

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

(1) CRA-S-1889-SB-2007 (O&M)

Sahabudin

...Appellant

Versus

State of Haryana

...Respondent

(2) CRA-S-539-SB-2008 (O&M)

Babudin

...Appellant

Versus

State of Haryana

...Respondent

Date of pronouncement: 23.08.2022

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

Present: Mr. Rajesh Bhateja, Advocate for
Mr. Sarfraj Hussain, Advocate for the appellant
in CRA-S-1889-SB-2007.

Mr. Atul Prataap Dhankhar, Advocate for
Mr. Bijender Dhankhar, Advocate for the appellant
in CRA-S-539-SB-2008.

Mr. Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. By this judgment, I intend to dispose of above mentioned
two appeals arising out of the same judgment, passed by Addl. Sessions
Judge, Gurgaon in FIR No.44 dated 26.02.2004, for offences under

Sections 148, 149, 332, 353, 307, 186, 224, 216 IPC and Section 25 of the Arms Act, registered with Police Station Nagina. Appeal No.CRA-S-1889-SB-2007 has been filed by appellant-accused Sahabudin whereas, appeal No.CRA-S-539-SB-2008 has been filed by appellant-accused Babudin.

2. Briefly stated the facts of the case, as per prosecution story are that on 26.02.2004, a police party headed by ASI Sarup Singh was carrying out investigation in a case bearing FIR No.62 for an offence under Section 379 IPC relating to Police Station Pinangaon in Rithath, where it had received a secret information that the accused wanted in that case namely Alim, Jahid, Salim and Babudin along with another person belonging to Rajasthan armed with guns, country made pistols were sitting on village bridge and if a raid was conducted, they could be apprehended; accordingly, a raiding party was constituted with which Rehmat Ex.Sarpanch of Village Rithath was joined; then the raiding party along with Rehmat went to the disclosed place in a private jeep and all the five criminals named by the informer having weapons were found to be there; Alim was having a 12 bore gun whereas remaining four criminals were possessing country made pistols; on seeing the police party, accused Babudin fired at it from his country made pistol, however, the police officials had a narrow escape; all the criminals ran towards village street and in order to chase and apprehend them, a request was made to DSP, Balwan Singh through police control room for sending more force for help.

On receipt of that request, SI Anil Kumar, SHO of Police Station Punhana, Inspector Sher Singh from CIA-III, SI Jagminder Singh, SHO of Police Station Nuh, SI Rattandeep Singh, SHO of Police Station Nagina along with HC Ravi Dutt came there so as to cordon of the culprits; all of them went to the fields of Rithath, Devla Nangli and Sangail; accused Babudin who was running towards Devla Nangli was chased; SI Anil Kumar, SI Rajender Singh along with their staff went towards Devla Nangli while chasing accused Babudin, who entered house of accused Sahabudin; SI Rattandeep Singh asked accused Sahabudin not to give shelter to Babudin and to hand him over to the police; accused Sahabudin replied that Babudin accused was not in his house; however, door of his house opened and Babudin was apprehended; Babudin was having a country made pistol 315 bore duly loaded and 07 rounds of 315 bore were there in the right pocket of his trouser; when Babudin was apprehended then accused Sahabudin, Ayub, Rehmat, Fazru, Abdula, Kalu, all residents of Devla Nangli along with seven other persons started pelting stones at the police party and hitting them with lathies so as to get Babudin freed from custody of police; Ayub and Sahabudin hit HC Ravi Dutt with lathies finding target on his back, hands and feet, as a result HC Ravi Dutt fell down; SI Anil Kumar asked Constable Bhajjan Lal to fire in the air in order to save police officials from attack by Sahabudin etc.; accused Sahabudin etc., were taking away HC Ravi Dutt, however, he was rescued from their clutches; accused Sahabudin continued pelting stones on the police party and a stone hit Constable Balkar Singh on right

side of his forehead, whereas stone thrown by Kalu hit Constable Jai Bhagwan on his right hand; Constable Balkar Singh also fell down on the ground; SI Anil Kumar fired twice in the air to save himself and got shots fired in the air from Constable Bhajjan Lal on account of pelting of stones by accused Sahabudin etc.; official jeep of SHO, PS Punhana bearing No.HR-26-F-5724 was damaged.

The police officials after taking Babudin accused and leaving all others in the village itself came away to a distance of 1 km from the village and thereafter sketch of country made pistol Ex.PL which had been recovered from accused Babudin was prepared; after unloading of the pistol, the pistol and 08 live cartridges were taken into possession, vide recovery memo Ex.PQ attested by witnesses; ruqa Ex.PA with regard to the incident was prepared and handed over to SHO, PS Nagina by SI Rattandeep Singh; such ruqa was sent to police station through Constable Jaswant Singh on the basis of which formal FIR Ex.PC was recorded by ASI Raj Kumar; ASI Raj Kumar put his endorsement Ex.PD on the ruqa; injured namely HC Ravi Dutt, Constable Jai Bhagwan, Constable Balkar Singh were taken to CHC Nuh, where they were medically treated and medico-legally examined; their MLRs in that regard were prepared as Ex.PI, PJ and PK respectively.

After the registration of FIR, the investigation in the case started; during the course of investigation, accused Babudin suffered a disclosure statement Ex.PN that he was having a country made pistol of 315 bore and 06 live cartridges which he had kept buried in the fields

near tubewell and he could get those recovered; further he could also get ornaments recovered from his friend Suleman, which he had stolen a few days back from Punhana.

Accused Sahabudin was also arrested and on being interrogated, he suffered a disclosure statement on 27.02.2004 that he was having a country made pistol 12 bore and 06 live cartridges which he kept in a house of his friend Zakir and he could get the same recovered.

Alim was arrested on 30.12.2004 and while being interrogated, he suffered a disclosure statement on 01.01.2005 before SI Sajjan Kumar that on 26.02.2004, he was having a gun and country made pistol and he had sold gun to some unknown person in Gulpara, Rajasthan, whereas, a country made pistol of 12 bore along with two live cartridges placed in a polythene were there in his house and he could get those recovered; then in pursuance of the said disclosure statements, accused aforesaid got the recovery effected; site plans of recovery were also prepared; the recovered fire arms along with cartridges were got tested from armourers and reports Ex.PM and PT were received from them; the remaining accused in this case could not be arrested.

On completion of investigation and other formalities, challan against accused Babudin and Sahabudin was prepared and filed in the Court by SI Rattandeep Singh on 23.04.2004. Final report against accused Alim was prepared by SI Sajjan Kumar, the then SHO, PS Nagina on 28.02.2005. All the reports under Section 173 Cr.P.C., were filed in the Court of Sub Divisional Judicial Magistrate, Ferozepur Jhirka

who supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C., and then finding that offence under Section 307 IPC is exclusively triable by the Court of Sessions had committed the challans to the Court of Sessions at Gurugram. The case was then assigned to Addl. Sessions Judge, Gurugram.

Ld. Addl. Sessions Judge, Gurugram finding a prima facie case, framed charge for offences under Sections 148, 323, 353, 216, 224 read with Section 149 IPC against all the accused, whereas charge for an offence under Section 307 IPC was framed against accused Babudin. Furthermore, charge for an offence under Section 25 (1-B)(a) of Arms Act was also framed against accused Babudin and Alim. The accused pleaded not guilty and claimed trial.

3. During the course of prosecution evidence, it examined the following witnesses:-

PW-1 ASI Raj Kumar testified that while he was posted at PS Nagina, he had received ruqa Ex.PA on the basis of which he had recorded formal FIR and thereafter, made endorsement Ex.PD on the same.

PW-2 HC Pohap Singh deposed that on 27.02.2004 while posted as Head Mechanic in Haryana Roadways, Nuh, he had mechanically examined jeep bearing registration No.HR26-F-5724 and had given his report Ex.PE.

PW-3 Constable Ravi Dutt and PW-4 Constable Jai

Bhagwan, who were members of the police party and had seen the occurrence provided the ocular version of the incident, supporting the prosecution story on material aspects. They testified with regard to their having got injuries in the incident.

PW-5 Ashok Kumar, Draughtman stated that on 17.04.2004 he was posted as such in the office of Superintendent of Police, Gurugram and on that day, he had gone to the spot at the instance of ASI Sarup Singh and had prepared scaled site plan of the place of incident as Ex.PF.

PW-6 HC Tej Raj a formal witness tendered his affiavit Ex.PG.

PW7 Nand Kishore, Ahlmad to District Magistrate, Gurugram stated that on 27.04.2004 while he was posted as such, Sh. Anurag Rastogi, the then District Magistrate, had issued sanction order for prosecution against accused Babudin and on 14.03.2005 that very authority had issued sanction order for prosecuting accused Alim.

PW-8 Dr. Lal Singh stated that on 26.02.2004 he had medico-legally examined Ravi Dutt, Jai Bhagwan and Balkar Singh injured and had submitted his reports in that regard as Ex.PI, PJ and PK respectively.

PW-9 ASI Mahabir Singh, Armourer (retired) deposed that on 27.02.2004 while he was posted as Armourer in Police Lines, Gurugram, on that day, SI Rattandeep Singh, SHO PS Nagina had produced before him a sealed parcel containing 315 bore pistol. He

opened the parcel, took out the pistol with sketch Ex.PL and examined the pistol manually and technically, finding it to be in working order. He stated that he had submitted his report in that regard as Ex.PM and then resealed the pistol with seal having inscription 'GS' making endorsement Ex.PK/1 on police request Ex.PK. The witness identified the country made pistol in question Ex.P1.

PW-10 EHC Hemant Kumar, in whose presence, SI Rattandeep Singh had interrogated accused Babudin on 27.02.2004 during the course of which, accused Babudin had suffered a disclosure statement Ex.PN and then on the same day, accused Sahabudin on being interrogated had suffered a disclosure statement Ex.PO deposited in that regard.

PW11 ASI Sarup Singh, IO of this case testified regarding the investigation conducted by him, proving various documents.

PW12 ASI Gurdial Singh stated that he had mechanically examined country made pistol and two live cartridges brought by ASI Mohan Singh and had submitted his report Ex.PT.

PW13 ASI Mohan Singh deposed that on 31.12.2004, while he was posted at Police Line Nagina, on that day, in his presence SI Sajjan Singh had interrogated accused Alim, who had suffered a disclosure statement Ex.PU and then on 01.01.2005 again accused Alim had suffered disclosure statement Ex.PV on the basis of which he had got recovered a country made pistol and two live cartridges. He further stated that sketch of recovered pistol was prepared and the country made

pistol and cartridges were converted into a parcel. The witness identified the pistol and cartridges as Ex.P10 to P12.

PW14 SI Rattandeep Singh and PW15 SI Anil Kumar deposed regarding their respective role corroborating the version of prosecution.

PW16 Constable Balkar Singh also provided the eye witness account toeing the line of prosecution.

PW17 SI Sajjan Kumar deposed with regard to his part in the investigation of this case.

The prosecution relied upon several documents. With that, the prosecution evidence got concluded.

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

Accused did not lead any evidence in defence despite availing of opportunities.

5. After hearing arguments, learned trial Court, vide impugned judgment dated 20.08.2007, convicted the accused and in terms of the order dated 25.08.2007, accused Babudin was sentenced to undergo rigorous imprisonment (RI) for a period of 05 years and to pay a fine of Rs.2000/- under Section 307 IPC; he was further sentenced to undergo undergo RI for a period of 02 years and to pay a fine of Rs.500/-

under Section 25 of the Arms Act; in default of payment of fine, to further undergo imprisonment for 07 days.

6. Accused Sahabudin was found guilty under Sections 148, 216, 225, 332 and 353 IPC, who was wanted in a case under Section 379 IPC by the police, under Section 225 IPC for offering resistance to the police officers to rescue the accused Babudin from the police custody, under Sections 332 and 353 IPC (for assaulting and hurting the police officers/officials while they were discharging their official duties) read with Section 149 IPC. It was observed that although Sahabudin was not specifically charged under Section 225 IPC but it is lesser offence than offence punishable under Section 224 IPC, so he can be held guilty under Section 225 IPC. However, all the three accused were acquitted of the remaining charge. He was sentenced to undergo undergo RI for a period of 02 years under Sections 148, 216, 225 IPC and to undergo undergo RI for a period of 02 years and to pay a fine of Rs.500/- under Section 332 IPC; in default of payment of fine, to further undergo imprisonment for 07 days; to undergo undergo RI for a period of 01 year and to pay a fine of Rs.500/- under Section 353 IPC; in default of payment of fine, to further undergo imprisonment for one week.

Feeling aggrieved by the said judgment of their conviction and sentence, accused Babudin and Sahabudin have preferred the present appeals which have come up for hearing now.

7. I have heard learned counsel for the appellants/accused, learned State counsel besides going through the record.

8. In this case, PW-3 Ravi Dutt, PW-4 Constable Jai Bhagwan and PW-16 Constable Balkar Singh have fully supported the prosecution story on material aspects. Although, they were cross-examined extensively on behalf of the accused but they stuck to their guns and could not be shattered on any material point. They having suffered injuries in the incident are stamped witnesses and their presence at the spot cannot be doubted. Furthermore, such PWs having undergone the trauma of getting injuries on their bodies, they would have been the last persons to screen the actual culprits and involve some other innocent persons in this case, since endeavour of such injured persons is to see that the person(s) responsible for their such fate are brought to book and do not go unpunished in the process there are little chances of the injured witnesses letting the actual culprits off the hook and named some innocent persons as their tormentors.

Furthermore, PW11 ASI Sarup Singh, PW-14 SI Rattandeep Singh lent support to the prosecution story on material aspects. None of the PWs examined by the prosecution is shown to have any previous enmity with the accused prompted by which they might have involved the accused in this case wrongly or to depose against them falsely to secure their conviction.

9. Although, learned counsel for the appellants has argued that none of the shots said to have been fired by the accused from fire arms had hit the police officials and further considering that the distance from which the shots are said to have been fired was more than 100 yards,

whereas effective distance of pistol is around 20-25 yards, it cannot be said that the accused had any intention to murder the police officials. However, I am not impressed with these contentions. The pistols used by the accused were country made, therefore, it cannot be said with certainty as to what was the effective range of that pistols. The mere fact that shots were fired from illegal weapons at police party goes to show the intention of the assailants to cause their deaths, though, the police officials were lucky enough not to be hit by the bullets but that does not dilute the gravity of the offence committed by the accused. Their intention to cause death of the police officials clearly comes out to be there. The law is well settled that the Court is to determine intention of the accused in the matter and whether some injury is suffered or not is not the sole determining factor. Therefore, this argument by learned counsel for the appellant is rejected.

10. Although, an attempt was made by learned counsel for the appellants to put-forward an argument that Sahabudin had no concern with FIR No.62 under Section 379 IPC, which as a matter of fact was registered against Alim, Zahid, Salim and Babudin. Actually, he was not present at the spot and had not caused any injury to any of the police officials, therefore, he has been wrongly involved in this case. However, I find that the prosecution has led overwhelming evidence ocular as well as documentary to show the involvement of Sahabudin in the incident. He cannot simply wash his hands off the matter coming with a straight face that he was not there at the spot and he has been wrongly involved. As

already discussed supra, in such type of incidents, chances off wrong involvement are very remote, more particularly when there is no previous enmity between the prosecution witnesses and the accused alleging false implication. The trial Court has dealt with all these aspects in detail rightly coming to the conclusion that involvement of Sahabudin in the incident was there. As it comes out the police officials were on duty and the accused clearly obstructed them from discharging their duties while making an attempt to kill them. Accused Babudin comes out to be the main culprit firing shots on the police party from country made pistol which he was holding without any license, whereas Sahabudin comes out to be guilty of harbouring Babudin in his house so as to screen him from legal punishment in the process he had offered resistance to the police officials so as to get Babudin freed from their custody. Firing at police party, pelting stones on police officials who were their to discharge their duties so as to enable a criminal to flee from justice are such acts which cannot be taken lightly.

11. The judgment of conviction passed by the trial Court is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein. The trial Court has gone into minute details of the incident and rightly convicted the accused for some of the offences, acquitting them of the remaining charge for which the prosecution could not bring enough cogent and convincing evidence to prove that. The very fact that the accused had taken law into their own hands, attacking the police party

which was discharging its official duties even firing at it from illegal fire arms, causing hurt to three of the police officials. Such act and conduct on the part of the accused cannot be taken lightly, rather they deserve to be given stringent punishment so that their fate may act as a deterrent to the potential criminals, who may be wanting to take law into their own hands and tread the path of crime.

The judgment of conviction passed by the trial Court does not call for any interference. The same is upheld.

Similarly with regard to order of sentence, in view of the detailed discussion above, the accused are not entitled to any leniency lest that gives a wrong message in the society that one can commit a grave crime and then let off lightly by the Court.

12. The appeals are found to be without merit and same are hereby dismissed accordingly.

13. As a result, the orders passed by this Court suspending their sentence and grant of bail during pendency of the appeals come to an end and are withdrawn. The appellants/accused are ordered to surrender before Chief Judicial Magistrate, Gurugram within a week from today, failing which learned CJM, would issue warrants of arrest to secure their presence and send them to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

23.08.2022

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(H.S. MADAAN)

JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No