. At the time of arguments, learned counsel for the appellant contended that the impugned judgment of conviction and order of sentence are liable to be set aside because learned trial Judge, while disbelieving the testimony of police officials, acquitted the accused-appellant for the offences under Section 399 and 402 IPC, while relying upon testimony of same witnesses, convicted and sentenced the appellant under Section 25 of the Arms Act, which is just contrary to law. On this point, reliance was placed upon the judgments of Co-ordinate Bench of this Court in Amru vs. State of Haryana, 2015(3) R.C.R. (Criminal) 392; Naresh vs. State of Haryana, 2013(4) R.C.R. (Criminal) 895 and; Ashwani Kumar alias

5. Learned counsel representing the respondent-State contended that there was no doubt regarding recovery of pistol and cartridge and learned trial Judge has rightly held the accused-appellant guilty and convicted and sentenced him for the offence under Section 25 of the Arms Act, so the appeal be dismissed.

6. Having considered the submissions made by learned counsel for the appellant as well as learned State counsel and appraisal of record of the case, this Court is of the considered view that if the same set of witnesses are disbelieved, the same accused cannot be convicted for commission of offence under Section 25 of the Arms Act. Reliance in this regard is placed upon decision of Co-ordinate Bench of this Court in Amru vs. State of Haryana, 2015(3) R.C.R. (Criminal) 392; Naresh vs. State of Haryana, 2013(4) R.C.R. (Criminal) 895 and; Ashwani Kumar alias Babbi vs. State of Punjab, 1999(1) CLJ (Criminal) 215.

7. In view of the above, the present appeal is allowed. The judgment of conviction dated 14.07.2006 and order of sentence dated 15.07.2006 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani are set aside. The appellant is also acquitted of the offence under Section 25 of the Arms Act.

(SHEKHER DHAWAN)
JUDGE

10.05.2019
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No