

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

CRA-S-939-SB-2004 (O&M)

Date of decision: 08.01.2020

Bhajan Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Aman Dhir, Amicus Curiae for the appellant.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J. (Oral)

Accused Bhajan Singh was booked by police of Police Station Bholath in FIR No.136 dated 26.07.2003, for offence under Section 25 of the Arms Act.

Briefly stated the prosecution story is that on 26.07.2003, a police party headed by SI Satnam Singh was present at Satgur Rakha Chowk, Begowal having laid a naka there, where SI Satnam Singh received a secret information on the basis of which, FIR No.134 under Sections 399, 402 read with Section 25 of Arms Act was registered. Later on, as planned, a raid was conducted at abandoned sheller situated at Nadala road. The police party divided itself into four groups for the purpose of conducting raid on the

abandoned sheller. The groups were headed by SI Satnam Singh, ASI Jaswinder Singh, ASI Joginder Singh and ASI Pardip Singh. When the police party stormed the abandoned sheller, persons present there tried to run away. Group of police personnel headed by ASI Pardip Singh apprehended accused Bhajan Singh and his personal search was conducted, which resulted in recovery of a country made pistol of .303 bore from the left dub of his wearing pant. On being unloaded, a live cartridge was taken out, whereas, 14 cartridges of .303 bore and 2 live cartridges of AK 47 were also recovered from the pocket of his pant. The accused could not produce any licence for possession of the pistol and cartridges. ASI Pardip Singh prepared rough sketch of the recovered pistol and prepared a sealed parcel thereof, taking it into possession, vide recovery memo. He sent ruqa to the police station, on the basis of which formal FIR was recorded. Accused was formally arrested in this case.

After completion of investigation and other formalities, the challan against accused was prepared and filed in the Court of Judicial Magistrate 1st Class, Kapurthala, who supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Since, it was an off shoot of the main case registered vide FIR No.134 under Sections 399 and 402 IPC with PS Bholath, this case was also committed to the Court of Sessions along with the main case. Finding a prima facie case, charge

for offence under Section 25 of the Arms Act was framed against the accused, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined as many as 05 witnesses i.e. PW1 HC Raman Kumar, Head Armourer, PW2 ASI Joginder Singh, PW3 Sh. Mukhtiar Singh, Reader, PW4 ASI Pardeep Singh and PW5 HC Naranjan Das.

After completion of prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him but he denied the same, contending that he was innocent and had been falsely involved in this case. In defence, the accused examined DW1 Mewa Singh and thereafter closed his defence evidence.

After hearing arguments, learned Addl. Sessions Judge, Fast Track Court, Kapurthala, vide judgment dated 17.04.2004, convicted the accused for the charge framed against him and sentenced him to undergo rigorous imprisonment for 03 years and to pay a fine of Rs.500/-, in default of payment of fine, to undergo further RI for two months.

Accused/convict felt aggrieved by the said judgment and has approached this Court by way of filing the present appeal, notice of which was issued to the State, which has put in appearance through counsel.

I have heard learned amicus curiae for the appellant and learned State counsel besides going through the record.

Learned amicus curiae for the appellant has assailed the impugned judgment, contending that SI Satnam Singh, who is stated to have received secret information, on the basis of which the abandoned sheller was raided, has not been examined by the prosecution, therefore, the prosecution story is affected adversely.

Learned State counsel has controverted that contention, stating that all the relevant witnesses have been examined.

After hearing learned counsel, I find that though at the first instance, the secret information had been received by SI Satnam Singh on the basis of which formal FIR No.134 had been recorded under Sections 399, 402 IPC read with Section 25 of the Arms Act and the raid was conducted on the abandoned sheller, but then the accused had been apprehended by the police party headed by ASI Pardip Singh and recovery had been effected from him by the said ASI. The prosecution has examined ASI Pardip Singh as PW4 in this case, besides other witness of recovery PW5 HC Naranjan Das. As such, non-examination of SI Satnam Singh in this case does not make much difference.

The learned amicus curiae for the appellant has further contended that as deposed by PW2 ASI Joginder Singh, he had produced sealed parcel having seal 'PS' before HC Raman Kumar,

Armourer for testing on 08.09.2003, whereas, according to PW1 HC Raman Kumar, the parcel was sealed with seal having letter 'JS' thereby raising a doubt in the mind about truthfulness of the prosecution story. Whereas, learned State counsel has contended that the sealed parcel had been produced before HC Raman Kumar with seal intact and there could be some typographical error with regard to the initials.

After hearing the rival contentions, I find that if statement of PW1 HC Raman Kumar is seen in entirety, he had stated that he had tested weapon Ex.P1 which tallied with sketch Ex.PW1/A prepared by the Investigating Officer on the spot and then had given his report Ex.PW1/B, finding the weapon fit for firing and in working condition and further cartridges were also fit to fire. It being so, no doubt is left in the mind with regard to identity of the recovered fire arm.

Learned amicus curiae for the appellant has raised another argument that in the report Ex.PW1/B, initially the description of the seal was mentioned as 'JS', which was struck off and then changed to 'PS'. Drawing attention to the cross-examination of HC Raman Kumar, learned amicus curiae has contended that he had not test fired from the pistol in question, therefore, it could not be said that the pistol was in working condition. However, I am not in agreement with learned amicus curiae on this point. HC Raman

Kumar being Armourer, an experienced person, was certainly in a position to know as to whether recovered pistol was in working condition or not and firing of shots therefrom to determine that fact was not required.

Learned amicus curiae has further argued that PW4 ASI Pardip Singh in his cross examination had stated that he had recovered the cartridges from the right pocket, whereas, PW5 HC Naranjan Dass stated that recovery was effected from the left pocket of the pant, which the accused was wearing at that time and there are certain material discrepancies in the statements of witnesses. Learned State counsel states that these are minor in nature and do occur with passage of time.

After hearing learned counsel, I find that the discrepancies and contradictions are quite small and of minor type which do not go to the root of the matter. I find that the prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The judgment of conviction recorded against the accused/convict is detailed and well reasoned and it does not suffer from any illegality or infirmity, rather, it is based upon proper appraisal of evidence and correct interpretation of law. Therefore, the trial Court was justified in convicting the accused. As regards the sentence part, although, learned amicus curiae for the appellant has contended that the appellant was aged about 19 years at

the relevant time and about 16 years have passed from the date of judgment, therefore, a lenient view in the matter be taken. But I find that the accused by keeping in his possession a country made pistol of .303 bore and cartridges of different types had committed a heinous crime and do not deserve any leniency. There is no reason to upset such judgment on the point of conviction and sentence. The appeal is found to be without any merit and is dismissed accordingly.

A copy of the judgment be sent to Chief Judicial Magistrate, Kapurthala, with a direction to issue non-bailable warrants against the accused so as to get him arrested and send to jail to undergo the remaining sentence.

08.01.2020

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No