

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

**CRA-S-827-SB-2005
Date of decision: 13.09.2019**

Mohammed Afroz

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Divay Sarup, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting aside the judgment of conviction dated 15.04.2005, passed by the trial Court, vide which the appellant was held guilty and convicted for commission of offence punishable under Section 25 of the Arms Act, while acquitting two of the co-accused Vijay and Vinod Kumar; as well as for setting aside the order of sentence dated 19.04.2005, whereby the appellant was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs. 500/- and in default of payment of fine; he was directed to further undergo rigorous imprisonment for a period of 03 months.

It is worth noticing here that while admitting the appeal, the sentence of the appellant was suspended, vide order dated 16.05.2005.

Brief facts of the case are that appellant Mohammed Afroz along with four other accused persons, namely Rajneet Singh, Vijay, Arun Kumar and Vinod Kumar, was arrested in FIR No. 28 dated 10.01.2003, under Sections 399 and 402 of the Indian Penal Code (for short 'IPC') and

Section 25 of the Arms Act, registered at Police Station Sarai Khawaja, Faridabad with the allegations that on 10.01.2003, when SI Krishan Kumar of Special Staff, Faridabad along with the police party was on usual patrol duty, he received a secret information that four/five persons have assembled in an abandoned room situated in the green belt and are preparing to commit dacoity in some house in Sector 37, Faridabad. On receiving such information, SI Krishan Kumar, along with his co-officials, laid a siege to the abandoned room and overheard that one of the accused was asking others that they can commit dacoity of a huge amount from Lal Kothi and in order to effectuate the dacoity, Afroz, armed with pistol, will stand on the main gate of the house and others will open the gate and in case any resistance is there by the owner of the house, then Ranjeet Singh will inflict injuries and Afroz will fire the shot. Upon this, the police party apprehended the accused persons on the spot and from the search of appellant Mohammed Afroz, one country made pistol with one cartridge was recovered. During the personal search of accused Ranjeet Singh, one spring actuated knife was recovered and from Vijay and Vinod Kumar, iron rods were recovered, whereas no recovery was effected from accused Arun Kumar.

Thereafter, the police submitted the challan and the case was committed to the Court of Sessions. The trial Court framed the charge against all the accused persons under Sections 399 and 402 of the IPC read with Section 25 of the Arms Act. One of the co-accused, namely Ranjeet Singh, was declared a proclaimed offender and he did not face the trial.

The trial Court, thereafter, recorded the prosecution evidence, in which, PW-1 Mahesh Kumar Sharma, Reader to District Magistrate

proved the sanction order and PW-2 Anoj Kumar, Draftsman proved the site plan. The trial Court also recorded the evidence of PW-3 ASI Mahender Singh, PW-4 HC Hitender Kumar, PW-5 ASI Bhim Singh and PW-6 SI Krishan Kumar, who were the members of the raiding party.

Thereafter, the trial Court recorded the statement of the accused persons under Section 313 Cr.P.C., wherein they were confronted with all the incriminating evidence and they denied the allegations levelled against them. However, none of the accused persons led any defence evidence.

The trial Court, thereafter, acquitted all the accused persons including appellant Mohammed Afroz of the charge under Sections 399 and 402 of the IPC, however, the appellant was convicted under Section 25 of the Arms Act.

Learned counsel for the appellant has raised arguments that once all the accused persons have been acquitted of the charge of preparing to commit dacoity, the conviction of the appellant under Section 25 of the Arms Act is not sustainable.

Learned counsel for the appellant has relied upon **2007 (13) SCC 83, *Sumersinh Umedsinh Rajput @ Sumersinh vs. State of Gujarat***, wherein Hon'ble Supreme Court has held that once the charge under Section 307 IPC was not proved against the appellant, he could not be convicted under Section 25 of the Arms Act.

In reply, learned State counsel has argued that it is proved from the statement of the prosecution witnesses that a .22 bore country made pistol was recovered from the appellant, therefore, the trial Court has rightly convicted the appellant under Section 25 of the Arms Act.

After hearing learned counsel for the parties, I find merit in the

present appeal.

The trial Court, after appreciation of entire evidence, has disbelieved the prosecution version, while acquitting all the accused persons under Sections 399 and 402 of the IPC. Even the appellant was acquitted of the aforesaid charge. However, the appellant was convicted in the aid of Section 25 of the Arms Act for possessing a country made pistol.

Considering the fact that the appellant has faced the agony of the long protracted trial of 12 years and also in view of the judgment of ***Sumersinh Umedsinh Rajput @ Sumersinh' case (supra)***, this appeal is allowed.

Appellant Mohammed Afroz is acquitted of the charge framed against him under Section 25 of the Arms Act.

Bail/surety bonds, if any, be discharged, accordingly.

13.09.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No