

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1340-SB-2007
Decided on: 22.02.2021

Sandeep alias Bagri		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Lokesh Sharma Advocate, for the appellant.

Mr.Shivendra Swaroop, AAG, Haryana.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. SANDHAWALIA, J. (Oral)

The present appeal has been filed against the judgment dated 13.07.2007, passed by the Addl.Sessions Judge-II, Jind whereby the appellant has been held guilty and sentenced under Section 25 of the Arms Act, to undergo imprisonment for a period of one year and a fine of Rs.1000/- and in default, to further undergo rigorous imprisonment for 15 days. It is pertinent to notice that apart from the appellant-Sandeep, 2 other accused, Subhash and Kuldeep were also held guilty and convicted and it has been informed that no appeal has been preferred by them.

The Trial Court had tried 9 persons who had faced trial as accused in FIR No.88/2005 dated 02.06.2005, registered under Sections 302, 307, 148, 149 & 216 IPC and Section 25 of the Arms Act for the offences under IPC whereas conviction has been recorded against the present appellant, Subhash and Kuldeep on account of the fact that there was sufficient evidence against them since one pistol of .315 bore along with one live cartridge and one empty cartridge were taken into possession vide recovery memo Ex.PV/1, in pursuance of the disclosure statement

(Ex.PM). Similarly, against Subhash and Kuldeep also, recovery of one .315 pistol and cartridges had also been effected. Resultantly, in the absence of any permit or licence for retaining the pistol and live cartridges, the conviction had been recorded.

Mr.Lokesh Sharma, Legal Aid Counsel, has taken support of the record of the case and submitted that the recovery memo (Ex.PM/1) was not witnessed by any independent witness as pistol which was recovered was kept concealed on the Hissar-Tohana-Hisar road near a pond and therefore, the same does not exhibit any confidence and the appellant has wrongly been convicted, having been falsely implicated by the investigating agency.

State Counsel, on the other hand, has opposed the said argument on the ground that there was no justification for the investigating agency to falsely implicate the appellant.

A perusal of the record would go on to show that the FIR was lodged regarding the incident which took place on 01.06.2005 at Narwana. Suresh Kumar, the injured had given statement (Ex.PA) who alleged that on 01.06.2005 at about 7.20 PM, he along with his brother, Jaipal were going on the motorcycle to their house from their shop and when they reached near LIC office behind Arya School, fire shot was given from behind. He found that one motorcycle was following them which had then overtaken them and stopped in front of them and on account of the same, both had fallen down. Jagdish @ Kunti who was one of the 3 occupants of the motorcycle, had fired a shot which had hit

at the back of his brother. The other two companions fired the shot which hit his brother in his head and the other shot hit on the right arm of the complainant and thereafter, his uncle Kunti had also come. On raising alarm, the accused person along with the other 2 companions riding on the motorcycle fled in the dark.

The deceased was taken to the Government Hospital, Narwana in the Government Jeepsy of the police where he was brought for treatment and was declared dead. The other assailant was named as Subhash and the third person was a young boy of medium height who could be recognized if produced. The reason for the incident is that they used to sell food-grains at Purchase Centre at Danoda and accused, Kunti had been demanding ransom from them which they had refused and therefore, the incident had taken place.

It is pertinent to notice that the present appellant was roped in on the basis of the investigation done by PW-22, Som Raj, Inspector who had received a message on the telephone that firing had taken place in Professor Colony near old LIC office Narwana. He had taken both the injured in his jeep for treatment in the Government Hospital. As per the information from investigation, it had come to his notice that murder had been committed by 8 persons, who were all charge-sheeted for the said incident. It, however, does not come forth from the statement as to from where the alleged information it was elucidated that the appellant was involved. In pursuance of the said suspicion, the appellant was arrested by the same person, Som Raj and interrogated and allegedly suffered a

disclosure statement on 20.06.2005 (Ex.PM). In pursuance of the same, recovery was done of the pistol of .315 bore as per recovery memo (Ex.PM/1) along with 2 live and 1 empty cartridges. Resultantly, sketch of the pistol was also prepared as Ex.PM/3.

A perusal of the statement of PW-12, Ram Kishan, ASI would go on to show that on the disclosure statement being made, pistol which was concealed at the Hisar Tohana road had been recovered along with the cartridges by procuring the police remand of the appellant by the said official. The disclosure statement and the recovery memo was duly attested by him and EHC, Wazir Singh. He further stated that the Investigating Officer had prepared the site-plan of the pistol. In cross-examination, the said official admitted that the disclosure statement (Ex.PM) was recorded in the police station and that the place of recovery was assessible to every one and no independent witness had been joined at the time of recovery and no public person joined as the villagers had shown their inability. He also stated that the IO had not given any notice to any of the witnesses and no action was taken against the witnesses and neither the Sarpanch and Lamberdar had been called from the village. This was inspite of the fact that they had taken 2 hours at the place of recovery and they had reached the police station at about 5 PM. It is also the case of the said official that the disclosure statement was made at 7.30 AM in the morning.

Thus, this aspect seems to have missed the notice of the Trial Court who proceeded to convict the appellant solely on the basis of the

disclosure statement and the recovery memo. The aspect that there was no other independent witness against the appellant and also the fact that the recovery was from an open place adjoining the main highway but still the investigating agency did not associate any independent person to witness the recovery of the weapon which was a countrymade pistol was ignored by the Trial Court. In the absence of any such private person having witnessed the recovery, this Court is of the opinion that if the said exercise had been done, it would have lead credence to the recovery of the pistol and the cartridges which is the sole evidence against the appellant. The disclosure statement was also recorded in the police station on 20.06.2005, early morning whereas the appellant was arrested on 19.06.2005 which should have not been relied upon by the Trial Court being disclosure in police custody. It has already been noticed that there is no credible evidence against the appellant being involved in the incident apart from the personal information of the Inspector, Som Raj.

The Apex Court in the case of '**Ritesh Chakarvarti Vs. State of Madhya Pradesh**', 2006 (12) SCC 321, while dealing with the case of recovery from a public place of a contraband under the NDPS Act, 1985, came to the conclusion that witnesses, who were present at the time of the occurrence could be associated and their names and addresses could be taken. In the absence of the same an adverse inference should be drawn for the non-examination of the material witnesses, keeping in view the provisions of Section 114 (g) of the Indian Evidence Act.

Similarly, in '**State of Uttar Pradesh Vs. Wasif Haider**', **2019 (2) SCC 303**, the Apex Court has held that in the absence of any independent witness prudence demands that the evidence of the official witness, has to be tested on the altar of strict scrutiny. Thus, the evidence of the prosecution witnesses was held not to inspire the confidence of the Court.

In the case of '**Madhu Vs. State of Kerala**' **2012 (2) SCC 399**, while dealing with the provisions of Sections 25 to 27 of the Indian Evidence Act, the Apex Court examined the veracity of the confessional statements made before the police officers and came to the conclusion that confession made by an accused while in custody could not be proved against him. The only exception was Section 27, which provides that a confessional statement made to police officer while an accused was in police custody could be proved against him, if it lead to the discovery of an unknown fact. It was, however, noticed that the evidence has to be scrutinized to that extent. Resultantly, regarding the recovery of the gold ornaments, which had been done on account of the statements made in the police custody, it was held that the same may well have been planted by the police.

The evidence herein also, thus, inspires no confidence for recording a conviction, on the basis of the statement record while in police custody, which led to the recovery of the weapons and cartridges, which also could have been planted upon the appellant, in order to solve

the crime.

It is also to be noted that the injured witness Suresh, the brother of the deceased did not support the case of the prosecution and was declared hostile. He denied of having made the statement regarding the involvement of Jaipal and Subhash in the FIR to the police. In such circumstances, in the absence of any corroborating evidence against the appellant, this Court is of the opinion that the benefit of doubt has to be accorded to the appellant as no credence can be attached to the recovery of the pistol and cartridges, in the absence of independent witnesses, which is the sole evidence against the appellant.

Accordingly, in view of the above discussion, the present appeal is allowed and the judgment dated 13.07.2007, passed by the Addl. Sessions Judge-II, Jind is set aside.

The appellant is already on bail, hence his bail bonds in present case stand discharged.

22.02.2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*