

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 07.03.2019

1. CRA-S No.3199-SB of 2016 (O&M)

Barinder Singh @ Bunty and others

....Appellants

Versus

State of Punjab

....Respondent

2. CRA-S No.3350-SB of 2016 (O&M)

Jai Deep Singh

....Appellants

Versus

State of Punjab

....Respondent

3. CRA-S No.3428-SB of 2016 (O&M)

Harinder Singh @ Cheeku and another

....Appellants

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Kaura, Advocate
for the appellants (in CRA-S-3199-SB-2016)

Ms. Monika Jalota, Advocate
for the appellant (in CRA-S-3350-SB-2016)

Mr. A.G.S. Dhillon, Advocate
for the appellants (in CRA-S-3428-SB-2016)

Mr. Joginder Pal Ratra, DAG, Punjab (in all the appeals)

ARVIND SINGH SANGWAN J.

Prayer in these appeals is for setting-aside the judgment of conviction as well as the order of sentence dated 05.09.2016 vide which the appellants namely Barinder Singh @ Bunty, Hardeep Singh @ Deep, Amarinder Singh @ Kaptan, Manjinder Singh @ Manu, Amarinder Singh, Jaideep Singh, Harinder Singh @ Cheeku and Gurjit Singh, were convicted for offence punishable under Section 25 of the Arms Act and they were sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 03 months.

Brief facts of the case (*in CRA-S No.3199-SB of 2016*) are that on 21.09.2011, SI Gurpartap Singh, SHO, Police Station Urban Estate, Patiala along with other police personnel was present in the premises of Punjabi University, Patiala, in connection with investigation of case registered vide FIR No.91 dated 21.09.2011 under Sections 307/148/149 of the Indian Penal Code,1860 (in short 'IPC') and 25 of the Arms Act, where accused Jashanpartap Singh Virk son of Charanjit Singh was apprehended. He was interrogated, during course of which he made statement before SI Gurpartap Singh wherein he stated that he is student of Ist year of Modi College, Patiala. Their organization NSFA headed by its President Harinder Singh @ Cheeku resident of village Saifdipur was organizing a volleyball tournament at Punjabit University, Patiala. The other group headed by its President Varinderpal Singh @ Bunty and his colleagues was opposing that

move. Varinderpal Singh had come to premises of Punjabi University and threatened that in case they organized the tournament then, they would have to the consequences. On 20.09.2011, when the tournament started and they were coming out of the premises at about 07:30 PM, they had boarded their vehicles. He was having Indica car bearing registration No.PB-11-AT-3314 and other vehicles with their group included an Endeavour car having last number 109, while in colour, belonging to Manbhinder Singh resident of village Mandaur, Scorpio vehicle bearing registration No.PB-11-AV-0069, white-cream in colour belonged to Harinder Singh @ Cheeku @ Virk, their total number being 10/15 and they had reached the main gate of the University, then from the side of Chandigarh-Rajpura road, a Verna car bearing No.PB-139-C-0606, two vehicles, one Safari vehicle, while in colour and one Fortuner having no.PB-01-BK-0068, black in colour, were standing on Chandigarh-Rajpura road. Barinder Singh @ Buntty @ Boxed, Harinder Singh son of Mehal Singh resident of village Samaspur, Inderjit Singh son of Tehal Singh, resident of Jalalpur, Sukhi Baba resident of village Ratola near Sunam, Ritu Boxed, Bharti, Shishu Dhillon son of Dean working at Punjabi University, Hardeep Singh resident of Urban Estate, Patiala, Kaptan resident of Shutrana, Jinder, Rana, along with 10/12 other persons were standing there and when their vehicles reached near them, they started firing at them. One of the shot so fired, hit bumper of his car. When they came to know about firing, they steered away their vehicles to save their lives and all those persons had attacked them with an intention to murder them. The motive for the incident being that the

accused party did not want them to organize the volleyball tournament. Subsequently, it came out that the assailants had fired at Zen car by mistake feeling that the persons of complainant party were travelling in them, resultantly, two students of B.Tech, namely Abhishek Kumar and Bharat Menon, got injured.

SI Gurpartap Singh recorded the statement of Jashanpartap Singh as Ex.PA and from the said statement, he found that it was a counter version of the incident regarding which an FIR No.91 dated 21.09.2011 for offence punishable under Sections 307/148/149 IPC and 25 of the Arms Act had already been registered at Police Station Urban Estate, Patiala. Thereafter, he was of the view that from the statement of Jashanpartap Singh Virk, offences under Sections 307/148/149 IPC and 25 of the Arms Act were disclosed and as such, this version be also investigating as a cross-case. For the purpose of entering the statement of Jashanpartap Singh in the Roznamcha, he appended his endorsement as Ex.PA/1 below that statement and sent it to Police Station Urban Estate, Patiala, through HC Dharmit Singh. The statement was thereafter, entered in the DDR vide Serial No.6 dated 21.09.2011.

Thereafter, SI Gurpartap Singh went to the place of occurrence and also carried out the spot inspection team and prepared the site plan Ex.PB with correct marginal notes. He took into possession empty shells of .315 bore and one .32 bore empty shell from there and put the same into a plastic box, convert it into a parcel and thereafter, sealed the same with the seal bearing impression 'GPS'. Sample seal impression was prepared and parcel was taken into

possession vide recovery memo Ex.PB/1. On return to the police station, he deposited the case property with seals intact with MHC Shamsheer Singh and subsequently, investigation of the case was carried out by ASI Tej Singh.

Brief facts of the case (*in CRA-S Nos.3350-SB and 3428-SB of 2016*) are that on 20.09.2011, the complainant Inderjit Singh son of Tehal Singh had gone to visit his friend Harinder Singh, in connection with some domestic work. One Rana their common friend was already there. They boarded a Fortuner vehicle belonging to Harinder Singh bearing registration No.PB-2BK-0068 and they were going from Village Samaspur to Patiala via Bahadurgarh, which was being driven by Harinder Singh. When the said vehicle reached near Punjabi University, Patiala, then a Scorpio vehicle white in colour having registration No.PB-11AV-0069 being driven by Jaideep Singh, came there. Harinder Singh @ Cheeku was sitting besides Jaideep Singh on the left hand side and there were 03 other occupants in the Scorpio vehicle. Another vehicle make Indica car bearing registration No.PB11-AT-3314 being driven by Jashanpartap Singh Virk having 2/3 other occupants and one more vehicle make Endeavour white in colour, bearing registration no. being 109, which was driven by Manbhinder Singh alongwith another vehicle make Scorpio having registration No.PB-1-AK-1515 being driven by Kala came and started following the Fortuner vehicle, in which the complainant alongwith his friends was travelling.

The persons travelling in the aforesaid vehicles had

identified the complainant and three other persons travelling in the Fortuner. They put down the glass panes of windows of their vehicles and raised lalkara that the complainant party would be given a taste for causing obstruction in the match and they would not be allowed to go scot-free. Harinder Singh @ Cheeku had .315 bore rifle, from which he fired a shot at complainant and other persons travelling in the Fortuner vehicle with intention to kill them. The bullet passed through the front window of the Fortuner vehicle and hit the right thigh of Harinder Singh. The complainant and others travelling in Fortuner vehicle raised alarm stating that they should speed away their vehicle otherwise accused would not spare them. Harinder Singh @ Cheeku fired another shot, after piercing the Fortuner vehicle on rear side and hit the complainant on right thigh; Jashanpartap Singh, travelling in Indica car also fired a shot from his firearm. The Fortuner driver tried to speed away his vehicle and Manbhinder Singh, thereafter, travelling in Endeavour vehicle fired a shot from his fire arm. The driver of Fortuner vehicle sped way his vehicle. Thereafter, the injured were admitted in Narain Hospital, Rajpura Road Patiala, where they were medically treated. A telephonic message was sent from Narain Hospital, Rajpura Road, Patiala, at Police Station Urban Estate, Patiala, to the effect that Inderjit Singh and Harinder Singh injured were admitted in that hospital and some Investigating Officer should be sent there. On receipt of that information, SI Gurpartap Singh, alongwith ASI Didar Singh, ASI Tej Singh and other members of the police party in Government vehicle No.PB-11AA-1310 which was driven by PHG Bahadur Singh went to

Narain Hospital. ASI Didar Singh, the Investigating Officer moved written applications addressed to the attending doctor Ex.PA and Ex.PB, enquiring about fitness of injured Inderjit Singh and Harinder Singh to make statements on which the doctor vide his endorsements Ex.PA/1 and Ex.PB/1 had opined that patient Inderjit Singh was fit to make statement whereas Harinder Singh was declared unfit to make statement stating that patient was undergoing the operative procedure as he had come in emergency of the hospital with gunshot wound on the right leg.

Thereafter, the Investigating Officer recorded the statement of Inderjit Singh Ex.PC and he sent a ruqa to the Police Station through HC Sharanjit Singh, on the basis of which a formal FIR Ex.PC/2 was recorded at Police Station Urban Estate, Patiala under the signatures of ASI Hardev Singh. Thereafter, SI Gurpartap Singh inspected the vehicle, parked outside the hospital, and certain recovery was effected and which were made into parcel and sealed with the seal of the Investigating Officer having impression 'GPS'. Empty shells of .315 bore was also recovered. On reaching the spot of occurrence, Indica car from Jashanpartap Singh was recovered by the Investigating Officer and accused Jashanpartap Singh was arrested and he recorded his statement, also giving cross-version of the incident and on the basis of the same, an entry in DDR was made Ex.PH/2.

On 22.9.2011, the doctor had declared Harinder Singh @ Babbu fit for making statement on an application (Ex.PJ) moved by ASI Didar Singh vide his endorsement (Ex.PJ) and the Investigating officer

recorded his statement and so also that of Manjit Singh.

Thereafter, all the accused were arrested and recovery mentioned below has been effected from them.

Sr. No.	Name of the accused	Date of recovery	Recovery effected
1.	Barinder Singh @ Bunty	10.10.2011	1 Pistol .32 bore bearing No.RP 10-2581 along with 05 live cartridges and Rs.200/-
2.	Hardeep Singh @ Deep	10.10.2011	1 country-made pistol .32 bore along with 05 live cartridges
3.	Amarinder Singh @ Kaptan	25.09.2011	1 country-made Pistol .32 bore along with 05 live cartridges
4.	Manjinder Singh @ Manu	10.10.2011	1 country-made Pistol .32 bore along with 05 live cartridges and Rs.130/-
5.	Amarinder Singh	23.09.2011	1 Pistol .32 bore bearing No.7738BK32 along with live cartridges
6.	Jai Deep Singh	----	1 Rivolver .32 bore along with 02 empty shells of cartridges and 1 .12 bore DBBL gun along with 02 empty shells of cartridges
7.	Harinder Singh @ Cheeku	30.09.2011	1 Rivolver .32 bore and 1 Rifle .315 bore along with 06 empty shells of cartridges
8.	Gurjit Singh	27.10.2011	1 country-made Pistol .32 bore along with 05 live cartridges

During the course of investigation, the Investigating Officer took into possession various documents, recorded statements of the witnesses and after completion of the investigation, challan for offences punishable under Sections 307/336/337/338/148/149 IPC and 25/27 of the Arms Act was prepared and presented against accused/appellants namely Barinder Singh @ Bunty, Inderjit Singh @ Jinder, Hardeep Singh @ Deep, Amarinder Singh @ Kaptan, Amandeep

Singh @ Rana, Manjinder Singh @ Manu Bhalwan, Amarinder Singh and Harinder Singh @ Babbu, whereas challan for offence punishable under Sections 307/148/149 IPC and 25/27 of the Arms Act was presented against the accused/appellants namely Harinder Singh @ Cheeku, Jaideep Singh, Gurjit Singh and Jashan Partap Singh in the Court of Illaqa/Area Magistrate, Patiala.

On presentation of the challan before the Court of Additional Chief Judicial Magistrate, Patiala, finding that the offence under Section 307 IPC is exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions vide order dated 23.12.2011.

On receipt of the case, the formal charge for offences punishable under Sections 307/148/149 IPC was framed against all the accused persons and subsequently, the charge was amended and additional charge for offence punishable under Section 25 of the Arms Act was framed against the accused persons, to which they did not plead guilty and claimed trial.

Thereafter (*in the appeal i.e. CRA-S No.3199-SB of 2016 preferred against the Sessions Case No.02 dated 06.01.2012*), the Lower Appellate Court examined Abhishek Kumar Grain as PW1, Bharat Mehan as PW2, Jashanpartap Virk, the complainant as PW3, Jaideep Singh as PW4, Harinder Singh @ Chiku as PW5, Manjit Singh as PW6, Darshan Singh, Clerk as PW7, SI Gurpartap Singh as PW8, HC Jatinder Singh as PW9, Balwinder Singh, Senior Assistant, Office of the Deputy Commissioner, Patiala as PW10, ASI Harjit Singh as

PW11, SI Tej Singh as PW12, ASI Didar Singh as PW13, SI Bhag Singh (retired) as PW14, Narinder Singh as PW15, ASI Tejinder Singh as PW16, ASI Shamsher Singh as PW17, HC Faquir Singh as PW18, PHG Kuldeep Singh as PW19, HC Jatinder Singh as PW20 and ASI Jaspal Singh as PW21 whereas ***(in CRA-S Nos.3350-SB and 3428-SB of 2016 preferred against the Sessions Case No.03A dated 06.01.2012)*** the Lower Appellate Court examined Inderjit Singh as PW1, Harinder Singh @ Babbu as PW2, Amandeep Singh as PW3, Manjit Singh as PW4, Darshan Singh, Clerk as PW5, SI Gurpartap Singh as PW6, HC Nirmal Singh as PW7, HC Faquir Singh as PW8, HC Jatinder Singh as PW9, ASI Amarjit Singh as PW10, ASI Lakhwinder Singh as PW11, ASI Didar Singh as PW13, HC Devinder Singh as PW14, Balwinder Singh, Senior Assistant, office of the Deputy Commissioner, Patiala as PW15, ASI Jarnail Singh as PW16, ASI Shamsher Singh as PW17, HC Jatinder Singh as PW18 and Rajinder Singh (repeatedly numbered) as PW19 and closed the prosecution evidence.

Thereafter, the statement of the accused persons under Section 313 Cr.P.C. was recorded wherein they have denied each and every incriminating evidence put against them and pleaded false implication in the present case, however, the accused ***(in CRA-S No.3199-SB of 2016)*** lead evidence in their defence and examined HC Kuldeep Singh as DW1 and Kulwinder Singh as DW2 and thereafter, they closed their evidence whereas ***(in CRA-S Nos.3350-SB and 3428-SB of 2016)*** the accused did not lead the defence evidence.

The Lower Appellate Court, after hearing learned counsel for the parties and after appreciating the evidence on record. The Lower Appellate Court also framed charge under Sections 307/148/149 IPC against all the accused persons and subsequently, the charge was amended and additional charge for offence punishable under Section 25 of the Arms Act was framed against all the accused persons, however, vide impugned judgment of conviction dated 05.09.2019, the Lower Appellate Court has recorded a finding that the prosecution has failed to establish the charge against the accused persons under Sections 307/148/149 IPC and all the accused persons were acquitted qua this part of the charge, however, the Lower Appellate Court convicted all the accused persons under Section 25 of the Arms Act.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 05.09.2016, the accused/appellants have preferred the present appeals, which were admitted on 16.09.2016, 26.09.2016 and 30.09.2016. Thereafter, the sentence of the appellants/accused was also suspended by this Court vide order dated 06.02.2017, 26.09.2016 and 30.09.2016.

Counsel for the appellants have submitted that during pendency of the present appeals, the appellants as well as respondent/complainant (*in version and cross-version case*) have entered into a compromise on 13.08.2018 (Annexure A11) and vide order dated 24.01.2019, the parties were directed to appear before the Mediation and Conciliation Centre of this Court for recording their statements in support of the compromise.

Counsel for the State, on instructions from the Investigating Officer, has not disputed the factual position but opposed the submissions made by counsel for the appellants/accused.

After hearing the counsel for the parties, I find merit in the present appeals. The complainant (***in FIR No.91 dated 21.09.2011 registered under Sections 307, 336, 337, 338, 148, 149 IPC and 25/27/54/59 of the Arms Act***) namely Jashanpratap Singh, has made a statement before the Mediation and Conciliation Centre of this Court that the parties have settled the matter and the compromise effected between the parties is voluntary and without any pressure and he has compromised the matter with his free will and he has no objection if the appeals pending before this Court are disposed in view of the compromise.

Similar statement has been made by the complainant – Inderjit Singh before the Mediation and Conciliation Centre of this Court (***in DDR No.6 dated 21.09.2011 under Sections 307, 148, 149 IPC and 25/27/54/59 of the Arms Act, registered at Police Station Urban Estate, Patiala***).

Even the remaining appellants/accused have admitted the factum of compromise and made similar statement before the Mediation and Conciliation Centre of this Court, as well that they have compromised the matter with each other without any pressure and with their own free will.

In “***Sube Singh and another vs State of Haryana and another***”, 2013 (4) RCR (Criminal) 102, the Division Bench of this

Court has held that even after conviction, if the parties have settled the dispute amicably and have decided to live in peace and harmony, this Court, in exercise of powers under Section 482 Cr.P.C, can compound the offence.

It has been held by the Hon'ble Supreme Court in ***“Sumersinbh Umedsinh Rajput @ Sumersinh vs State of Gujarat”***, 2007(13) SCC 83, that if the prosecution failed to establish the charge of attempt to murder under Section 307 IPC by gun-shot injury, resultantly, the prosecution under Section 25 of the Arms Act would also fail.

In the present case, the Lower Appellate Court in all the three cases, has recorded a finding that since the prosecution witnesses have not supported the version, the prosecution has failed to establish the charge under Sections 307/148/149 IPC, however, has convicted the appellants/accused only under Section 25 of the Arms Act, therefore, in view of the judgment passed by the Hon'ble Supreme Court in ***Sumersinbh Umedsinh Rajput @ Sumersinh's case (supra)***, once the Lower Appellate Court has recorded a finding that the prosecution has failed to prove the charge under Sections 307/148/149 IPC by the gun-shot injury, the prosecution under Section 25 of the Arms Act is not sustainable.

Considering the fact that the parties have decided to bury their *inter se* dispute and further decided to live in peace and also in view of the compromise arrived at between the parties, ***the present appeals are allowed and the judgment of conviction as well as the***

order of sentence dated 05.09.2016 passed by the Lower Appellate Court, qua the present appellants/accused are set-aside.

Disposed of accordingly.

07.03.2019

yakub

(ARVIND SINGH SANGWAN)

JUDGE

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