

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1497-SB-2018 (O&M)
Date of decision : 04.11.2019

Sushil and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Atul Pratap Dhankar, Advocate and
Mr. Bijender Dhankar, Advocate for the appellants.

Mr. Anmol Malik, AAG, Haryana.

ANIL KSHETARPAL, J.

Appellants have assailed correctness and validity of judgment of conviction passed by Additional Session Judge, Sonipat in a criminal case arising out of FIR No.402 dated 11.10.2014 registered under Sections 186, 353, 307, 34 IPC and 25 of Arms Act, sentencing appellants in the following manner:-

<i>Name of the accused</i>	<i>Offence U/s</i>	<i>Period of sentence (RI)</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Sushil and Ramesh	307 IPC	10 years each	Rs.20,000/- each	One year each
	353 IPC	2 years each	Rs.5,000/- each	Three months each
	25 Arms Act	3 year each	Rs.5,000/- each	Three months each

Case of the prosecution as noticed in the impugned judgment is extracted as under:-

“2. The brief facts of the present case are that on 11.10.2014, ASI Hari Om alongwith ASI Dharambir, HC Naveen, Constable Sanjay, Constable Anil and Constable Vinit was present at Kami Road Bypass T-point for election patrolling duty in Government vehicle bearing registration No.HR 45B-1008 being driven by its driver Constable Sandeep, then a secret informer met ASI Hari Om and informed that Sushil @ Sheela son of Suresh, resident of Panchi Jattan and Ramesh son of Ram Kishan, resident of Naya Bansh will be coming on a motor cycle without number plate from the side of G.T.Road and with illegal arms and ammunition in a large quantity and that they would go to village Panchit Jattan from the said way. On believing the information to be trustworthy a separate rojnamcha was reduced into writing and sent through Constable Vinit to the Police Station Sadar, Sonapat. ASI Hari Om shared this information to the fellow police officials and a nakabandi was done at T-point Kami Road, Sonapat. The secret informer was freed. After some time two youngsters were seen coming on a motor cycle from G.T.Road side and ASI Hari Om signaled to stop them, however, both the youngsters took out pistols from their pockets and fired at the police party with an intention to kill them, but HC Naveen and Constable Sanjay narrowly escaped. Thereafter, both the youngsters fled away towards the fields in northern side after leaving the motor cycle at the spot, but they were apprehended by the police party. ASI Hariom also fired from Government pistol in the air in the defence of police party and to apprehend the accused. The youngster apprehended by ASI Hari Om with

the help of HC Naveen and Constable Sanjay on inquiry disclosed his name as Ramesh son of Ram Kishan, caste Naya Bans and from his personal search one country made pistol of .315 bore alongwith one live cartridge was recovered. One more loaded country made pistol of .9 mm with two live cartridges in the magazine were found lying near the right foot of Ramesh upon the earth. The other youngster apprehended by ASI Dharambir, Constable Anil and Constable Sandeep on inquiry disclosed his name as Sushil @ Sheela son of Suresh, caste Jat, resident of Panchi Jatan and from his personal search one country made pistol of .315 bore and one live cartridge were recovered. One more country made pistol of .315 bore was found lying present near the left leg of Sushil @ Sheela upon the earth and one empty cartridge was found in the said country made pistol. The accused did not produce any documents regarding the ownership of motor cycle and the same was taken into police possession under section 102 of Cr.P.C. The accused could not produce any permit or licence of the recovered country made pistols and cartridges. The sketches of the aforesaid country made pistols and cartridges were prepared. Separate palandas of the recovered country made pistols and cartridges were prepared and the same were sealed with seal having inscription of "BS" and the same were taken into police possession vide separate recovery memos.

3. On the basis of the aforesaid application of the complainant, the present case FIR was registered under Sections 186, 353, and 307 read with section 34 of Indian Penal Code and 25 of the Arms Act. The investigation was set into motion. Statements of the witnesses were recorded. After the completion of other formalities and investigation,

the challan against accused was prepared by the SHO Police Station Sadar, Sonapat and filed in the Court against the accused.”

After completing the investigation, prosecution in order to prove its case examined PW1 Rajesh, Patwari who proved and prepared scaled site plan Ex.PA. Rajender Singh, Sub Inspector was examined as PW2-deposed about deposit of the case property with him and sending the same through Constable Pardeep to Forensic Science Laboratory, Madhuban. Constable Pardeep was examined as PW3-had deposited the case property to Forensic Science Laboratory, Madhuban. Sub Inspector Dalvir Singh was examined as PW4-prepared police report under Section 173 Cr.P.C. PW5 Jasbir Singh, Reader to District Magistrate, Sonipat was examined-proved sanction orders. Head Constable Vineet was examined as PW6-a member of the police party engaged in patrolling duty. Assistant Sub Inspector Hari Om was examined as PW7-one of the member of the police party. PW8 Assistant Sub Inspector, Dharambir, again a member of the police party. Assistant Sub Inspector Subash was also examined as PW9-had partially investigated the case.

Statements of both the appellants were recorded under Section 313 Cr.P.C. wherein they denied all the allegations and claimed trial. In defence, evidence of Sandeep was recorded.

This Court has heard learned counsel for the appellants as well as State and with their able assistance gone through the record and the judgment passed by the learned trial Court.

Learned counsel for the appellants has raised following

arguments:-

- 1) There are material contradictions in the oral depositions of the witnesses and in view thereof, non-joining of independent witness assumes significance. Therefore, the prosecution has failed to prove its case beyond shadow of reasonable doubt. He further submitted that Subhash, the Investigating Officer who has been examined as PW9 has admitted that no recovery was effected from any of the accused in his presence. He further submitted that in absence of recovery, on the disclosure statement of the appellants/accused, makes statements of the appellants inadmissible in view of Section 27 of the Evidence Act.

On the other hand, learned counsel appearing for State of Haryana has supported the judgment and submitted that appellants are habitual offenders as rightly noticed by the learned Additional Session Judge, while passing order of sentence. He submitted that judgment under appeal does not require interference.

Let us recapitulate the case setup by the prosecution.

On a secret information, police party took position and appellants were seen coming on a motorcycle and on being signaled to stop, they stopped their vehicle and tried to run away leaving their vehicle behind, while firing at the police party and when one of the member of the police party fired a warning shot, appellants surrendered. As per the information, appellants were travelling with heavy illegal arms. Prosecution has tried to prove that three .315 country made pistols and one

9 mm country made pistol, total four arms were recovered. Appellants were alleged to be travelling at the time of occurrence was taken in possession by the police vide Ex.PW7/H-Recovery Memo. As per statement, Hari Om ASI, first informant, the vehicle was alleged to be without registration number. The witness appearing on behalf of the prosecution has tried to explain that the chasis number of the aforesaid vehicle was not visible. However, on close scrutiny, the statement of ASI Hari Om is correct as Ex.PW7/H does record engine number and chasis number. Prosecution could have easily known from the manufacturer, particulars of owner of the vehicle, because the chasis number and engine number are unique on each vehicle. No effort has been made by the prosecution to connect appellants with the aforesaid motorcycle.

As per the case of the prosecution, appellants while trying to run away had fired at the police party. Admittedly, there is no injury to anyone. The phraseology used in the information Ex.PW7/1 is that both the appellants fired from the arms in their possession. Three cartridge cases were recovered. One bullet was supposed to have been fired by the police party which was the alleged warning shot.

The prosecution has failed to link the alleged recovered arms with the appellants. No effort has been made by the prosecution to dig out from where these illegal arms and ammunition were allegedly prosecuted by the appellants. It is common knowledge that such arms are available for few thousand rupees.

Still further, there are material contradictions in the evidence

produced by the prosecution. PW6 Head Constable Vineet has deposed that the police party left CIA Staff on the day of occurrence i.e. 11.10.2016 at 11:00 AM, whereas PW7 ASI Hari Om has deposed that they left CIA Staff at 6:30 AM. Likewise, PW8 Dharambir ASI has deposed that they left CIA Staff at 6:00 AM. Similarly, ASI Dharambir has deposed that Investigating Officer joined 4/5 persons in the investigation whereas PW6 Vineet and PW7 Hari Om have deposed that no independent witness was joined in investigation.

Learned Additional Session Judge ignored these contradictions by observing that these are minor. No doubt, in a given case, some minor contradictions or variations can be ignored, because of time between date of occurrence and deposition, however, in absence of any independent witness, such contradictions/variations assume significance. It is the duty of the Court to examine the evidence of the prosecution more minutely and critically, particularly when no independent witness has been associated.

So, from the evidence, the Court is left with only oral evidence of police officials. As noticed above, appellants have taken a defence that they have been falsely implicated at the behest of Kanwal Singh, Incharge of CIA Staff. As per the case of the appellants, they were picked from water plant and since Kanwal Singh since did not find any incriminating material, therefore, demanded money and in spite of some payment having been made, falsely implicated appellants. All the police officials were working under the aforesaid Kanwal Singh, Incharge of CIA Staff at the

relevant time. Still further, on careful examination of scaled lay out plan prepared Ex.PA, it is apparent that appellants are alleged to have just gone few yards when they surrendered before the police. This aspect has to be examined in the context of the evidence of the prosecution that appellants are alleged to be habitual criminals. The appellants have been apprehended from the field abutting main road. Appellants are alleged to be in possession of loaded pistols two each carrying 4 rounds of ammunition. Still on one warning shot fired by the police, appellants are alleged to have tamely surrendered which does not appear to be probable. In other words, appellants did not make any serious attempt even to escape.

Still further, it is case of no injury. Evidence to the effect that appellant had fired 2 shots by aiming at the police party does not inspire confidence. Hence, offence under Section 307 IPC is not made out.

For the reasons stated above, this Court is of the considered view that the prosecution has failed to prove its case beyond shadow of reasonable doubt and important facets of the case remain unexplained. Hence, judgment passed by the learned Court of Sessions cannot be sustained. While giving benefit of doubt, appellants are acquitted.

Appeal allowed.

04.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No