

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-4031-SB-2017 (O&M)

Date of decision:17.01.2019

Sarabjit Singh @ Sethi

.....Appellant

versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Naveen Batra, Advocate for the appellant.

Mr. Karanbir Singh, AAG, Punjab.

Kuldip Singh, J. (Oral)

This appeal has been filed against judgment dated 10.10.2017, passed by learned Additional Sessions Judge, Hoshiarpur, vide which the present appellant-Sarabjit Singh @ Sethi was convicted under Section 109 read with Section 489-C IPC and sentenced to undergo rigorous imprisonment for one year under Section 109 IPC and rigorous imprisonment for one year under Section 489-C IPC. His co-accused Kulwinder Kumar was also awarded similar sentenced under Section 489-C and 25(1)(b)(a) of Arms Act,1959. All the sentences were directed to run concurrently.

The brief facts of the case which are required to be noticed for the purpose of disposal of this case, SI Kamal Dev was holding a *naka* at Mahilpur and was checking vehicles on 09/01/2014. One Indica Car was

seen coming from Garshankar side and was stopped, in which, three young persons were sitting. The driver of the vehicle was apprehended by SI Kamal Dev with the help of ASI Mahesh Chander and HC Surinder Singh. The driver disclosed his name as Kulwinder Kumar @ Billa S/o Paramjit Singh. The personal search of the said Kulwinder Kumar @ Billa resulted in recovery of one pistol 315 bore and 10 live cartridges. Fake currency notes of Rs.52,000/- and some other genuine currency notes were also recovered. Rough site plan was prepared. ASI Balwinder Singh arrested another person Lovely Thakur from whom intoxicant powder was recovered for which, a separate investigation was carried out. ASI Balwinder Singh also arrested Subhash Masih from whom heroin was recovered and against whom also separate investigation was also carried out. During investigation accused Kulwinder Singh @ Billa made a disclosure statement that he is working with one Sarabjit Singh @ Sethi-the present appellant and who had given him car and pistol which have been recovered from them. Consequently, Sarabjit Singh @ Sethi was also arrested. The accused were charge-sheeted under Section 489-C IPC and Section 25 of the Arms Act by the Sessions Court, whereas, the present appellant-Sarabjit Singh @ Sethi was also charge-sheeted under Section 109 IPC.

To prove the case prosecution examined SI Kamal Dev investigating Officer-PW1, HC Rajan Vasudevs-PW2, ASI Mahesh Chander-recovery witness PW3 and thereafter, prosecution closed the evidence. When the accused persons were examined under Section 313 Cr.P.C., they denied their implication. After the trial the accused were

convicted and sentenced as aforesaid.

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

So far as, the role of Kulwinder Singh @ Billa is concerned, one country made pistol and fake currency of Rs.52,000/- were recovered from him. His appeal is not under consideration before this Court. Only the appeal of Sarabjit Singh @ Sethi is under consideration before this Court and therefore, this Court will only confine discussion to the role of Sarabjit Singh @ Sethi. Before the trial Court, plea was raised that there is only disclosure statement of Kulwinder Kumar @ Billa-Ex.Pj that accused Sarabjit Singh @ Sethi was working with him and that he was working on the asking of the accused Sarabjit Singh @ Sethi. While recording the conviction of the appellant, the learned Additional Sessions Judge made the following observations:-

“22.....and further prosecution has been able to prove that one country made pistol 315 bore along with 10 live cartridges were recovered from the accused Kulwinder Singh and as per his disclosure statement accused Sarabjit Singh @ Sethi was also working with him. So from the evidence adduced on record, the prosecution has been able to bring home guilt of the accused persons beyond any reasonable shadow of doubt. So I held accused Kulwinder Kumar guilty under Section 489-C of IPC and 25 (1-b)(a) of Arms Act and convict Sarabjit Singh is held guilty under Section 109 read with Section 489-C IPC and convicts them thereunder. Let they be heard on the quantum of sentence.”

Therefore, the observation of the trial Court shows that the trial Court convicted the accused only on the basis of the disclosure statement of co-accused Kulwinder Kumar @ Billa that Sarabjit Singh @ Sethi was working with him.

I am of the view that statement of the co-accused was not admissible in evidence and was not substantive evidence to convict Sarabjit Singh @ Sethi. After the disclosure statement made by Kulwinder Kumar, police should have made further investigation to find out as to whether what Kulwinder Kumar is stating, is correct and whether there is any evidence to show that he was working with Sarabjit Singh @ Sethi and that he has committed the crime of carrying fake currency and country made pistol at the behest of Sarabjit Singh @ Sethi. Unluckily, nothing was done in the said direction. Therefore, the conviction of the present appellant-Sarabjit Singh @ Sethi on the basis of disclosure statement of the co-accused is wholly illegal, against the established canons of law and rather the basic principles of law. Unluckily, as per the custody certificate, the appellant has already undergone one year sentence imposed upon him. Therefore, in my view, the appellant is entitled for compensation from the State for facing trial without any evidence being there against him and only on the basis of disclosure statement of co-accused. As such, the present appeal is allowed and impugned judgment and order of conviction dated 10.10.2017, passed by learned Additional Sessions Judge, Hoshiarpur, qua Sarabjit Singh @ Sethi-appellant is set aside and he stands acquitted of the charge under Section 109 IPC read with Section 489-C IPC. State is also ordered to pay

compensation to the tune of Rs.50,000/- for having him to undergo imprisonment of one year without there being any tangible evidence against him. So far as, the Presiding Officer is concerned, let the copy of the judgment be convey to Sh. R.K. Khullar, Additional Sessions Judge, Hoshiarpur, wherever he is posted now for future guidance with a direction that in future, he should appreciate the evidence in accordance with law.

(KULDIP SINGH)
JUDGE

17.01.2019

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Whether speaking/ reasoned:

Yes

Whether Reportable:

No