

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

CRA-S-474-2005

Date of decision: 24.2.2020

Lada

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mrs.GK Mann, Advocate for the appellant

Mr.AA Pathak, Addl.AG, Punjab

JITENDRA CHAUHAN, J.

The present appeal is directed against the judgment and order dated 8.1.2005 passed by the Additional Sessions Judge (Adhoc), Amritsar, whereby the accused–appellant alongwith co-accused Vinod Kumar and Santosh Kumar @ Githa has been sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 307 read with Section 34 IPC.

The trial Court noticed the facts of the present case in para No.2 the impugned judgment, which are as under:-

“.... Constable Tarsem Singh No.3511 son of Kartar Singh, aged about 30 yeas was resident of village Maliyan, P.S. Jandiala Guru, Amritsar and he was

employed in the Punjab Police Department and was posted in PP Taranwala. On the day of recording his statement at about 2.05 A.M. he and LC Sarabjit Singh No.1974 were going on towards Abadi Sant Avenue in connection with night patrolling duty. When they reached a little ahead of Gurudwara Sahib, then LC Sarabjit Singh said that they should stay there for some time as bad elements pass through that way. When LC Sarabjit Singh was stopping his scooter, he (complainant) looked behind and saw that four Hindu gentlemen of the age of about 25-30 years came from the side of vacant plots on the left hand. He asked them to stop. In the meantime, one of those persons fired a shot towards them with his armed small 12 bore gun with an intention to kill them, which hit LC Sarabjit Singh on his left arm muscle and shoulder. Due to fire shot, LC Sarabjit Singh fell down on the ground. He (complainant) in order to save himself also fired a shot. Thereafter, all the accused ran away from the spot. He saw those persons in the light of the bulb, which was working at that time in a nearby kothi. He could identify those persons seeing them. He was going to the police station alongwith LC Sarabjit Singh, who was injured at that time, on the scooter of LC Sarabjit Singh to lodge a complaint where on the way SI Balkar Singh met him.

The complainant got recorded his aforesaid statement with SI Balkar Singh on the basis of which present case bearing FIR No.195 dated 9.9.2002 under Sections 307, 353, 186 read with Section 34 IPC and Section 25 of the Arms Act was registered against the accused at Police Station Sultanwind, Amritsar.....”

On completion of the investigation, challan was prepared and presented and the accused/appellant alongwith co-accused Suraj alias Ajay Kumar alias Pappu, Vinod Kumar and Santosh Kumar alias Githa was charge-sheeted under Section 307 read with Section 34 IPC, to which they pleaded not guilty and claimed trial. During the course of trial Suraj alias Ajay Kumar alias Pappu had remained absent from the Court proceedings and therefore, he was declared a proclaimed offender vide order dated 5.6.2004. However, he was later on, arrested and was convicted and sentenced separately by the learned trial Court vide judgment and order dated 5/6.6.2007. Appellant Suraj filed a separate appeal, which has been rendered infructuous vide separate order of even date, as he has already complete his sentence.

To prove its case, the prosecution had examined Constable Tarsem Singh as PW1, Gurbax Singh as PW2, Dr.Indu Bala, Medical Officer, GMC Amritsar as PW3, Dr.Ajay Gupta as PW4, Dr.Rajesh Kapila as PW5, Rishi Ram Draftsman as PW6, LC Sarabjit Singh as PW7, Constable Sukhwant Singh as PW8, HC Avtar Singh as PW9, Dr.Rajiv Joshi as Pw10, HC Prabhdial Singh as PW11, SI Balkar Singh as PW12 and Dr.Parminder Singh Khullar as PW13.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded innocence and false implication. In defence, no evidence was adduced by the accused.

After hearing learned counsel for the parties, learned trial Court convicted and sentenced the accused as noticed at the outset of this judgment.

Feeling aggrieved by the judgment/ order of the learned Trial Court, appellant Lada has preferred this appeal.

Learned counsel for the appellant submits that the learned learned trial Court fell in grave error while convicting appellant Lada with the aid of Section 34 IPC. The appellant was not named in the FIR. The prosecution has miserably failed to lead evidence of common intention as well as of any overt act on the part of the appellant. As alleged, the appellant was armed with 'dang' but nothing was recovered from him. Only single injury attributed to PW7 HC Sarabjit Singh was by co-accused Suraj. No test identification parade of the accused was conducted.

On the other hand, learned State counsel submits that the appellant alongwith co-accused had made an attempt to commit the murder of PW7 LC Sarabjit Singh with common intention. The learned trial Court has rightly appreciated the evidence on record and convicted them. He prays for the dismissal of the appeal.

I have heard the learned counsel for the parties and perused the record with their able assistance.

The case of the prosecution emanates from the statement of

complainant, who has narrated that on 9.9.2002 he alongwith injured LC Sarabjit Singh was on patrolling duty were going towards Sant Avenue from Pool Tarawala. At about 2.05 am, they had reached a little ahead of Gurudwara Sahib, they stayed for some time as bad elements pass through that way. He looked behind and saw that four Hindu gentlemen of age about 25-30 year were coming and he asked them to stop but instead of stopping there, one of them fired a gun shot from his rifle .12 bore, which struck on the left shoulder of LC Sarabjit Singh. In defence, he also fired a shot, but it did not hit anyone. Thereafter, he had taken LC Sarabjit Singh to the Police Post Pooltarawala and then he had taken the injured to SGTB Hospital Amritsar on the same scooter.

However, as regards the present accused appellant Lada, there is no evidence on record with regard to sharing of common intention by him with main accused Suraj. The shot was allegedly fired by Suraj and no overt act was attributed to the present appellant. Complainant C. Tarsem Singh while appearing in the witness box as PW1 has stated that four persons came there. He asked them to stop but instead of stopping there, one of them fired a shot which struck on the left shoulder of PW7 LC Sarabjit Singh. PW2 Gurbax Singh deposed that he asked the accused persons to stop and at that time Suraj was armed with rifle, whereas other were having 'dandas'. From the statements of the complainant and PW2 Gurbax Singh, no attribution to the appellant has been made. So much so, the name of the accused were not mentioned in the FIR. Not only that neither in the FIR nor in the statement recorded under Section 161 Cr.P.C. of the complainant, the name of the accused were mentioned. Particularly

when, the injured witness LC Sarabjit Singh, in his statement before the Court admitted that he knew the accused well before the occurrence. Even when he (injured) accompanied the complainant on the scooter, he did not disclose the name of the accused appellants to the complainant as perpetrator of the crime. Moreover, despite the fact that the accused were not named in the FIR, no test identification parade was done. This aspect of the matter creates doubt on the story propounded by the prosecution, the benefit of which needs to be given to accused- appellant Lada.

In the FIR, no role has been attributed to the appellant. They have been convicted by invoking the provisions of Section 34 IPC. However, there is no evidence with regard to the application of section 34 IPC in this case. Inasmuch as there is no whisper with regard to the sharing of common intention by the accused appellant to form a gang to commit theft or dacoity or to commit the murder of the injured and complainant, coupled with the fact that no recovery of any weapon of offence has been effected from the appellant. In view the same the appellant deserves the benefit of doubt.

Consequently, the present appeal is allowed. The appellant is hereby acquitted of the charge framed against him. The judgment of conviction and order of sentence are hereby set aside.

24.2.2020
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No