

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 03.02.2020

1. CRA-S-2508-SB-2017 (O&M)

Surender

... Appellant

Vs.

State of Haryana

... Respondent

2. CRA-S-2215-SB-2017 (O&M)

Omi @ Om Parkash

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Nehra, Advocate
for the appellant (in CRA-S-2508-SB-2017).

Mr. Atul Yadav, Advocate
for the appellant (in CRA-S-2215-SB-2017).

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in both these appeals is for setting aside the judgment of conviction as well as the order of sentence dated 12.05.2017, vide which appellant Om Parkash @ Omi was convicted for offence punishable under

Section 25 (1B) (a) of the Arms Act, 1962 (for short 'the Act') and was sentenced to undergo rigorous imprisonment for a period of one year along with a fine of Rs.5,000/- and in default of payment of fine, he was further ordered to undergo simple imprisonment for a period of three months. Similarly, appellant Surrender was sentenced for the offence punishable under Section 30 of the Act to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months.

Brief facts of the case are that on the intervening night of 22/23.03.2015, on receiving an information about some firing incident in the area of Village Zahidpur, SI Jagdish Parshad of Police Station, Kosli, reached at the spot, where complainant Azad Singh son of Rambir Singh met him and moved a written complaint, *inter-alia*, alleging that on 22.03.2015, his harvest combine machine was harvesting mustard crop in the fields of village Zahidpur and on that day at about 10.00 p.m., he along with his nephew Abhinesh was going to the fields in village Zahidpur, where his driver was harvesting crops, on Bolero bearing registration No.HR-34B-8547 and when they reached near the house of Kuldip, resident of village Zahidpur, a Santro car bearing registration No.HR-36N-0155 came from opposite side and its driver put it before their vehicle and a boy alighted from that car and starting abusing them and then grappled with them and he suddenly took out a pistol and put it on the chest of nephew of the complainant and then put it on the temple of the complainant. On this, the complainant and his nephew pushed away that boy, on which he fired two shots towards them. On hearing the noise, their driver Malkiat Singh came at the spot and he tried to nab that boy and in that process that boy fired a shot on Malkiat Singh with an intention to kill him, but all of

them narrowly escaped. Other persons had also gathered there and he came to know about name of the culprit as Omi @ Om Parkash caste Jat, resident of village Zahidpur and in the meantime the assailant ran away with his Santro car. SI Jagdish Parshad made his endorsement on the complaint moved by the complainant, on the basis of which, formal FIR was registered and he took over the investigation. During investigation, he inspected the spot and prepared rough site plan. After recording the statements of Malkiat Singh and Abhinesh, the police went in search of accused Om Parkash to his house, but he was not found there, but in the meantime, he was found coming in a vehicle Santro car bearing registration No.HR-36N-0155 and he was arrested and Santro car was taken in police possession vide a separate memo. Santro car was searched. On search, a revolver 7.6 mm along an empty of same caliber was recovered. Sketch of the revolver and empty was prepared. Revolver along an empty was taken in police possession after converting into sealed parcel vide a separate memo. On interrogation, accused Om Parkash admitted his involvement in the crime and further disclosed that the weapon was brought by him from the house of his friend Sulla. Pursuant to his disclosure statement, accused demarcated the place of occurrence.

After coming to know that the revolver was a licensed one of Surender Singh son of Amarjit Singh, on 30.03.2015, he was summoned to join investigation and he accordingly joined investigation and produced arms licence, which was taken in police possession vide a separate memo. Statements of the witnesses were recorded. Ultimately on completion of the investigation, report under section 173 Cr.P.C. against accused Om Parkash alone concluding that accused Surender has no role in this occurrence and his revolver was taken

by accused Omi @ Om Parkash, without his knowledge.

The Illaqa Magistrate, vide his order dated 09.06.2015, committed the case to the Court of Sessions, as the offence is triable by the Court of Sessions. Since the initial charge-sheet was only against accused Om Parkash, vide order dated 15.07.2015, he alone was charge-sheeted for the offences as punishable under Sections 341 & 307 IPC and Sections 25 & 27 of the Arms Act. The trial Court, vide order dated 26.11.2015, summoned Surrender as additional accused to face trial for the commission of offences punishable under Sections 29 & 30 of the Arms Act.

Vide order dated 15.01.2016, accused Om Parkash @ Omi was charge-sheeted for commission of offence punishable under Sections 341 & 307 IPC and Sections 25 & 27 of the Arms Act, whereas accused Surrender was charge-sheeted for commission of offences punishable under Sections 29 & 30 of the Arms Act, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 HC Vinod, PW2 Inspector Ram Kumar, PW3 ASI Narender Singh, PW4 ASI Jai Bhagwan, PW5 Malkiat Singh, PW6 Azad Singh (complainant), PW7 Abhinesh, nephew of the complainant, PW8 Rajender Singh, Reader to District Magistrate, Rewari, PW9 ASI Jai Bhagwan, PW10 S.I. Jagdish Parshad and PW11 ASI Naresh Kumar, Draftsman and closed the evidence.

After conclusion of the prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The appellants denied the allegation of the prosecution and pleaded false implication. In defence, the accused did not

produce any evidence.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction and order of sentence of even date i.e. 12.05.2017, convicted and sentenced the appellants.

Learned counsel for appellant Surender submits that the appellant is holder of licensed revolver and the trial Court, while acquitting him under Section 30 of the Act, had recorded a finding that the appellant is guilty of negligence for keeping the licensed revolver in safe and proper custody, which amounts to violation of terms and conditions of the arm licence granted to him. It is further submitted that since the substantive charge under Section 307 IPC was not proved, charge under Section 25 of the Arms Act resultantly fails and therefore, conviction of appellant Surender under Section 30 of the Arms Act is not sustainable.

Learned counsel for appellant Omi @ Om Parkash has additionally argued that the trial Court, while acquitting both the accused under Section 307 IPC, had recorded a finding that since the arms licence of Surender was recovered from appellant Omi @ Om Parkash, he is liable to be punished under Section 25 (1B) (a) of the Arms Act. Learned counsel has relied upon a judgment in **Sumersinh Umedsinh Rajpur @ Sumersinh Vs. State of Gujarat, 2008 (1) Crimes 57**, wherein the Hon'ble Supreme Court has held that where the accused are facing charge under Section 307 IPC read with Section 25 of Arms Act and if the prosecution has failed to prove the substantive charge under Section 307 IPC, charge under Section 25 of Arms Act would also fail and therefore, both the appellants are liable to be acquitted of the charge.

In reply, learned State counsel could not dispute that the State has not filed any appeal challenging acquittal of the appellants under Section 307 IPC. It is submitted that the trial Court has recorded a finding that appellant Surender was negligent in keeping his licensed weapon in safe custody and accused Omi @ Om Parkash was found in possession of the said weapon without there being any licence with him, therefore, the trial Court has rightly held guilty and sentenced them.

After hearing learned counsel for the parties, I find merit in the present appeals.

Admittedly, the trial Court has acquitted both the accused-appellants of the charge under Section 307 IPC, therefore, in view of judgment of the Hon'ble Supreme Court in **Sumersinh Umedsinh Rajput @ Sumersinh's** case (supra), charge under Section 25 (1B) (a) of the Arms Act qua appellant Omi @ Om Parkash and charge under Section 30 of the Arms Act qua appellant Surender is not sustainable.

Accordingly, both these appeals are allowed and the impugned judgment of conviction as well as the order of sentence dated 12.05.2017 passed by the trial Court are set aside. The appellants are acquitted of the charge framed against them.

[ARVIND SINGH SANGWAN]
JUDGE

03.02.2020
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No