

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

**CRA-S-623-SB-2004 (O&M)
Date of decision : 19.02.2020**

Vikram and others

...Appellants

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Aman Pal, Advocate
for appellant Nos.1 and 2.

Appeal qua appellant No.3 already abated
v.o. dated 09.12.2015.

None for appellant No.4.

Mr. Vikrant Pamboo, DAG, Haryana.

JITENDRA CHAUHAN, J.

The instant appeal is directed against the judgment and order dated 24/25.02.2004 passed by Additional Sessions Judge, Fast Track Court, Karnal (hereinafter referred to as 'the trial Court') whereby, the appellants were convicted under Sections 333 and 332 of the Indian Penal Code (in short 'the IPC') read with Section 34 IPC and sentenced to undergo rigorous imprisonment for seven years with fine of ₹ 2,000/- with default stipulation. Further, appellant No.3 Rajesh, since deceased, was convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of six months. All the accused were acquitted of the charges framed

against them under Section 61 of the Punjab Excise Act as well as Section 285 IPC read with Section 34 IPC.

Brief facts of the present case as noticed in the opening para of the impugned judgment are as under:-

“.....On 7.4.2001 Shri Om Parkash Inspector/Station House Officer, alongwith Head Constable Ram Sarup, Head Constable Dharamvir, Head Constable Ram Bhajan, Head Constable/A Kulwant and Constable Jagbir, was on usual checking and patrol duty. The patrolling party was in a Government Jeep bearing No.HR-05G-4600 to be driven by Constable Ramesh Chand. When Om Parkash Inspector/Station House Officer alongwith other police officials was present on Farsi Kanta, Karnal, a secret information was received that five young persons namely Rajesh Kumar, Manpreet, Sudhir, Bharat and Vikram were indulged into selling of illicit liquor and on that day i.e. 7.4.2001 accused Vikram and Bharat were bringing illicit liquor in a Maruti Car bearing registration No.HR-02E-4300 from Delhi side towards Karnal, whereas remaining accused were coming on motor cycles bearing registration No.HR-05-D-2625 for their protection. The police party organized a Nakabandi at Namestey Chowk, Karnal, meanwhile Karam Singh Sarpanch and Karambir reached at the place of Nakabandi. The witnesses Karam Singh Sarpanch and Karambir have been disclosed the object of the presence of police party and have been requested to join the raiding party as a witnesses. Meanwhile, a Maruti Car bearing

registration No.HR-02E-4300 came from the side of Delhi and a signal to stop the vehicle was given and therefore the vehicle was stopped. The accused Vikram was driving the car whereas accused Bharat (since deceased) was sitting on the front seat of the car. After sensing that the police party has stopped the vehicle carrying liquor, the three other accused came on a motor cycle No.HR-05D-2625. Accused Manpreet was driving the Bullet Motor Cycle bearing No.HR-05D-2625, whereas the other accused Sudhir and Rajesh were pillion riders. Accused Rajesh has fired a shot from the pistol on the police party and thereafter, ran away from the spot. Taking the advantage of the disturbance caused by the pistol shot both the accused Vikram and Bharat have also attempted to run away from the spot. The driver of the government jeep No.HR-05G-4600 namely Constable Ramesh Chand has attempted to stop the accused Vikram from running away and therefore, grappled with him but accused Vikram twisted the finger of Constable Ramesh Chand and also caused him other injuries. Both the accused Vikram and Bharat have also succeeded in running away from the place of occurrence. ”

2. *Constable Ramesh Chand who has received the injuries, was sent to Civil Hospital, Karnal for treatment. It is further disclosed that police party searched that car bearing registration No.HR-02E-4300 and 13 bags full of liquor pouches were found, out of which 10 bags were found carrying 200 pouches each Marka Mastana, whereas three bags have been found carrying 200 pouches each of liquor Mark Sofi. Samples from the*

bags have been taken out and thereafter, the samples as well as the remaining substance in the jute bags have been sealed and taken into possession vide recovery memo which have been signed by witnesses Karan Singh Sarpanch and Karambir. In this sense as many as 2600 pouches have been recovered which the accused have been carrying in the Car, that too, without any permit or licence. The case under Sections 307/332/333/353/186 of the Indian Penal Code and 61-1-14 of Punjab Excise Act and 25/54/59 of the Arms Act was registered in the Police Station.”

The accused were charged with the offence under Sections 333, 332, 285/34 IPC, Section 61 of the Punjab Excise Act and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. S.P. Singh, Medical Officer, General Hospital, Karnal as PW-1; Dr. Sham Wadhwa, Ex.S.M.O. now Satyam Ultrasound Clinic, Karnal as PW-2, Head Constable Ram Chander as PW-3, ASI Ram Sarup as PW-4, Vinod Kumar, Ahlmad to learned District Magistrate, Karnal as PW-5; HC Parmod Kumar as PW-6; Constable Lakhwant Singh as PW-7; HC Randhir Singh as PW-8; ASI Bhim Singh as PW-9; Karan Singh as PW-10; Inspector Mohan Singh as PW-12; and DSP Om Parkash Narwal as PW-13.

Thereafter, statement of the accused under Section 313 Cr.P.C was recorded and entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and

pleaded false implication. In defence, they examined Narinder Singh as DW-1; and Raj Bahadur as DW-2.

After appraisal of the evidence, learned trial Court convicted and sentenced the accused-appellants as narrated above.

Feeling aggrieved against the judgement and conviction and the order of sentence passed by learned trial Court, the instant appeal has been filed by the accused/appellants.

Learned counsel contends that story propounded by the prosecution is highly improbable. It is unbelievable that seven police officials with vehicle and weapons could not apprehend even one accused, two of whom allegedly ran away from the spot. The independent witness, Karan Singh, PW-10 has admitted having business rivalry with the accused. HC Ramesh Chand, PW3, allegedly suffered fracture in right index finger, however, he has never stated this fact in his statement. Further, the incident took place on 07.04.2001, whereas, the x-ray was conducted on 20.04.2001.

On the other hand, the learned State counsel supports the judgement of conviction and order of sentence passed by the trial Court and submits that the accused-appellants have been rightly convicted and sentenced. There was no motive with the police to falsely implicate the appellants.

I have heard the arguments of the learned counsel for the parties and have carefully gone through the record of the case.

In this case, a secret information was received regarding

transportation of illicit liquor. Pursuant thereto, a *naka* was set up at Namaste Chowk, Karnal. A Maruti car which was coming from Delhi side on G.T. Road, was signalled to stop. The driver stopped the vehicle. On being asked, the driver and the co-passenger disclosed their names as Vikram and Bharat, respectively. In the meantime, three persons came from Delhi side on a motorcycle and the person sitting on the middle of the bike fired at the police party, however, no one was hurt. Thereafter all the three escaped. The occupants of the car also ran away from the spot leaving the car behind. Thereafter, the recovery, as narrated above, was effected.

As per the prosecution story, appellant No.1 Vikram grappled with HC Ramesh Chand, PW-3 and due to this he suffered a fracture in right index finger but he did not mention this fact in his statement. Further the incident occurred on 07.04.2001, whereas, the X-ray (Ex.PC) was conducted on 20.04.2001. The conduct of PW-3 in not mentioning about the injury in his statement along with an inordinate delay in getting the X-ray conducted casts serious doubts on the prosecution version. It is also highly unbelievable that seven police officials who were equipped with firearms and a vehicle were unable to apprehend any one of the accused, two of whom allegedly managed to flee on foot. The veracity of the prosecution version also becomes doubtful from the fact that the identity of all the accused was disclosed in the FIR.

In this case, the police party had joined an independent witness i.e. PW-10, Karan Singh. He was a wine contractor in Karnal and also had

appeared in another case as a police witness. He has admitted old rivalry with the accused person being in the same business. He has also admitted his close relation with the complainant. As far as the quality of his evidence, this witness has failed to prove the fact as to whether the gunshot was fired by Rajesh or Sudhir.

It is also an admitted fact by all the witnesses that the car in question was stopped by the accused on being signalled to do so. Had the accused intended to escape, they would have ran away with the car without stopping as there were couple of unblocked roads leading to the city and other directions as is evident from the site plan itself. Moreover, the offence of carrying liquor is bailable in the State of Haryana and thus, there was no need for the accused to resist even if they had been carrying liquor.

In view of the above discussion, this Court is of the considered opinion that the prosecution has failed to prove its case against the accused-appellants beyond a shadow of reasonable doubt. Consequently, the instant appeal is allowed qua appellant Nos.1, 2 and 4; the impugned judgment and order passed by the trial Court are set aside; and the accused-appellants are acquitted of the charges framed against them. They are stated to be on bail. Their bail bonds shall stand discharged.

Allowed.

(JITENDRA CHAUHAN)
JUDGE

19.02.2020

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Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No