

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

**CRA-S-548-SB-2006(O&M)
Date of decision:-17.3.2020**

Vinod and another

....Appellants

Versus

The State of Haryana

....Respondent

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

Argued by :Ms.Saigeeta Srivastava, Advocate for
Ms.Niharika Gupta, Legal Aid Counsel
for the appellants.

Ms.Harpreet Kaur, AAG, Haryana.

H.S. MADAAN, J.

Briefly stated, the facts of the case as per the prosecution story are that on 22.12.2000 at about 8:00 a.m., complainant Smt.Laxmi wife of Surender was cooking meals in her house at village Behbalpur; accused Megh Singh, Vinod and Bhupender came there; accused Megh Singh asked Surender, husband of the complainant to accompany them so that they could pay money at Ballabgarh; as a matter of fact Megh Singh owed a sum of Rs.5,000/- to Surender; Surender accordingly accompanied the three visitors, however, he did not return home; the complainant reported the matter to the police and formal FIR No.42 of 17.1.2001 was initially registered for the offence under Section 364 IPC

with Police Station Sadar, Ballabgarh.

On 23.12.2002, SI Arun Kumar Singh from Police Station Samsabad, District Agra (U.P.) heading a police party went to Nawada on getting information that a dead body was lying there. The police party came across dead body lying in the area of village Nawada near Samsabad, Agra Road. SI Shiv Singh carried out inquest proceedings with regard to the said dead body and postmortem examination was got performed thereon at District Hospital, Agra. FIR no.291 of 2002 was recorded at Police Station Samsabad. Since the identity of the dead body could not be established, it was cremated as unidentified, however before doing that photographs of the dead body had been taken, which were got published in the newspaper.

On 8.1.2001 photograph of the dead body was published in Daily Amar Ujala. On 30.1.2001, Nathu Ram, SHO of Police Station Sadar, Ballabgarh reached Police Station Samsabad accompanied by some other officials and Satpal PW; clothes of deceased, which had been removed by the doctor at the time of postmortem and which had been converted into a sealed parcel, thereafter being handed over to the police were identified by Satpal to be clothes of his brother Surender. Therefore, identity of the deceased was established to be that of Surender. Documents with regard to case registered at Samsabad were handed over to Nathu Ram SHO along with the case property.

It may be mentioned here that Man Singh resident of Rahimpur along with his son Sujan had gone to village Samsabad on 22.12.2000 to purchase buffaloes; while they were on return journey and time was about 11:00 p.m., they were proceeding on bicycles towards

village Dingar from Samsabad, then they saw a Maruti car coming from Agra side and going towards Samsabad; accused Vinod and three other persons alighted from that car; the fourth person was brought out of the car and shot at by accused Vinod. Thereafter, the accused went away, whereas Man Singh and his son Sujan proceeded towards village Dingar and informed the residents of that village in that regard. The brother and other relations of the victim met him after 3-4 days when he had gone to Ballabgarh.

On 30.1.2001 SI/SHO Nathu Ram from Police Station Sadar, Ballabgarh received information about detection of dead body in the area of Police Station Samsabad. He along with other employees and Satpal had reached there and collected the photographs of the dead body, the clothes and other articles. On 5.2.2001, he had arrested accused Dharmender and Megh Singh and they were interrogated in presence of Kartar Singh ASI. They suffered disclosure statements that they had called Surender deceased. Megh Singh accused had stayed back in Ballabgarh and on 22.12.2000 Surender was taken by them to U.P. and was shot dead when he got down from Maruti car for urinating and the dead body was thrown in the ditches. Similar disclosure statements were made by accused Dharmender and Megh Singh. The accused were taken to the place, where the murder had been committed and dead body was thrown away and both the accused identified that place.

On 23.1.2001, accused Bhupender and Vinod were interrogated and they made disclosure statements with regard to commission of murder and throwing of dead body in presence of Satpal

PW. Accused Vinod disclosed that on 27.1.2001 he had kept concealed a country-made pistol in his house at Ballabgarh and thereafter in pursuance of that statement got the pistol recovered from the disclosed place. The Investigating Officer prepared rough sketch of the recovered pistol and converted it into the sealed parcel, which was taken into police possession.

Accused Bhupender was interrogated on 26.2.2001, during the course of which, he disclosed that he had kept concealed one pistol in his rented room in the house of co-accused Vinod at Ballabgarh. Thereafter, in pursuance of that statement, he got the pistol recovered from the box lying in his rented room. Rough sketch of that recovered pistol was prepared. The pistol was converted into a sealed parcel and then into possession.

On 27.2.2001 accused Vinod while being interrogated suffered a disclosure statement that Maruti car used by them in the incident was parked in the area of Saran and then in pursuance of the said statement, he got recovered the car, which was taken into police possession. Statements of Man Singh and his son were recorded on 3.4.2001.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Faridabad.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Faridabad, copies of documents relied upon in the challan were supplied to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Sections 364

and 302 IPC are exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Faridabad committed the case to the Court of learned Sessions Judge, Faridabad vide order dated 3.6.2002 from where it was entrusted to the Court of learned Additional Sessions Judge, Faridabad.

On receipt of case in the Court, learned Additional Sessions Judge, Faridabad, observing that prima facie charge for offences under Sections 364, 302 read with Section 34, 120-B and 404 IPC was disclosed against all the accused and charge for the offence under Section 25 of the Arms Act was disclosed against Vinod and Bhupender, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as thirteen witnesses, namely, PW1-A HC Ram Niwas, PW2-A Dr.SC Katiya, PW1 Vidya Sagar, Assistant, PW2 ASI Kartar Singh, PW3 Armourer Hitender Kumar, PW4 ASI Kartar Singh, PW5 ASI Dalbir Singh, PW6 Dr.D.D. Bansal, PW7 complainant – Laxmi, PW8 Man Singh, PW9 Constable Shispal, PW10 SI Hem Raj, PW11 Satpal, PW12 SI Arun Kumar and PW13 Inspector Nathu Ram.

With that the prosecution evidence got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court vide judgment

dated 11.2.2006 acquitted all the accused for the offences under Sections 364, 302 read with Section 34 IPC and 302 read with Section 120-B and Section 404 IPC. Whereas accused Vinod and Bhupender were convicted for the offence under Section 25 of the Arms Act and vide order dated 14.2.2006, both the accused were sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default thereof undergo further rigorous imprisonment for one year. The said judgment of their conviction and sentence left accused Vinod and Bhupender aggrieved and they have filed the present appeal.

I have heard learned counsel for the appellants – accused - convicts, learned Assistant Advocate General for the State of Haryana besides going through the record.

The trial Court while acquitting all the accused of the charge for the offences under Sections 364, 302 read with Section 34 IPC and 302 read with Section 120-B and Section 404 IPC had found the prosecution case to be established against accused Vinod and Bhupender as regards offence under Section 25 of the Arms Act. Both the accused were not having any licence for possession of the country-made pistols. The possession of such country-made pistols by the accused stands established from the statement of PW13 Nathu Ram and PW11 Satpal. Both of them had stated that accused Vinod and Bhupender during the course of their interrogation had suffered disclosure statements and got recovered the country-made pistols from their possession, which were converted into sealed parcels and taken into police possession. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could

not be shattered on material contents. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses, who depose in a parrot like manner. I find that the account given by both of them to be worthy of reliance.

Sanction Ex.PA has been granted by District Magistrate for prosecution of both the accused for the offence under Section 25 of the Arms Act. No fault with such sanction order comes out to be there. The pistols had been sent to FSL and as per report received therefrom Ex.PX pistol Ex.P5 recovered from Vinod was of .315 bore and pistol Ex.P6 recovered from the possession of accused Bhupender was of .303 bore. Both the pistols were found to be in working order. Therefore, all the necessary ingredients of offence under Section 25 of the Arms Act are proved against both the accused and they were rightly convicted and sentenced for the offence under Section 25 of the Arms Act.

The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and

order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellants – accused namely Vinod and Bhupender are on bail in terms of the orders passed by this Court. The bail order is cancelled. They are ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Faridabad.

17.3.2020
Brij

(H.S.MADAAN)
JUDGE

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