

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

330

CRA-S-2228-SB-2003 (O&M)

Reserved on 08.12.2022

Date of Decision: 09.12.2022

Jaswant Singh

...Appellant

Versus

State of Haryana

... Respondent

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

Present : Mr. Gurinder Pal Singh, Advocate as
Amicus Curiae for the appellant.

Mr. Rajinder Kumar, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

The present appeal is directed against the judgment and order dated 20.10.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Karnal, whereby, the appellant was ordered to be convicted under Section 307 read with Section 34 of the Indian Penal Code and Section 25 of the Arms Act and was sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 1000/- and rigorous imprisonment for a period of three years and to pay a fine of Rs. 500/-, respectively, alongwith default stipulation.

The facts of the case in brief are that on 24.02.2003, the complainant Jagan Nath SI/SHO alongwith ASI Janak Singh, ASI Jai Singh and other police officials were present in a government jeep, driven by Constable Ranbir Singh for checking vehicles at the bridge of Yamuna at Meerut Road in the area of Manglora. During the

checking, a bus bearing registration No. DL-1PA-5642 came from the side of Karnal, which was driven by one person and one person was sitting on the front left side seat of the driver. The bus was signaled to stop and the driver of the bus stopped the bus all of sudden on the road. When SI/SHO Jagan Nath alongwith other police officials proceeded towards the bus to check it, both the persons sitting on the front side of the bus alighted from the same all of sudden from the left side of the door and all of sudden both of them took out pistols from their pockets and fired one shot straight at the police party with an intention to kill them. On seeing them, the SI/SHO Jagan Nath and other officials laid on the ground and saved their lives. Both the persons raised the pistols in their hands and fled in the fields towards the left side of the road and the SI/SHO alongwith other police officials chased them in the fields and by surrounding them, they were apprehended. On inquiry, they told their names to be Prem Singh son of Ram Singh and Jaswant Singh son of Balbir Singh, respectively. Search was conducted of both Prem Singh and Jaswant Singh and one country made pistol of .315 bore was recovered from the right hand of Prem Singh and one empty cartridge and one live cartridge were also recovered from Prem Singh, whereas, one .303 bore country made pistol and one live cartridge were recovered from Jaswant Singh and the pistols and the cartridges were taken into possession by the police. Even, the bus in question was also taken into possession by the

police, which was found to be stolen from Panipat. The ruka was sent to the Police Station and, accordingly, the FIR under Sections 307, 411 and 34 IPC and Section 25 of the Arms Act was ordered to be registered against the appellant Jaswant Singh and his co-accused Prem Singh.

After completion of the investigation, the challan was presented against the appellant and Prem Singh co-accused. The trial Court found that a prima facie case under Sections 307, 411, 34 IPC and Section 25 of the Arms Act was made out against both the accused and the accused were ordered to be charge sheeted accordingly, to which, they pleaded not guilty and claimed trial.

In support of the case of the prosecution, the prosecution examined nine witnesses.

The prosecution examined PW1 C-Dharambir Singh, who carried the special reports to the Illaqa Magistrate and other higher police officers. He delivered the special report to the Illaqa Magistrate at 09.30 p.m. on 24.02.2003 and also delivered the various other reports and ASI Japan Giri was examined as PW2 who had formally registered the FIR Ex.P1, on the basis of the ruka. PW3 Balwan Singh Head Constable and PW4 Constable Chander Bhan were the formal witnesses. Vinod Kumar, Ahlmad to the District Magistrate was examined to prove the sanction order Ex.P6. The prosecution further examined PW6 Prem Kumar, Draftsman, who had

prepared the scaled site plan Ex.P7 with correct marginal notes. The prosecution further examined PW7 Jagan Nath SI/SHO Police Station Madhuban, the complainant. He supported the case of the prosecution and he had effected the recovery of one country made pistol .315 bore alongwith one empty cartridge and one live cartridge from Prem Singh whereas one country made pistol, and one live cartridge were recovered from Jaswant Singh, the present appellant/accused. The parcels were prepared and he had conducted the initial investigation in the instant case. In his cross-examination, he stated that the accused alighted from the bus from its right window and they fired at the police party after alighting the bus. There were many persons on the road but no person was working in the fields. The accused were apprehended at about 03 acres away from the road. He further stated that no official of the police party sustained any injury. ASI Jai Bhagwan was examined as PW8, who brought the record relating to one FIR No. 78 of 2003 under Sections 392 and 397 IPC, Police Station Model Town Karnal and exhibited the same on the record. ASI Janak Singh was examined as PW9, who was part of the police party, which was fired at by the accused. He was also signatory to various memos regarding recovery made at the spot. In his cross-examination, he had admitted that they were standing at about four steps away from the bus. The accused alighted from the bus from the left side window and accused tried to fire at the police party from

5/7 steps. He further admitted that no one was injured from the fired shots. The investigating Officer tried to join the independent witnesses, but nobody was ready to become the witness in the police case.

After prosecution closed its evidence by examining nine witnesses, the evidence was put to the accused in the shape of a statement under Section 313 Cr.P.C. and the appellant/accused and his co-accused pleaded false implication by the police.

In defence evidence, the accused tendered copy of statement of PW4 Krishan Kumar as Ex.DA and closed the defence evidence.

After the evidence was led by both the sides, vide impugned judgment and order, the learned trial Court held that no offence under Section 411 IPC was made out against the appellant and he was ordered to be acquitted. However, the learned trial Court convicted the appellant under Section 307/34 IPC and Section 25 of the Arms Act and was sentenced as mentioned above with a default stipulation.

By way of the instant appeal, the appellant has challenged the impugned judgment and order passed by the learned trial Court.

Learned counsel for the appellant vehemently argued that the appellant has been wrongly convicted under Section 307 IPC. He

further submitted that the story set up by the prosecution was inherently improbable and no offence under Section 307 IPC is made out against the appellant. He further submitted that the statements made by various prosecution witnesses were contradictory to each other and the prosecution version was liable to be disbelieved by this Court.

The learned State counsel has vehemently opposed the submissions made by the learned counsel for the appellant and submitted that there are serious and specific allegations against the appellants and his co-accused Prem Singh and they had fired one shot each at a police party, who had stopped the bus driven by one of them. Without provocation they alighted from the bus and fired shots at the police party and the said version is duly corroborated by the testimonies of PW7 SI Jagan Nath, PW9 ASI Janak Singh and other official witnesses. He finally prayed that impugned judgment and order are liable to be upheld by this Court.

I have considered the rival submissions made by the learned counsel for the parties and marshaled the trial Court record with their able assistance.

In the instant case, as per complainant/PW7 Jagan Nath, he alongwith other police officials, namely, ASI Janak Singh, ASI Jai Singh, HC Bhram Swaroop, HC Bahadur Singh, C. Dharambir, C. Ranbir Singh, ASI Rajbir Singh, EHC Phool Singh, EHC Ratan

Singh, C. Rajbir Singh and C Surajbhan etc., was present for checking the vehicles at Yamuna river bridge at Meerut road. Thus, it is apparent that the complainant was present at the spot with 11 other police officials in an official vehicle, which was driven by Constable Ranbir Singh. It has been further stated by the prosecution that a bus came from the side of Karnal and the appellant and his co-accused Prem Singh were the only occupants in the bus and the bus was signaled to stop. All of sudden, two persons alighted from the bus and fired one shot each from their respective weapons at the police party and the police laid on the ground to save itself. After that both the accused raised their weapons in their hands and fled towards the fields. The complainant alongwith other police officials chased them and apprehended both the accused, i.e. present appellant and his co-accused and the recoveries of firearms and cartridges were made from those persons.

The appellants in this case has been charged with offence of attempt to murder. The complainant simply alleged that that the accused alighted from the bus and immediately thereafter, they fired at the police party, which comprised of 12 police officers. I find sufficient force in the argument raised by the learned counsel for the appellant that the version of the prosecution was highly improbable and was liable to be disbelieved by this Court. It is highly unbelievable that the accused, who were signaled to stop, alighted

from the bus and started firing at the police party without any motive, reason or provocation. Still further, as per the complainant, when the fire was opened by the accused, they laid on the ground to save their lives. 12 police officials were on official duty and must be carrying firearms with themselves. It is surprising to note that the persons had opened fire at the police party, in which, 12 police officials were present and none of the police officers retaliated. Three senior policeman were also in the team, who were aware of their right to private defence. If any assault, which may cause reasonable apprehension that death will otherwise be the consequence of such a assault, then in such eventuality, the right of private defence of the victim extends to voluntarily causing the death or any other harm to the assailants. Even otherwise, when the accused had fired at the police party without any provocation, the police party would have certainly fired at them in retaliation. However, no such thing happened at the spot and the story of the prosecution is doubtful on that count. Still further, as per the prosecution story, both the accused had fired from their respective weapons, but no empties/pellets were recovered from the spot. As per the story of the prosecution, the accused had fired with an intention to kill from a very close range, but surprisingly none of the police men suffered any injury. Even, the accused, instead of leaving the spot in a bus, chose to ran away on foot. Still further, if the intention of the accused was to fire at the

police party with an intention to kill them, they could have fired shots while sitting in the bus itself and could have easily escaped from scene of crime. Still further, as per the case of the prosecution, both the accused ran away towards the fields and were caught by the police party after chasing them. It is again surprising that the accused did not repeat the firing, when they were being chased by the police party. Still further, even during the process of catching hold of the accused, neither the police party suffered even a bruise nor the accused suffered any injury. Further, as per the admission of the prosecution witnesses themselves, several persons were present near the spot and the incident had happened at busy Meerut road. Surprisingly, no independent witness was joined at the time of conducting the proceedings at the spot, despite availability. In view of this, the story of the prosecution that the accused fired at the police party, immediately alighting from the bus seems to be highly improbable and no offence under Section 307 IPC is made out against the appellant.

Apart from Section 307 IPC, the appellant and his co-accused were charged and convicted under Section 25 of the Arms Act and were sentenced to undergo rigorous imprisonment for a period of 3 years each and to pay a fine of Rs. 500/- each under the said provision. The legal maxim '*falsus in uno falsus in omnibus*' has no application to the Indian Criminal Justice System. The said

principle of law was discussed by the Hon'ble Supreme Court in Criminal Appeal No. 1282 of 2001 titled as "**Gangadhar Behera and others Vs. State of Orissa**", is reproduced as under:-

*"15. To the same effect is the decision in **State of Punjab v. Jagir Singh, (AIR 1973 Supreme Court 2407) and Lehna v. State of Haryana, (2002 (3) SCC 76)**. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno*

*falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See **Nisar Alli v. The State of Uttar Pradesh (AIR 1957 Supreme Court 366)**. Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See **Gurucharan Singh v. State of Punjab, AIR 1956 Supreme Court 460**. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be*

*feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See **Sohrab s/o Beli Nayata v. The State of Madhya Pradesh, (1972)3 SCC 751**) and **Ugar Ahir v. The State of Bihar, (AIR 1965 Supreme Court 277)**). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by*

*the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See - **winglee Ariel v. State of Madhya Pradesh, (AIR 1954 Supreme Court 15) and Balaka Singh v. The State of Punjab, AIR 1975 Supreme Court 1962.** As observed by this Court in *State of Rajasthan v. Smt. Kalki*, (AIR 1981 Supreme Court 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in **Krishna Mochi v. State of Bihar etc., (2002(4) JT (SC) 186)**. Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the*

distinguishing”.

No doubt, the testimonies of the prosecution witnesses regarding the firing incident have not been found to be worth placing reliance, still such part of the statements, which relates to recovery of illicit firearms from the appellant and his co-accused is concerned, the same can be believed and regarded. In the instant case, the prosecution examined PW7 SI Jagan Nath, who deposed that from personal search of the accused Prem Singh one country made pistol of 315 bore was recovered and two cartridges were also recovered from him. Similarly, one country made pistol was recovered from the right hand of the appellant. One live cartridge of the same bore was also recovered from the pocket of the pant of the appellant. The sketch of the pistol Ex.P12 was prepared. The pistol alongwith empty live cartridges were converted into a parcel which was sealed with the seal of JN. The parcel was taken into possession vide recovery memo Ex.P13, which was signed by ASI Janak Singh and ASI Jai Singh. Still further, seal was handed over to ASI Janak Singh. Sealed parcel was opened in the Court and one country made pistol and cartridges were produced before the Court. The said testimony is also corroborated in this regard by ASI Janak Singh PW9 in all material particulars. Still further, the prosecution examined PW5 Vinod Kumar Ahlamd to District Magistrate, who proved the sanction order Ex.P6.

Apart from that, the said weapon was taken to FSL by the prosecution witnesses and vide report Ex. P22, the FSL Madhuban reported that the country made pistol recovered from the present appellant was a fire arm as defined in the Arms Act, 1959.

Thus, the prosecution has been able to prove the charge under Section 25 of the Arms Act against the present appellant and is accordingly convicted under Section 25 of the Arms Act only and the impugned judgment of conviction is liable to modified to that extent.

The trial Court had sentenced the appellant to undergo rigorous imprisonment for period of three years and to pay a fine of Rs. 500/- of the Arms Act. A perusal of the custody certificate makes it clear that at the time of conviction, the present appellant was aged about 40 years in the year 2003 and now he is aged about 60 years. The custody certificate further reveals that the appellant did not indulge in any other criminal case since 24.02.2003 and did not misuse the concession of suspension of sentence in the last several years. Even as per the custody certificate, he has undergone an actual custody of one year, two months and ten days and, consequently, ends of justice will be suitably met, if the sentence imposed upon him is reduced to the one already undergone by him.

Resultantly, the appellant is acquitted of the charge under Section 307 IPC. The conviction of the appellant, as recorded by the learned trial Court under Section 25 of the Arms Act

is maintained. However, the substantive sentence is ordered to be reduced to the one already undergone by him and order of sentence is accordingly modified.

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.

09.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

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