

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

CRA-S-1848-SB-2004

Date of decision: 18.2.2020

Dharambir

...Appellant

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.JS Bedi, Sr. Advocate with
Mr.Sunil Sihag, Advocate for the appellant

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

The present appeal has been directed against the judgment of conviction and order of sentence dated 27/29.7.2004 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani, whereby the accused-appellant was sentenced to undergo rigorous imprisonment for a period of 7 years with a fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of six months under Section 3/4 of the Explosive Substances Act (for short 'the Act').

The facts necessary for adjudication of the matter as narrated in para no.2 of the impugned judgement are as under:-

“.. on 18.9.2001 SI Sukhbir Singh alongwith other police officials was present at village Mankawas. A secret information was received that accused Dharambir and Ramesh (since deceased) were having ballistic material

for explosion of hills. At that time, both the accused were going to Mankawas Hills. If raid be conducted, they could be apprehended. On receiving this secret information, SI Sukhbir Singh prepared raiding party and reached at Mankawas Hills and saw that a Mahendra DI tractor fitted with a drill machine was parked at the spot. One person was sitting on the driver seat and one other was sitting on the mudguard. On seeing the police party, the person who was sitting on the driver seat succeeded in running away, whereas the person who was sitting on the mudguard was apprehended on the spot. On enquiry, he disclosed his name as Dharambir son of Har Lal and name of the person who had run away as Ramesh son of Heera Lal. From the search of tractor, card board boxes containing 120 Batti Gutka having the inscription of 'Explosive Bell Gelatine' and 13 bundles of blue colour batti and 200 ft. batti of red colour were recovered. One bundle and one piece of 1 ft. batti were recovered as sample and sealed with seal SS. The accused could not show any permit or licence. A rukka was sent to the police station on the basis of which, formal FIR was registered.

After completion of the investigation, the challan was presented in the Court. The appellant and his co-accused Ramesh were charged under Section 3/4 of the Act, to which, they did not plead guilty

and claimed trial.

During trial, accused Ramesh died and the proceedings against him were dropped vide order dated 27.8.2003 by the trial Court.

In order to substantiate the charges, the prosecution had examined Constable Dharambir Singh as PW1, HC Kanwar Singh as PW2, ASI Sanwar Singh as PW3, SI Baljeet Singh as PW4, SI Sukhbir Singh as PW5, ASI Jai Parkash as PW6 and Bhisham Chander, Reader to District Magistrate, Bhiwani as PW7.

When examined under Section 313 of the Code of Criminal Procedure, the accused-appellant denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded false implication. In defence, he examined Sukhpal Singh as DW1.

After analysing the entire evidence and hearing the learned counsel for the parties, the learned Trial Court convicted and sentenced the accused-appellant noticed at the outset.

Feeling dissatisfied with the same, the accused- appellant Dharambir has preferred the present appeal.

Learned counsel for the appellant submits that the learned trial Court has committed a grave error while convicting the appellant, as the appellant was not in the conscious possession of the explosive substance. He had taken a lift to go to his village. He was neither the owner nor the driver of the tractor. It is further argued that no independent witness was joined by the police party. He further submits that there are material contradictions in the statements of PW5 SI Sukhbir Singh, Investigating Officer and PW6 ASI Jai Parkash, member of the raiding party regarding

recovery of the substance.

On the other hand, learned counsel for the State submits that the learned trial Court after appreciating the evidence on record has rightly convicted and sentenced the accused.

Heard.

PW5 SI Sukhbir Singh, Investigating Officer in his cross-examination deposed that they had engaged a private jeep from Dadri for going towards Mankawas. He did not remember the number of the jeep, name of the driver and conductor of the jeep. He alongwith other police official reached at Mankawas at about 5.30 pm. He had not sent any official for calling lambardar or sarpanch to join in the investigation. He had asked 8/10 persons to join the investigation. Many persons were present in the fields and on the passage to village Charkhi, the writing work was done while sitting in the jeep. He did not know the registration number of the tractor. During investigation also he did not find out as to what was the registration number of the tractor. At the time of search of the tractor, he did not call persons from neighbouring locality. Whereas, PW6 ASI Jai Parkash, a member of the raiding party deposed in his cross examination that the police party had set out from the police station at about 5 pm. They reached at Mankawas bus stand at about 6 pm. A constable was sent for calling lambardar and sarpanch for joining in the investigation but none came. Driver and conductor of the jeep were not joined in the investigation. They had reached near the tractor at about 7 pm.

From the bare reading of the above statements, the Court feels that the contradictions pointed out above, regarding joining of the witness

and the time of reaching at the place of recovery are material and goes to the root of the case. Moreover, the driver and the conductor of the jeep though present on the spot were not joined in the investigation by the police.

It is the case of the prosecution that the police had received a secret information regarding explosive substance held by the appellant and his co-accused Ramesh. However, the investigating officer chose not to register the FIR or inform his superior officers and straight away proceeded for conducting raid. It is a serious lapse on the part of the prosecution, which renders the prosecution story doubtful.

Another nail in the coffin of the prosecution case is that no investigation was done by the investigating agency with regard to the ownership of the tractor recovered from the spot. The appellant was found sitting on the mudguard of the tractor. In his statement under Section 313 Cr.P.C. he has specifically stated that on the date of alleged recovery, he was coming from village Dhoki and was going to his own village Charkhi and on the way he took lift on the tractor. On seeing the police party, the driver of the tractor ran away. Had the appellant had knowledge of the explosive substance in the box fitted on the tractor, he would have certainly tried to escape but he concededly he did not make any such attempt.

Moreover, it is evident from the statements of PW5 SI Sukhbir Singh and PW6 ASI Jai Parkash, that a number of persons were present on the spot at the time of effecting recovery, but no effort was made to join them. Even the conductor and driver of the jeep in which the police party had arrived at the scene of occurrence were also not joined in the

investigation for the reasons best known to the police. Non-joining of any independent witness, despite availability, is a serious infirmity and benefit of the same ought to be given to the accused.

Further the tractor was owned by one Surender Singh r/o village Kalyana to whom it was released on superdari by the trial Court. Thus, it stands established on record that the appellant was neither the driver nor the owner of the tractor, and the recovery was not effected from the conscious possession of the appellant. The prosecution case appears to be highly doubtful. Accordingly, the present appeal is allowed and the appellant is acquitted of the charge framed against him. His bail bonds shall stand discharged.

Since the main appeal is decided as such, the misc. applications pending, if any, shall also stand disposed of.

18.2.2020

gsv

(JITENDRA CHAUHAN)**JUDGE****Whether speaking / reasoned?****Yes / No****Whether reportable?****Yes / No**