

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

CRA-S-2140-SB-2014 (O&M)
Date of decision: 16.03.2022

RAM BILAS @ SITU

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. J.S. Mehndiratta, Advocate for the appellant.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J.

1. The learned Additional Sessions Judge, Gurgaon tried accused Ram Bilas alias Situ alongwith co-accused Rohit, Pawan, and, Ranbir alias Fauji, for a charge drawn against each under Sections 392, 397, and, 412 of IPC, and, under Section 25 of the Arms Act, 1959. After conclusion of trial, the learned Additional Sessions Judge, Gurgaon, through a verdict made on 10.03.2014, upon Sessions Case No.9/2012 proceeded to make a verdict of acquittal qua accused Rohit, Pawan, and, also qua the convict-appellant, qua charges drawn against each of them, under Sections 392, 397 IPC. Moreover, through the afore drawn verdict, the learned trial Judge concerned, also acquitted Ranbir alias Fauji for charge drawn against him, under Section 412 of the IPC. Further co-accused Rahul, Pawan, and, the convict-appellant, all became convicted for a charge drawn against each of them, for the commission of an offence, under Section 25 of the Arms Act, 1959. Through a separate sentencing order drawn on 11.03.2014, the learned trial Judge concerned, sentenced each of the convicts to undergo rigorous imprisonment for a term extending upto 5 years each, and, also sentenced each of the convicts to pay a fine of Rs. 1,000/- each, for the

commission of an offence under Section 25 of the Arms Act, 1959. Moreover in default of payment of fine, the learned trial Judge concerned, sentenced each of the convicts, to undergo simple imprisonment extending upto a period of 6 months each.

2. During the course of arguments being made before this Court, the learned State counsel, was directed to make an intimation to this Court, whether the State of Haryana has preferred an appeal against the verdict of acquittal, as, made upon the convicts concerned, vis-a-vis the charges drawn against them under Sections, 392, 397, and, Section 412 of the IPC. However, the learned State counsel has fairly stated at the bar, that the State of Haryana has not preferred an appeal challenging the afore made verdict of acquittal qua the accused, vis-a-vis, the afore drawn charges against each of them.

3. The instant appeal is preferred before this Court, only at the instance of one of the convicts, inasmuch as by Ram Bilas alias Situ, whereas, the other co-convicts, omitted to prefer an appeal before this Court, hence challenging the verdict of conviction, as became pronounced, upon, them by the learned Additional Sessions Judge, Gurgaon.

4. Through the instant appeal the convict-appellant challenges the verdict of conviction, and, also the consequent thereto sentence (supra), as became imposed, upon him by the learned Additional Sessions Judge, concerned, on 10.03.2014, upon Sessions Case No.9/2012.

5. The learned counsel appearing for the aggrieved-convict herein, has contended, that the verdict of conviction imposed, upon the convict-appellant for a charge drawn against him, under Section 25 of the Arms Act, 1959, is infirm, as it is based upon mis-appreciation, and, non-appreciation of evidence germane to the charge (supra).

6. On the other hand, the learned State counsel has contended with much vigor before this Court, that the verdict of conviction, as made, upon the convict by the learned trial Judge concerned, qua the afore drawn charge against him is meritworthy, and, does not require any interference being made by this Court.

7. Since the instant appeal is only confined to the verdict of conviction drawn against the aggrieved-convict qua a charge drawn against him under Section 25 of the Arms Act, 1959. Therefore, only the evidence relating to the afore drawn charge is required to be referred to, and, is obviously required to be appreciated rather for determining the validity of the drawing of the verdict of conviction, as made upon, the convict, by the learned trial Judge concerned. Consequently the evidentiary worth of Ex. PE, and, of Ex. PE/1 is to be appreciated. The reason for making a conjoint appreciation of the above exhibits, arises from the imperative legal necessity, to determine whether there exists therein, the enjoined *inter-se* similarity *inter-se*, the respectively made therein description(s) of the incriminatory pistol. Ex. PE/1 describes the incriminatory pistol to be an automatic pistol made in USA. Ex. PE is drawn by the investigating officer concerned. However, Ex. PE, is the sketch of the seized weapon, and, it describes the incriminatory pistol to be a country made pistol. Ex. PE is signed by the Inspector/Station House Officer of the Police Station concerned, and, is drawn on 05.11.2011. The contradiction *inter-se* Ex. PE/1 with Ex. PE, the latter exhibit whereof, is the sketch of the incriminatory pistol, is that, whereas Ex. PE/1 describes the incriminatory pistol to be an automatic pistol made in USA, rather, in stark contradiction thereto hence Ex. PE describes the incriminatory pistol to be a country made pistol.

8. Even though the afore *inter-se* dichotomy *inter-se* Ex. PE/1, and, Ex. PE/4 may become paled, upon the incriminatory pistol after being inserted in a sealed cloth parcel, and, whereafter it became deposited in the police *malkhana* concerned, the same, thereafter, upon its production in Court, and, upon its becoming retrieved therefrom, the above *inter-se* contradiction *inter-se* Ex. PE, and, Ex. PE/4, becoming subsumed, through the completest matchings hence *inter-se* recovery memo, and, the produced in Court weapon of offence rather making imminent surgings, and, the apposite matchings becoming echoed through Court observations, being made during the course of the recording of the deposition(s) of the PW concerned. In determining whether the afore *inter-se* dichotomy *inter-se* the description of the seized pistol, as occurring in Ex. PE/1 and, in Ex. PE/2, becoming reconciled, upon the production of the incriminatory pistol in Court, it becomes imperative, to allude to the testification of the investigating officer concerned, who stepped into the witness box as PW-7. During the course of his examination-in-chief, Court observations occur, that the seized pistol, as became produced in a sealed cloth parcel, upon, its becoming retrieved therefrom, rather being a country made pistol. The investigating officer concerned, also identified it to with one which became recovered to him, at the instance of the accused, in pursuance to a disclosure statement embodied in Ex. PE/2. However, though the afore testification requires corroboration thereto from the description of the seized pistol, as made in Ex. PE/1, inasmuch as, Ex. PE/1, tallying with its testified description, hence as a country made pistol. Nonetheless, the observations (*supra*), bear concurrence with Ex. PE, exhibit whereof is the sketch of the purportedly recovered pistol. It is not the recovery memo. Since the emanation of *inter-se* correspondence *inter-se* the seized pistol as became produced in the Court,

hence with the recovery memo borne in Ex. PE/1, would only spur from Court observations, as made qua the produced in Court pistol, inasmuch as, it being a country made pistol, rather tallying with the descriptions, as made qua thereof, in Ex. PE/1, i.e. the recovery memo, as became prepared by the investigating officer concerned. However, in Ex. PE/1 the seized pistol is described to be an automatic pistol made in USA. Therefore, when the descriptions made in the recovery memo drawn qua the recovered pistol rather is required to be completely tallying, and, matching with the descriptions thereof, as made by the Court, during the course of the recording of the testification of PW-7. Contrarily, since upon production in Court, of the seized pistol, and, after its being retrieved from the sealed parcel, the learned trial Judge concerned, during the course of recording of the testification of PW-7, has made observation(s), that it is not an automatic pistol made in USA, but is a country made pistol.

9. Therefore, when the apposite description, as made in the relevant recovery memo, as embodied in PE/1, makes emergences of stark evidence qua *inter-se* incongruity existing *inter-se* the Court observations as made (supra), upon production in Court, of the seized pistol, rather with Ex. PE/1. In sequel when the recovery memo remains unconnected with the production in Court of the seized pistol, therefore, neither recovery memo PE/1 becomes proven nor the production in Court of the country made pistol, can be assigned any incriminatory evidentiary vigor, against the convict-appellant herein, as it remains unconnected with its user, and/or, its recovery at the instance of the accused concerned, to the investigating officer concerned.

10. Therefore, the impugned verdict of conviction, and, the consequent therewith sentence(s) (supra), as drawn against the convict-appellant herein, does for the afore reason, suffers from a grave perversity, and, absurdity of gross

mis-appreciation of the evidentiary worth of exhibits (supra). In sequel, it is amenable for being quashed, and, set aside.

11. The instant appeal is allowed. The impugned verdict of conviction, and, consequent therewith sentence(s) is quashed, and, set aside. The personal and surety bonds of the convict-appellant herein are ordered to be forthwith cancelled, and, discharged. The accused is directed to be forthwith released from prison unless he is required in any other case. The case properties are ordered to be destroyed after the expiry of the period of limitation. Records be sent down forthwith.

12. Pending miscellaneous application(s), if any, stand(s), disposed of.

16.03.2022

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(SURESHWAR THAKUR)
JUDGE

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