

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

(i) Crl. Appeal No.S-3416-SB of 2014 (O&M)

Sonu

...Appellant

VERSUS

State of Haryana

...Respondent

(ii) Crl. Appeal No.S-1974-SB of 2015 (O&M)

Kewal

...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: February 24, 2020

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Ankur Lal, Amicus Curiae
for the appellant (in CRA No.S-3416-SB of 2014).

Mr.Rishav Jain, Advocate
for the appellant (in CRA No.S-1974-SB of 2015).

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the twin appeals, is to the judgment of conviction

dated 24.04.2014 and order of sentence dated 25.04.2014 passed by learned

Addl. Sessions Judge, Panipat, vide which the appellants were held guilty and convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
307 read with 34 IPC	RI for ten years	₹10,000/-	RI one year
353 read with 34 IPC	RI for one year	₹1,000/-	RI two months
25 Arms Act	RI for three years	₹5,000/-	RI five months

All the substantive sentences were ordered to run concurrently.

The background facts in nutshell are, as herein given:-

That, on 11.03.2012, CIA Inspector Deepak Kumar alongwith other police officials, was present at Ganda Nalla Babarpur Turn, Sector 18, Panipat, in connection with investigation in case FIR No.229 dated 29.02.2012 under Section 365 IPC, Police Station, Chandni Bagh, Panipat, where he received secret information about Kewal s/o Harish and Sonu s/o Suresh Kumar, who were having criminal background, to be entering Panipat City through Barsat Road, Panipat, in Alto car bearing registration No.HR-10G-7171 and if barricading is done, they could be apprehended and disclosures could be there of various occurrences caused by them. Accordingly, barricade was laid and after some time, from the side of Barsat Road, Panipat, a while coloured Alto car was seen coming, registration number of which later on came to be known as HR-10G-7171. The said car was signalled to stop by Inspector Deepak Kumar. However, the person occupying the front seat next to the driver, fired upon Inspector Deepak Kumar and other officials, with an intention to kill them. However, Inspector Deepak Kumar, at once, sat down and the fire hit the front glass of

government vehicle Tavera bearing registration No.HR-45A-6163. The car driver sped up his car towards G.T. Road. Inspector Deepak Kumar, passed on the information to the Control Room, Panipat vis-a-vis the incident in question and requested to apprehend the car. Inspector Deepak Kumar and other police officials chased the Alto car, as a result whereof, the driver of the car got excited and lost balance. The car stopped, while encroaching upon a divider and both the occupants of the car, while in the process of fleeing from the spot, were apprehended by Inspector Deepak Kumar and other police officials. On interrogation, the driver of the car, disclosed his name as Sonu s/o Suresh, while the other occupant is Kewal s/o Harish. A country-made .315 bore pistol and three live cartridges were recovered from accused Sonu. Likewise, a country-made .315 bore pistol, containing .315 bore shell and two live cartridges, was recovered from accused Kewal. The government vehicle bearing registration No.HR-45A-6163 was also checked and a lead was found in rear window of the vehicle.

The case was registered. Both the accused were arrested, who suffered their disclosure statements, vis-a-vis causing of various occurrences by them. The recovered articles were sent to FSL, Madhuban, for examination.

On completion of investigation, challan was presented against both the accused.

After compliance of Section 207 Cr.P.C., the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed under Sections 307, 353, 332 read with Section 34 IPC and Section 25 of the Arms Act, against both the

accused, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 12 witness, besides adducing documentary evidence. The witnesses so examined by the prosecution are namely **PW-1 SI Bijender Singh, PW-2 ASI Balwan No.50, PW-3 Sumer Singh, Reader, PW-4 Head Constable Gulzar Singh No.1148, PW-5 ASI Jasmer Singh No.872, PW-6 Head Constable Pawan Kumar No.780, PW-7 Constable Jagbir Singh, PW-8 Head Constable Sushil Kumar No.1061, PW-9 Head Constable Balkar Singh No.16, PW-10 Dr.Neelam Arya, PW-11 SI Narender Kumar and PW-12 Inspector Deepak Kumar.**

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their respective statements under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence and false implication. However, accused did not lead any evidence in defence.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence, brought on record, vide impugned judgment of conviction and order of sentence, both the accused were convicted and sentenced, as detailed in the earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants have filed the respective appeals.

We have heard learned counsel for the appellants and learned State counsel and have perused the trial Court record.

As already observed, it was during the course of investigation of case bearing FIR No.229 dated 29.02.2012 under Section 365 IPC, Police

Station, Chandni Bagh, Panipat, that secret information about Kewal and

Sonu, who were habitual offenders, while in their Alto car bearing registration No.HR-10G-7171, to be passing through the way, where Inspector Deepak Kumar alongwith other police officials, was present. Thereupon, a naka was laid and car bearing No.HR-10G-7171 was seen coming and was signalled to stop. The person sitting on the adjoining seat of the driver, fired upon Inspector Deepak Kumar. It is pertinent to mention that naka was laid at turn of Sector-18, HUDA, Panipat. To so substantiate this version, the prosecution has examined SI Bijender Singh as PW-1, who was accompanying Inspector Deepak Kumar. The said witness in his examination-in-chief has stated about the manner of occurrence, so caused which is in consonance with the prosecution version. However, in cross-examination, this witness has deposed that the occurrence had taken place at 3.15 p.m. He also stated that no public witness was found, who could say that he had seen the occurrence. He also stated that only police officials had seen the occurrence. Even, Inspector Deepak Kumar has stepped into witness box as PW-12 and has also deposed on similar lines but in the cross-examination, the said witness has stated that no public person was joined. It is highly improbable that occurrence had taken place in a broad day-light i.e. at 3.15 p.m. as per PW-1 but still no witness from the public has been associated vis-a-vis causing of the occurrence. This definitely cautions the Court. Not only this, even though, it is the version of the prosecution that after the registration of the present case, during the interrogation on 12.03.2012, Sonu and Kewal had made disclosure statements Ex.P5 and Ex.P6, relating to their participation in the incidents, other than the present case, qua the same, PW-2 ASI Balwan has been examined and he has also stated that no independent witness was joined,

during the course of investigation. Even, CD, as such, has been proved by PW-6 Head Constable Pawan Kumar and he also stated that the parcel containing CD Ex.P16 is not sealed and nothing has been written on the parcel containing CD. He has also stated that the details of the case regarding FIR number and other details have not been mentioned on the parcel containing CD Ex.P16 and he further stated that he cannot say, whether CD has been changed or not by the Investigating Officer, as the parcel is not sealed. He also stated that no public person was joined at the time of preparation of CD. As such, it is evident that there was no effort, at any stage, by the police officials, to associate witness from the public. Even PW-11 SI Narender Kumar, who stated about disclosure statements, so made by the accused on 12.03.2012, also stated that no public witness was joined in the investigation, at the time of recording of the disclosure statements, as they showed their inability. Further, he stated that he cannot tell the names of the persons, who showed their inability to join investigation and he did not take legal action against them. Thus, the effort, so claimed to have been made, also stands falsified, in the light of the cross-examination of the said witnesses.

Considering the conduct of the police officials, the version so put forth, by the prosecution, cannot be termed to be free from doubt and precisely, on this account, benefit of doubt, is ought to be extended to the accused.

As such, we find merit in both the appeals filed by the appellants and the same are allowed. The impugned judgment of conviction dated 24.04.2014 and order of sentence dated 25.04.2014 passed by learned

accused/appellants Kewal and Sonu have been acquitted of the charges framed against them. They be released forthwith, if not required in any other case.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

February 24, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No