

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

**CRA-S-36-SB-2016(O&M)
Date of decision:-25.2.2020**

Vijay Kumar @ Vijay and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present : Mr.D.S. Gandhi, Advocate
for the appellants.

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

Briefly stated, the prosecution story is that on 5.10.2011, a police party headed by SI Palwinder Singh (hereinafter referred to as the Investigating Officer/I.O.) from CIA Staff, Amritsar was present near turning point of Naiyan Wala in connection with search/detection of bad elements, where he received a secret information that Surinder Singh @ Sandy @ Shinda, Ramesh Kumar @ Rinku and Vijay Kumar @ Vijay had formed a gang and they were indulging in theft of vehicles, snatching of handbag and chains and at that time they were roaming around on motorcycles in the area of village Dhupai and if a raid was conducted, they could be apprehended. The police party accordingly proceeded towards that place and laid a picket near railway crossing, Dhupai. During the course of checking of vehicles, three persons were spotted coming from the side of village Dhupai on a motorcycle. The

Investigating Officer signalled the driver of said motorcycle to stop it but he instead of doing so, tried to speed it away by turning, but that motorcycle was intercepted and riders were apprehended. On being asked, the person driving the motorcycle disclosed his name as Ramesh Kumar @ Rinku, whereas the person sitting in the middle gave his name as Surinder Singh @ Sandy and the person, who was pillion riding stated that his name was Vijay Kumar @ Vijay. Personal searches of all the three such persons were conducted, during the course of which a country-made pistol of 12 bore was recovered from the possession of Surinder Singh @ Sandy. It was unloaded and a live cartridge of 12 bore was recovered. Whereas, personal search of Surinder Singh @ Sandy revealed that he was carrying a live 12 bore cartridge, a phone make Nokia and Rs.100/- in the pocket of his pant.

As a result of personal search of accused Vijay Kumar @ Vijay, a country-made pistol was recovered, which was loaded. Such pistol was unloaded and a live cartridge of 12 bore was recovered therefrom. Further personal search of accused Vijay Kumar @ Vijay revealed that he was carrying two more live cartridges of 12 bore and a polythene bag. When the polythene bag was checked, it was found to contain intoxicant powder. The Investigating Officer drew two samples weighing 10 gms. each and the remaining contraband when weighed, came out to be 230 gms. A mobile phone which was China made and currency notes of Rs.80/- were recovered from further personal search of accused Vijay Kumar @ Vijay.

As far as accused Ramesh Kumar was concerned, a mobile phone make Nokia was recovered from him.

Such articles were taken into police possession. The Investigating Officer sent ruqa to the police station, on the basis of which formal FIR Ex.PW7/B was recorded. He prepared rough site plan of the place of recovery. Accused were arrested in this case. Intimation regarding their arrest was given vide different memos. The weapons and cartridges recovered were converted into different sealed parcels and then taken into possession. A mobile phone of China made and Rs.50/- recovered from the personal search of accused Vijay Kumar @ Vijay were taken into possession vide separate memo. On reaching the police station, the Investigating Officer produced the case property including the contraband along with accused before Inspector Ashwani Kumar, SHO of Police Station Chheharta, who verified the intactness of the seals on the parcels and put his own seal having inscription 'AK' on those parcels. Specimen of inscription of seal was prepared. The entire case property, sample seals and form M-29 etc. were kept in double lock. Handing over memo was also prepared.

On 6.10.2011 during the course of interrogation accused Ramesh Kumar @ Rinku suffered a disclosure statement that he had kept concealed a motorcycle make Pulsar under the heap of old clothes in his residential house regarding which only he knew and could get the same recovered by pointing the place. Such disclosure statement was reduced into writing. Thereafter, in pursuance of the disclosure statement accused Ramesh Kumar @ Rinku got motorcycle bearing registration No.PB02-BC-11 recovered, which was taken into police possession. The sample seals and Form M-29 were got authenticated from the Illaqa Magistrate on 6.10.2011 by the Investigating Officer.

During the course of investigation, sanction for the prosecution for an offence under Section 25 of the Arms Act was obtained. Sample of the contraband was also sent to the office of Chemical Examiner.

After completion of investigation, challan against the accused was presented in the Court.

Copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judge, Special Court, Amritsar finding that charge for an offence under Section 22 read with Section 29 of NDPS Act and 411 IPC against all the accused, under Section 25 of Arms Act against accused Vijay Kumar and Surinder Singh, and under Section 414/472 IPC against accused Ramesh Kumar was disclosed, charge-sheeted them accordingly for those offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined in as many as eleven witnesses as per the details below:

PW1 ASI Anil Kumar, who was member of the police party when the accused had been arrested and recoveries effected from them deposed in that regard.

PW2 HC Gurinder Singh testified regarding depositing the sample in the office of Chemical Examiner, Punjab Kharar on 14.10.2011.

PW3 Paramjit Singh owner of motorcycle bearing registration No.PB02-AW-1829 identified the motorcycle Hero Honda

Splendor belonging to him and produced original bill of motorcycle as Ex.PW3/1.

PW4 HC Sahib Singh, who was posted as MHC at Police Station Chheharta on 5.10.2011 deposed regarding his role.

PW5 Ms.Sawinder Kaur, Senior Assistant in the office of DTO, Amritsar deposed from the summoned record with regard to vehicle No.PB-02-BC-0011 and vehicle No.PB-02-AW-1829.

PW6 Inspector Ashwani Kumar, SHO of Police Station Chehharta at the relevant time deposed regarding his role in the investigation.

PW7 SI Palwinder Singh, the Investigating Officer testified with regard to the investigation conducted by him in this case proving various documents.

PW8 Sh.Vijay Kumar, Clerk, office of Commissioner of Police, Amritsar proved the sanction order Ex.PW8/A.

PW9 HC Assa Singh had got sanction from the Commissioner of Police, Amritsar.

PW10 ASI Palwinder Singh, who had joined as MHC, Police Station Chheharta on 1.7.2012 deposed with regard to his role.

PW11 HC Jaswinder Singh, a formal witness, who on 26.2.2013 had handed over two sealed parcel containing two 12 bore cartridges, one country-made pistol, three 12 bore cartridges, one country-made pistol duly sealed along with 5/5 cartridges of 12 bore for depositing the same in the office of FSL Lab, Mohali, testified in that regard.

With that the prosecution evidence stood closed.

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

Accused Surinder @ Shinda further stated that a false case has been planted against him; no such occurrence ever taken place and nothing was recovered from him.

Accused Surinder Singh @ Shinda had later on jumped bail and was declared a proclaimed offender.

Further accused Ramesh Kumar had taken up a plea that he was innocent and falsely involved in the case; he had no link with the alleged crime and story made up by the prosecution is totally false; as a matter of fact, he was lifted from his house on 3.10.2013 at 2:00 p.m. by police of CIA Staff, Amritsar and his house situated in Harijan Colony, Near Water Tank, Gilwali Gate, Amritsar and his wife Rekha had sent telegram to DGP, Chief Justice, Punjab and Haryana High Court, Chairman, Human Rights Commission on 4.10.2011; telegrams to SSP, Amritsar and Sessions Judge Judge, Amritsar also sent.

Accused Vijay Kumar @ Vijay had taken up a plea that a false case has been planted against him and nothing was recovered from him.

During the course of defence evidence, the accused examined Smt.Rekha Sharma as DW1, who deposed about taking of her husband Ramesh Kumar @ Rinku from the house by the police of CIA Staff on 3.10.2011 and giving of telegrams.

Accused further examined Rakesh as DW2, who deposed regarding raid of the house of Vijay Kumar on 3.10.2011 at 8:00 p.m. and taking of Vijay Kumar @ Vijay into custody.

With that the defence evidence got concluded.

In order to settle the controversy, the trial Court has formulated the following points for determination:

(A) Whether accused Vijay Kumar in conspiracy with co-accused Surinder Singh and Ramesh Kumar on 5.10.2011 in the area of near railway crossing village Dupai was found in conscious possession of 250 grams of intoxicant substance containing dextropropoxyphene without any legal permit or licence?

(B) Whether the accused have committed an offence under Section 25 of the Arms Act by keeping in possession 12 bore country-made pistol and live cartridges?

(C) Whether the accused have committed offence under Sections 411/414/472 IPC?

(D) Whether the prosecution evidence is contradictory and discrepant?

(E) Whether the mandatory provisions of the NDPS Act 1985 have been complied with while effecting the recovery?

After hearing arguments, learned trial Court convicted and sentenced the accused Ramesh Kumar @ Rinku and Vijay Kumar @ Vijay as under:

Sr.No.	Name of convict	Under Section	RI for a period of	Fine	In default RI for a period of
1.	Ramesh Kumar	22/29 of NDPS Act	2 years	Rs.10,000/-	2 months
	--do--	411/34	1 year	Rs.5,000/-	1 month
2.	Vijay Kumar	22 of NDPS Act	2 years	Rs.10,000/-	2 months
	---do---	411/34 IPC	1 year	Rs.5,000/-	1 month

The above-said judgment of conviction and order of sentence left Ramesh Kumar @ Rinku and Vijay Kumar @ Vijay aggrieved and they have filed the present appeal.

I have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Punjab besides going through the record.

I find that the impugned judgment and order do not suffer from any illegality or infirmity, which might have called for interference by this Court while exercising appellate jurisdiction.

The prosecution has led sufficient oral as well as documentary evidence to prove its charge for the offences under Sections 22/29 of NDPS Act and Section 411/34 IPC against accused Ramesh Kumar @ Rinku and for the offence under Section 22 of NDPS Act and Section 411/34 IPC against accused Vijay Kumar @ Vijay. The prosecution has been unable to bring enough cogent and convincing evidence to prove charge for the offence under Sections 25 of the Arms Act and for the offence under Sections 414/472 IPC. Therefore, accused Ramesh Kumar @ Rinku and Vijay Kumar @ Vijay were acquitted for such offences.

The main thrust of arguments of learned counsel for the appellants was that wife of accused Ramesh Kumar @ Rinku i.e. DW1 Rekha had sent telegraphs to DSP, Chief Justice, Punjab & Haryana High Court etc. on 4.10.2011. Whereas the incident is dated 5.10.2011. This goes to shatter the prosecution story and the accused are entitled to be acquitted for that very reason.

However, learned State counsel has vehemently opposed the request contending that sending of telegrams is not proved in accordance with law and it is quite possible that the telegrams were sent to offer probable defence so as to make the incident doubtful.

After hearing the learned counsel for the parties, I find that the trial Court has dealt with those aspects in a proper and appropriate manner finding that even if it is taken that telegrams had been sent by Rekha then she did not take the things to the logical end and did not press for holding of any enquiry or probe to show that her husband was innocent and had been falsely involved in this case. In absence of the fact that no official from the department of Post and Telegraph Department was summoned with the record and the copies of telegrams have been got exhibited by Rekha Rani too much importance cannot be given to such telegrams.

As far as the prosecution witnesses examined, there is nothing on record to show that they had any previous enmity with the accused so as to involve them in this case wrongly and then depose against them to secure their conviction. Therefore, this contention does not have much affect in this case.

Though learned counsel for the appellants has contended

that no independent corroboration to the evidence of official witnesses is there, which cast a doubt over truthfulness of the prosecution. But I find little merit in this contention. As deposed by PW1 ASI Anil Kumar, SI Palwinder Singh had tried to join the public witnesses but none was ready to do so. Even otherwise, the official witnesses are not shown to have any previous enmity with the accused prompted by which they might have come forward to depose falsely against the accused to secure their conviction. As such statements of official witnesses are treated at par with those of independent witnesses.

Furthermore, independent corroboration is a rule of prudence and not requirement of law. It is nowhere provided in any statute that independent corroboration is a must and in absence thereof, the case of the prosecution is to be rejected outrightly. Therefore, independent corroboration in this case does not make much difference.

As deposed by PW1 ASI Anil Kumar, accused Ramesh Kumar @ Rinku during the course of interrogation on 6.10.2011 had disclosed that a few days earlier, they had stolen a Pulsar motorcycle, which was used in an incident of snatching and it was concealed by him in his residential house. Subsequently, in pursuance of disclosure statement, he had got the motorcycle recovered. From the other evidence, it comes out that the motorcycle happened to be a stolen property, which was received/retained by the accused obviously with a dishonest intention for causing wrongful loss to the owner and wrongful gain to them.

With respect to offence under NDPS Act, since it was a chance recovery non-compliance of Section 50 of the NDPS Act cannot

work to the prejudice of prosecution. As rightly observed by the trial Court, there is no non-compliance of Section 42 of the Act since the secret information was not with regard to recovery of contraband under NDPS Act.

With regard to offence under Section 25 of the Arms Act, the trial Court has found faults with the sanction for the prosecution under the Arms Act for the reason that sanction without application of mind by Sanctioning Authority is no sanction in the eyes of law and in the present case a pre typed sanction order was presented before the sanctioning authority, therefore it lost the sanctity of the valid sanction and the accused were acquitted of the offence under Section 25 of the Arms Act.

As far as motorcycle bearing registration No.PB02-AW-1829 is concerned PW3 Paramjit Singh had got his statement recorded claiming ownership of that motorcycle. The accused did not claim that the motorcycle belong to them. The trial Court has rightly come to the conclusion that this motorcycle belongs to PW3 Paramjit Singh and not from accused Ramesh Kumar @ Rinku from whom it was recovered. PW3 Paramjit Singh had lodged a report with regard to theft of the motorcycle. The trial Court came to the conclusion that the accused were having knowledge that the motorcycle was stolen property, even then they retained it in their possession.

The prosecution has successfully proved its case against the accused beyond shadow of reasonable doubt.

I do not find any illegality or infirmity with the impugned judgment of conviction and order of sentence.

In view of the above discussion, 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.

Appellants are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Amritsar is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

25.2.2020

Brij

**(H.S.MADAAN)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No