

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

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**CRM-A-1517-MA-2017 (O&M)
Date of Decision : 09.07.2019**

Sewak and another

... Applicants

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Ms. Shweta Sanghi, Advocate for the applicants.

HARNARESH SINGH GILL, J.

The applicants, namely, Sewak @ Sewa Singh and Rakesh have filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 28.04.2017 passed by the learned Additional Sessions Judge, Sirsa.

Vide impugned judgment, the trial Court has acquitted respondents no. 2 to 5 of the charges under Sections 120-B, 307, 195 and 211 of IPC besides acquitting accused-respondent Sanjay son of Kalu Ram of the offence under Section 25 of the Arms Act.

The brief facts of the present case are that on 03.07.2013 on receipt of a medical ruqa regarding admission of Sanjay @ Sanju son of Kalu Ram in General Hospital, Sirsa, ASI-Suraj Bhan had gone to record

his statement but the injured was declared unfit. Later, when Sanjay @ Sanju son of Kalu Ram was declared fit, his statement was recorded to the effect that he was running a shop of Hair Dresser. On 03.07.2013 at about 7:00 p.m. his friend, namely, Sewak resident of Gudia Khera, with whom he was having money transactions, came and argued with him. A heated exchange took place between them and before leaving Sewak Singh had threatened to kill him. Thereafter, on the same day at about 9:00 p.m., Sewak Singh along with his friend, namely, Rakesh came on a motorcycle and after calling complainant-Sanjay outside the shop, caught hold of him from the neck and also fired from a pistol after taking out same from his pocket, which hit the mirror of his shop. Rakesh took Sanjay in his arms, on which Sewak shot a second fire which hit on his right thigh. Accordingly, on the statement of Sanjay @ Sanju s/o Kalu Ram an FIR under Sections 307, 34 IPC and 25 of the Arms Act was registered.

During investigation, the case registered by Sanjay @ Sanju was found to be false. On 04.09.2013, statements of Sewak Singh and Rakesh Kumar were recorded under Section 161 Cr.P.C. wherein they stated that Sanjay @ Sanju son of Kalu Ram, on whose statement FIR was lodged, had got himself injured by a fire arm after taking the same from Harpej Singh and had registered a false case against them. After investigation by CIA Staff, Sirsa, accused, namely, Harpej Singh and Sanjay @ Sanju were arrested and on their disclosure statement(s) it was revealed that it was Harpej Singh who had shot a fire on Sanjay @ Sanju on his asking with the pistol belonging to Sanjay @ Sanju himself. Accordingly, the illicit pistol was taken into possession.

Accordingly charges under Section 120-B, 307, 195, 211 IPC were

framed against the respondents vide order dated 24.04.2014. Respondent-Sanjay @ Sanju son of Kalu Ram was also chargesheeted for the offence punishable under Section 25 of the Arms Act. All the respondents/accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 17 witnesses. On the other other side, the statements of the respondents/accused under Section 313 Cr.P.C. were recorded to which they pleaded not guilty and claimed to lead evidence in their defence.

Learned trial Court, while taking into consideration the evidence on record, especially the statements recorded by the prosecution has drawn a conclusion that Sanjay @ Sanju had sustained fire arm injury on his thigh but the prosecution could not prove that it was a self-suffered injury, that too, with the intention to implicate Sanjay @ Sanju and Rakesh in a false case. Ultimately all the four accused, namely, Sanjay @ Sanju son of Kalu Ram, Harpej Singh, Kalu Ram. Sanjay son of Moti Ram were acquitted and Sanjay @ Sanju son of Kalu Ram was also acquitted of the charge levelled against him under Section 25 of the Arms Act.

Learned counsel for the applicant has argued that it is proved that accused Sanjay @ Sanju in connivance with other co-accused got himself injured by a fire arm at the hands of accused-Harpej Singh in order to implicate Sewak Singh and Rakesh in a false case and the empty cartridges along with the country made pistol was also recovered from the possession of respondents/accused, which was used by them in causing fire arm injury to Sanjay @ Sanju. It has further been pointed out that the statement of Sanjay @ Sanju (on the basis of which the present FIR stood registered) was found false during investigation and it was found that Sanjay @ Sanju had

sustained injuries with ulterior motive to implicate Sewak Singh and Rakesh in a false case. It is argued that the confessional statement is binding on the other co-accused as all the respondents/accused are facing the joint trial. It was further argued by learned counsel that even as per the FSL report (Ex.PZ/1) it was proved on file that injuries sustained by accused Sanjay @ Sanju were self inflicted.

We have heard learned counsel for the applicants and with his able assistance, have gone through the record of the case.

PW-1 Sewak Singh and PW-2 Rakesh Kumar, have specifically deposed in their testimony that accused-Sanjay @ Sanju got himself injured with the fire arm of Harpej Singh just to implicate them in a false case. It is an admitted fact that the alleged occurrence took place in the presence of both the PWs. Prosecution had also examined PW-3, Ram Partap, before whom the accused had made an extra-judicial confession. They had, accordingly requested P3-Ram Partap to settle the matter. The pistol alleged to have been used in the crime, was recovered from the open place which is accessible to all. This fact in pursuance of the disclosure statement of Sanjay @ Sanju is not acceptable as at the time of the alleged recovery, no independent witness had been joined in the investigation. Even the empty cartridges alleged to have been handed over by Sanjay @ Moti Ram were also not proved because no independent witness from the vicinity was joined especially when the same was recovered from the crowded place. It is admitted by PW-12, namely, SI-Ran Singh that there are shops situated on the left side, right side and front side but no independent witness was examined. Thus, the trial Court has rightly discarded the evidence of the prosecution.

basis of the confessional statements of the accused. It has come in the evidence that the Investigating Officer did not enquire about the matter from any of the independent witness of the vicinity. Except the confessional statements of the respondents-accused, there is no other source available on the record with the Investigating Officer to implicate the respondents-accused in the present case.

Moreover, it is proved on file that Sanjay @ Sanju had sustained fire arm injury on his thigh but it was not proved that it was a self suffered injury, that too, to implicate Sewak Singh and Rakesh (applicants herein) in a false case.

From the above, it appears that there are serious contradictions in the statements of the witnesses. The entire case of the prosecution is based on the confessional statements made by the accused-respondents. However, as noticed above, no independent witness was either joined in the investigation or examined in evidence. Sanjay @ Sanju had though received a fire arm injury on his thigh yet there is no evidence on record to reach a conclusion that it was a self suffered injury and, that too, to implicate the applicants in a false case.

Moreover, a Division Bench of this Court in the case titled as ***Gurcharan Singh versus Charna Singh and others***, 2012 (6) RCR (Criminal) 2679 held that when two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal recorded by the trial Court.

In view of the above, it held that the trial Court was justified in acquitting all the four accused. The judgment of acquittal is neither unreasonable nor perverse and hence calls for no interference.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

09.07.2019
pooja saini

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>