

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

CRA-S-1049-SB-2005

Date of decision:-13.3.2020

Dara Singh

...Appellant

Versus

The State of Punjab.

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Appellant with counsel Sh.G.S. Bhandari, Advocate.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment and order dated 31.5.2005 passed by learned Additional Sessions Judge, Bathinda vide which accused Dara Singh was convicted for an offence under Section 25 of the Arms Act, 1959 and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.3,000/- and in default thereof, to further undergo rigorous imprisonment for eight months.

The accused-convict – Dara Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution

story are that on 17.9.2002 Inspector Gurdarshan Singh, Incharge CIA Staff, Bathinda (hereinafter referred to as the Investigating Officer/IO) along with other police officials was carrying out investigation of the case registered vide FIR No.14 dated 13.2.2002 for the offences under Sections 382/506/511/34 IPC, Police Station Sangat, when accused Dara Singh during the course of interrogation suffered a disclosure statement that he had kept concealed an AK-56 rifle along with three magazines thereof as well as 150 live cartridges of that rifle and 50 live cartridges of .30 bore in the area of Phulo Khari near Kikar trees and such articles had been buried in the earth at that place regarding which only he knew and could get those recovered; in pursuance of that statement, the accused while in police custody got effected recovery of such articles, which were lying wrapped in a glazed paper and were tied with rubber tube of black colour; the recovered articles included a hand grenade also; the Investigating Officer prepared separate parcels of AK-56 rifle, magazines, live cartridges, hand grenade, sealing those with his seal having impression 'GS' and those were taken into police possession vide recovery memos; he sent ruqa to the police station, on the basis of which formal FIR was registered; the Investigating Officer prepared rough site-plan of the place of recovery; he recorded statements of witnesses; after obtaining sanction of District Magistrate and receipt of report of Forensic Science Laboratory, Punjab, Chandigarh. When the investigation was complete, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Bathinda.

On presentation of challan in the Court of Judicial Magistrate

Ist Class, Bathinda, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 4/5 of Explosive Substances Act, 1908 is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Bathinda vide his order dated 10.2.2005 committed the case to the Court of learned Sessions Judge, Bathinda and after that the case was entrusted to the Court of learned Additional Sessions Judge, Bathinda.

Learned Additional Sessions Judge, Bathinda, finding that prima-facie charge for offences under Sections 25 of the Arms Act and 4/5 of the Explosive Substances Act, 1908 was disclosed against the accused, charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined in as many as seven witnesses, namely, ASI Fulbir Singh as PW1, ASI Kabal Singh as PW2, HC Rajinder Singh as PW3, Inspector Lachhman Singh as PW4, Ajit Singh as PW5, HC Buta Singh as PW6 and Inspector Gurdarshan Singh as PW7.

With that the prosecution evidence stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he has been falsely involved in this case because he was pursuing criminal cases registered against his brother Jarnail Singh; that as a matter of fact, he had

been picked up by the police from his village in presence of several persons then he was kept illegally confined and thereafter involved in this case wrongly.

During his defence evidence the accused had examined Jaswant Singh as DW1 and HC Manjit Singh as DW2.

After hearing arguments, Additional Sessions Judge, Bathinda acquitted the accused for the offences under Sections 4 and 5 of the Explosive Substances Act, 1908, whereas convicted and sentenced him for an offence under Section 25 of the Arms Act for possession of one AK-56 rifle in working order, three magazines of AK-56 along with 150 live cartridges of AK 56 and 50 live cartridges of .30 bore, as mentioned supra, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Deputy Advocate General for the State of Punjab besides going through the record.

The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons

may go scot-free but even one innocent should not be punished.

Here in the present case, the entire prosecution story is based upon the fact that the accused while in police custody during the course of investigation had suffered a disclosure statement Ex.PA and in pursuance thereof had got AK 56 rifle, magazines and cartridges recovered from his possession. The important thing to be seen is as to whether the accused was in legal custody of the police at that time because if it is not established, then the alleged disclosure statement cannot be held to be legally and validly made.

Learned Additional Sessions Judge, Bathinda has dealt with such aspects in para Nos.10 and 11 of the judgment but he could not give proper reasoning for dealing with the objections raised by the defence counsel that disclosure statement could not be said to be suffered as per law because the accused was not in custody at the time of suffering the alleged disclosure statement Ex.PA. The trial Court in para No.11 itself has observed that the testimony of PW1 establishes that the present accused was not nominated as an accused in case FIR No.14 of 13.2.2002 and he was not challaned in that case and no recovery was effected in that case. If it was so, then how could the accused be taken to be in custody in FIR No.14 of 13.2.2002 when he had allegedly suffered disclosure statement Ex.PA and if it is taken that he was not in custody, then disclosure statement Ex.PA cannot be held to have been made legally and validly and cannot be taken into consideration. The trial Court has taken note of authority *Tara Chand Versus State of Haryana, 1978 CLR 235(P&H)* providing that a disclosure statement to be admissible must be

suffered by accused while in custody of police. But then how it is not applicable to the present case has not been satisfactorily dealt with by Additional Sessions Judge, Bathinda.

Learned Additional Sessions Judge, Bathinda instead of properly appreciating the factual position, rather gave a twist to the story stating that such assertion of PW1 establishes that PW1 ASI Fulbir Singh or PW7 Inspector Gurdarshan Singh had no malice or motive to depose falsely against the accused and had such malice or motive was there on the part of PW1 ASI Fulbir Singh or PW7 Inspector Gurdarshan Singh, then it was very easy for them to plant recovery even in said FIR No.14 of 13.2.2002, which was not done and it shows that in fact PW1 and PW7 deposed only those facts as are close to the reality. The reasoning so given is least convincing. Instead of analyzing the evidence in a proper and appropriate manner, learned Additional Sessions Judge, Bathinda seems to have relied upon conjectures and surmises labelling the depositions of PW1 and PW7 to be truthful and reliable. Those PWs had admitted that no independent witness was joined despite easy availability. That should have rather gone against the prosecution story. Though admittedly joining of independent witness is not mandatory but the independent witness, if joined does lend credence and credibility to the prosecution version. It is another matter if no independent witness was available at the time of effecting recovery but if such witness though easily available is not joined that does sometimes creates a doubt in the mind about truthfulness of the prosecution version.

In para No.13 of the judgment, learned trial Court has taken

note of discrepancies in the statements of PW1 and PW7 with regard to the fact as to where interrogation of the accused was done, whether at CIA Staff, Bathinda or at Sirki Bazaar, Bathinda. The independent witness said to have been joined with the police party at the time of effecting recovery namely Gurcharan Singh was not examined during the trial. PW1 Fulbir Singh had stated that items of case property were not in intact condition at the time of production in the Court since there was no seal of mark of identification. That raised a serious issue as to whether the case property produced in the Court was the same, which had been got recovered by the accused from his possession as per the prosecution story. This point had not been dealt with specifically by the trial Court. Rather it has been observed that seals on items of case property cannot remain after a spell of three years particularly when the case property passes through hands of trial Court etc.

True, the sealing wax containing the seal impression may get cracked or a part thereof may fall down at times but then a note in that regard needs to be made and if things are taken in a casual manner then where is the necessity of sealing the parcels because one can always say that seals are bound to disappear or get damaged with handling by several persons and as a result of passage of time.

One more fact, which has been noticed by learned trial Court but not given much importance is that affidavit of Constable Sukhdev Singh, who took the parcels of live cartridges to the office of FSL was not tendered and he was not examined as a prosecution witness, thereby link evidence being missing. Learned trial Court has rather conceded that link

evidence is incomplete but then with a strange reasoning, it has been observed that PW1 and PW7 being police officials are bound to have knowledge as to the workability of the recovered cartridges and AK 56 rifle. The visual examination and basic knowledge regarding arms and ammunition of police officials cannot be a substitute for scientific opinion given by the FSL. Life and liberty of a person is involved, who is facing trial on serious allegations of possessing AK 56 rifle along with ammunition etc.

It may be mentioned here that learned Additional Sessions Judge, Bathinda has not given importance to the fact that accused apprehended from his house, then detained at police station and thereafter involved in this case. Para No.18 of the judgment dealing with that aspect makes very interesting reading and it is being reproduced as under:

18. Even if accused may have been apprehended from Vill.Roran wali District Muktsar but despite that non joining of independent witness from that village not fatal to case of prosecution because accused was arrested in connection with case FIR No.14 earlier to recoveries in this case. That arrest of accused was about 7-8 days prior to recoveries in this case and if accused detained for 7-8 days concerning case FIR No.14, then the same does not make any difference because police exonerated accused in that case FIR No.14. Stray sentence in cross-examination of PW1 that there is no evidence to connect accused with the recovered articles cannot be taken as an admission particularly when testimony

of PW1 read as a whole establishes about recoveries in pursuance of disclosure statement suffered by accused from the place disclosed by accused. Discrepancies qua fact as to who did the writing work bound to creep in after spell of time and as such that discrepancy being not major liable to be ignored.

Again learned trial Court has tried to make distinction between physical arrest and formal arrest when legally no such distinction could be made. How this matter has been dealt with, for understanding that para No.19 is reproduced as under:

19. If PW7 claims that recovery was effected at about 5:00 p.m. but accused alongwith police party reached at 2:00 p.m. but formal arrest of accused shown at 8:00 p.m. then all this shows that arrest of accused recorded in papers at 8:00 p.m. though he was physically arrested before that. Physical arrest of accused at the time sufference of disclosure statement essential and not formal arrest. So no benefit from this fact can be gained by counsel for defence.

There were several reasons giving rise to a doubt in the mind about truthfulness of the prosecution story which needs to have been given proper attention and weightage. The trial Court though noticed the same but did not properly appreciate the effect thereof and convicted the accused for the offence under Section 25 of the Arms Act, when the facts

and circumstances of the case called for giving benefit of doubt to the appellant/accused.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable, the same are set aside by way of acceptance of this appeal. The appellant is acquitted of the charge under Section 25 of the Arms Act by giving him benefit of doubt.

Necessary intimation be sent to the quarter concerned.

13.3.2020

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No