

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

378

CRA-S-1577-SB-2004 (O&M)

Reserved on 29.11.2022

Date of Decision: 01.12.2022

Sanjeev Singh @ Monu

...Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rajender Singh Malik, Advocate
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

Assailing the findings recorded by the Court of learned Additional Sessions Judge, Sonapat, vide judgment of conviction dated 31.07.2004 and order of sentence dated 02.08.2004, whereby, the appellant was convicted under Section 25 of the Arms Act and was sentenced to undergo rigorous imprisonment for a period of one year alongwith fine of Rs. 500/- alongwith default stipulation, the appellant has preferred the instant appeal.

The brief facts of the case are that on 12.03.2001, a police party headed by SI/SHO Mahabir Singh alongwith ASI Rajiv Kumar, HC Om Parkash 572, HC Kawal Singh 734, HC Suresh Chander 295, UGC Jugal Kishore 191, Constable Bhagat Singh 840, Dhan Ran 293, Samunder Singh 132, EHC Dharampal 751, Vinod Kumar 494 was present in Government jeep bearing registration No. HR-10-C-3210 driven by Constable Shamsher Singh No. 1116

and had received a V.T., message from the Superintendent of Police, Sonapat, regarding a motorcycle silver colour Hero Honda bearing registration No. UP-10A-4249 and it was further informed that two persons were riding on the said motorcycle in suspicious manner in Sonapat City and directed the police officials to arrest them and to take action against them. They were searched on Sonapat-Kharkhoda roads. When they were present near the bridge of Pipli-Gurgaon Minor, they received a secret information that these young boys were seen on motorcycle bearing registration No. UP-10A-4249 and they had committed the dacoity in Sector 3, Rohtak one month back and had looted the motorcycle after firing shots. The information was received that they were coming from the side of the *katcha* path of Pipli-Gurgaon Minor. At a distance of about ½ kilometer from the bridge, complainant reached towards that side and one motorcycle Hero Honda of silver colour was seen coming from the opposite side and two boys were riding on the same. On seeing the jeep of the police party there, they tried to turn back and while turning back they were apprehended by the police officials, who were accompanying SI/SHO Mahabir Singh and the number plate of UP-10A-4249 had been affixed on the back side on the motorcycle. The driver of the motorcycle was apprehended and he disclosed his name and address to be Sandeep Hooda son of Roop Singh Hooda caste Jat resident of Rurki, Police Station Sampla at present resident of House No. 456

Housing Board Colony 11 Rohtak and the person who was pillion rider, told his name to be Sanjeev Singh @ Monu son of Jai Pal Singh resident of Sultanpur Dabas, Police Station Bawana (Delhi) at present resident of Adarsh Nagar, Sonapat, Police Station Civil Line, Sonapat and they were searched one by one and from the right side of the pocket of pants of Sandeep Hooda, one country made pistol of .315 bore was recovered and from the right side pocket two live cartridges of .315 bore were also recovered. Sandeep Hooda could not produce any licence or permit with regard to the pistol and a separate sketch was prepared. Even the personal search of Sanjeev Singh was conducted and a country made pistol of .315 bore and two live cartridges were recovered from him and after preparing the sketch, country made pistol and the cartridges were kept in a parcel and were sealed with the seal of 'MS' and after use the seal was handed over to ASI Rajiv Kumar. Initially, the FIR was registered against him under Section 412 IPC and Section 25 of the Arms Act.

After completion of the investigation, both the accused were charge sheeted for the offence under Section 412 IPC and Section 25 of Arms Act.

At the time of framing of charge, they pleaded not guilty and claimed trial.

During the course of trial, accused Sandeep Hooda was declared as proclaimed offender and the present appellant faced the

prosecution. Vide impugned judgement, the learned trial Court acquitted the appellant of the offence under Section 412 IPC, but convicted the appellant under Section 25 of the Arms Act and was sentenced as mentioned above.

Learned counsel for the appellant submitted that the appellant has been rightly acquitted of the charge under Section 412 IPC, however, he has been wrongly convicted under Section 25 of the Arms Act on the basis of the same set of evidence. Still further, the police had received secret information and from the prosecution evidence it is evident that the police party had ample opportunity to join the independent witnesses. However, despite availability, no independent witness was joined in the recovery proceedings and the recovery of the firearm from the present appellant was doubtful. The entire case is based on the testimonies of official witnesses and that testimonies of these witnesses are liable to be discarded by this Court. The learned counsel also referred to certain contradictions in statements of PW3 ASI Satbir Singh, PW7 HC Jugal Kishore, PW9 Inspector Mahabir Singh and submitted that the contradictions appearing in the statements of various witnesses render the case to be highly unbelievable and the appellant is liable to be acquitted.

Learned counsel appearing for the State of Haryana has opposed the submissions made by learned counsel for the appellant and submitted that the evidence led by the prosecution is worthy of

credence and the impugned judgment and order are liable to be upheld by this Court.

Before discussing the rival contentions made by the learned counsel for both the parties and law points involved in the instant case, this Court would discuss the testimonies of various witnesses examined by the prosecution to prove the charge against the appellant. The prosecution has examined PW1 ASI Rajeev Kumar, who was part of the police team, which had apprehended two accused coming on a motorcycle of silver colour bearing registration No.UP-10A-4249, which was looted from Rohtak. In fact both the persons, who were riding on the motorcycle were apprehended at the spot and one of them disclosed his name to be Sandeep Hooda, who was later declared as proclaimed offender and the pillion rider disclosed his name to be Sanjeev @ Monu. The said witness has been cross-examined at length and nothing material could be elicited from him. His testimony is duly corroborated by PW9 Inspector Mahabir Singh, who was posted as SHO Police Station Kharkhoda on 12.03.2001. He was heading the police team and on receipt of the secret information, both the accused were apprehended at the spot and a country made pistol of .315 bore and two live cartridges of the same bore were found in the right side of the pocket of the pant of the appellant. Even the memos were prepared and the rough sketch of the recovered pistol was also prepared.

The said recovered pistol and the two live cartridges of the same bore were sent to PW2 HC Balwan Singh, who tested the country made pistol with the help of dummy cartridges and gauge and found the same to be in working condition. He tested the same and resealed the pistol and cartridges in the same parcel and it was sealed with the seal of 'BS'. Still further, the prosecution examined PW4 Satbir Singh, Reader to the District Magistrate, Sonapat, who exhibited sanction Ex.PE granted by the then District Magistrate to prosecute the present appellant for commission of the offence under Section 25 of the Arms Act. The testimonies of these officials clearly show that the mandatory provisions of Arms Act were fully complied with and the recovery of .315 bore pistol alongwith two live cartridges from the right side of the pocket of the pant of the appellant stood proved.

Learned counsel for the appellant contended that despite availability, no independent witness was joined in the instant case and this makes the prosecution story to be doubtful. In fact, a Division Bench of this Court in the matter of **Sarabjit Singh VS. State of Punjab 2004(1) R.C.R. (Criminal) 333** held that the mere fact that no independent witness was associated, will not disprove the prosecution story. The police officers are competent witnesses. Even their submissions regarding the recovery of pistol and cartridges without licence is reliable even if examined with care and caution.

Similarly, in the instant case, this Court has gone through the testimonies of various witnesses and found the witnesses worth placing reliance and there is nothing to disbelieve the testimonies of the said official witnesses. Still further, the learned counsel for the appellant has referred to minor contradictions appearing in the testimonies of various official witnesses, however, the same do not strike at the root of the matter and such minor contradictions are bound to appear in the testimonies of various official witnesses, who had come to depose before the trial Court after several years.

Consequently, no infirmity is found in the findings recorded by the learned trial Court and conviction of the appellant under Section 25 of the Arms Act is maintained and the impugned judgment of conviction is upheld.

However, the appellant/accused was found carrying the country made pistol alongwith two live cartridges without any permit/licence on 12.03.2001 and is facing the agony of trial/appeal for the last 21 years. Still further, the custody shows that he has undergone 08 months and 19 days of actual custody out of the total sentence of one year. Still further, as per the custody certificate, no other criminal case was registered against the appellant after the registration of the present case on 12.03.2001. Consequently, the ends of justice would be suitably met, if the his sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant, as recorded by the learned trial Court is maintained. However, his substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine will remain the same and the same has already been deposited by the present appellant.

The present appeal is, accordingly, disposed of.

All the pending miscellaneous applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with in accordance with law after the expiry of the period of limitation.

The trial Court record be transmitted back.

01.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No