

ASHOK KUMAR VS STATE OF HARYANA

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Present: Ashok Kumar – appellant with
Mr. Anshuman Dalal, Advocate

Mr. Brijesh Sharma, Assistant Advocate General,
Haryana.

Sandeep – complainant with
Mr. Kuldeep Choudhary, Advocate

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Compromise deed has been placed on record alongwith affidavit of Sandeep – complainant. The appellant-accused and complainant state that they are real brothers and even during the trial Sandeep- complainant, Murti Devi – mother and Sangeeta w/o Sandeep, had not supported the prosecution case that it was accused- Ashok Kumar who had fired at the complainant from his licensed revolver, causing him injury in the thigh, even then the trial Court has convicted and sentenced the appellant.

The two brothers are quite cordial and they are residing together. Therefore, the complainant does not want to take any action against the appellant. The appellant has also stated so in the Court.

Arguments on merits heard.

Vide separate judgment of even date, the appeal stands accepted.

(H.S. Madaan)
Judge

1.8.2022
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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-902-SB-2016 (O&M)

Date of decision : 01.08.2022

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Ashok Kumar

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Anshuman Dalal, Advocate
for the appellant.

Mr. Brijesh Sharma, Assistant Advocate General,
Haryana.

Mr. Kuldeep Choudhary, Advocate for the complainant.

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H. S. Madaan, J. (ORAL)

1. This appeal is directed against judgment and order dated 19.2.2016, passed by Sessions Judge, Rohtak, vide which, on conclusion of trial accused Ashok Kumar s/o Rajender, caste Brahman, resident of village Sanghi, was convicted for offences under Section 307 IPC and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.10,000/-, for offence under Section 307 IPC and in default of payment of fine to further undergo rigorous imprisonment for 6 months; he was further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of

Rs.2,000/- under Section 27 of the Arms Act and in default of payment of fine to further undergo rigorous imprisonment for a period of three months. Both the sentences were ordered to run concurrently. The period of detention already undergone by the accused was ordered to be set off from the substantive sentence. It is prayed that the appeal filed by the accused -appellant may be accepted and judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him

2. Briefly stated, facts of the case, as per the prosecution story are that accused – Ashok Kumar, is elder brother of injured complainant- Sandeep; both the brothers owned about three Bighas of land which was being cultivated by their mother Murti Devi; the accused wanted to cultivate that land himself, however, the complainant-injured Sandeep objected to that stating that during her life time, their mother would continue to cultivate the said land and after her death, they could divide that chunk of land in equal shares; the accused got infuriated and on 3.11.2014 at about 11.30 a.m. in the residential house of the parties at village Sanghi, he fired a shot at Sandeep from his licensed revolver with an intention to kill him. However, the shot hit Sandeep on his leg and he got injured; that Sandeep went towards Police Station Sadar Rohtak to lodge report regarding the incident and on the way at Bus Stand of village Jassia, he came across a Police Party lead by SI Jai Narain, which was coming to the spot on learning of the incident; that Sandeep submitted written application Exhibit PB to SI Jai Narain

(Investigating Officer), narrating the incident, which was forwarded to the Police Station for registration of the formal FIR. The Investigating Officer had appended his endorsement Exhibit PB/1 below it. Formal FIR Exhibit PV was registered. HC Ved Pal accompanied injured Sandeep to the community Health Center, (CHC) Kilo, where he was medico legally examined and medically treated. The injured was referred to Post Graduate Institute of Medical Sciences (PGIMS) Rohtak, for further management. He was examined radiologically there, which reflected a few metallic density artefacts in the left thigh. The Police Party had gone to the place of incident where a team from Forensic Science Laboratory (FSL), Rohtak Unit headed by Dr. Saroj Dahiya, had been called, which accordingly carried out necessary inspection and submitted report. Investigating Officer- SI Jai Narain, lifted a fired bullet from the spot, converted it into a sealed parcel and took it into possession vide a recovery memo. A partially burnt curtain hanging on a door in the room where the occurrence had statedly taken place was also seized and after converting it into a sealed parcel, it was taken into police possession vide recovery memo. After the injured was discharged from PGIMS, Rohtak, he produced his lower, which he was wearing at the relevant time before the Investigating Officer, which was converted into a sealed parcel and taken into police possession.

3. On that very day, the accused was produced before the Investigating Officer by one Ishwar. The accused was arrested and interrogated, during the course of which he suffered a disclosure

statement and in pursuance of that he got recovered his licensed revolver, which was loaded with 5 live cartridges, besides one empty shell. All these articles were taken into police possession, after converting those into sealed parcels. The accused also produced his arms license, 17 live cartridges and two empty shells before the police. Those were also converted into sealed parcels and were taken into police possession. During the course of investigation, fired bullet which was lifted from the spot and licensed revolver of the accused, were sent to the FSL, Madhuban. Curtain and lower of the injured-complainant were also sent there. As per the report received from FSL, Madhuban, the revolver was found to be in working condition and the fired bullet was found to have been fired from the said revolver. The hole in the curtain was opined to be caused by the bullet.

4. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate at Rohtak. Learned Magistrate, complied with provisions of Section 207 Cr.P.C. by supplying the copies of documents, relied upon in the challan, to the accused, free of cost, and then finding that offence under Section 307 IPC is exclusively triable by the Court of Sessions, committed the case to the court of learned Sessions Judge, Rohtak. On receipt of the case and finding a prima facie case, charge for offence under Section 307 IPC and Section 27 of the Arms Act was framed against the accused, to which he pleaded not guilty and claimed trial.

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

PW-1 Murti Devi, mother of injured and accused and an eye witness of the incident, did not toe the line of prosecution, with regard to accused Ashok having fired at injured-Sandeep from his licensed recovered, hitting him on his left thigh, rather she stated that she was not present at home at the relevant time and could not tell as to who had inflicted fire arm injuries on the person of Sandeep. She stated that her son Ashok had not caused any injury to Sandeep. She was declared a hostile witness at the request of learned Public Prosecutor and he was given an opportunity to cross examine such witness.

PW-2 Sandeep – Injured did not fair any better and did not support the prosecution story at all. Rather he resiled from the statement made by him to the police by stating that on 3.11.2014, at about 11 am, he was taking meals at his home and two un-known persons entered his house with an intention to commit some crime and when he enquired from them their names and address, they started abusing him. He rushed towards the almirah, where his accused brother had kept his licensed revolver. Both the boys came behind him and caught hold of him and took out the licensed revolver of his brother and fired a shot, which hit him on his thigh; he raised alarm, which attracted his wife and another person from the neighbourhood. On their arrival, both the strangers/intruders left the spot leaving the revolver there. The said witness was also got

declared hostile by the Public Prosecutor, and he was permitted to cross examine him. The Public Prosecutor availed of the opportunity. However nothing incriminating could be extracted from his mouth.

PW-3 Yogender Singh, Record Keeper, PGIMS Rohtak, who had produced the treatment record of the injured-Sandeep, happened to be a formal witness only.

PW-5 HC Sumit Kumar had deposed about preparing of scaled site plan on the pointing out of injured -complainant. He was also a formal witness, so was PW-7 Vijay Kumar, Patwari, Halqa Sanghi, who on an application presented by the police, had submitted his report Exhibit PJ/1 to the effect that as per Jamabandi for the year 2010-2011, the land measuring 10 kanals 18 marlas was owned by Rajender father of the accused and injured and the dispute was between the two brothers over that land.

PW-8 Dr. Vikas, Medical Officer, CHC, Kilo, who had examined the injured, proved such report Exhibit PK. He stated that on examination following injuries were found on his person:-

1. Black coloured circular wound of the size
5 x 5 cm. around middle of left thigh.
Synging of hair and tattooing were present
around the wound. Reddish colour around
the wound was also present.
2. Black coloured small wound of the size
0.25 x 0.25 cm near injury No.1.
3. Reddish abrasion of the size 0.5 x 0.5 cm,

10 cm medial to injury No.1.

PW-9 ASI Ramesh Kumar, deposed regarding his taking of application Exhibit PB presented by the injured to the Police Station for registration of a case with endorsement Exhibit PB/1 by SI Jai Narain. He further deposed about the accused having suffered a disclosure statement Exhibit PM and thereafter getting the revolver recovered from his possession in pursuance of that statement. He testified that the accused had produced his arms license Exhibit PP, 17 live cartridges and 2 empty shells, which were taken into police possession vide memo Exhibit PQ after converting those into separate sealed parcels.

PW-10 Dr. Kiran who had examined the injured radiologically, stated that she had seen a few metallic density artefacts in the left thigh of the injured. She proved her report Exhibit PR in that regard.

PW-11 Inspector Gajender Singh, stated that on completion of investigation in this case he had prepared final report for filing that in the court.

PW-12 HC Vedpal, a witness of the recovery, stated that in his presence, the Investigating Officer had lifted the fired bullet Exhibit MO-4, curtain Exhibit MO-5 from the scene of crime and the injured had produced his lower Exhibit MO-6. All those articles had been converted into separate sealed parcels and were taken into possession vide memos Exhibit PF, PD and PE, respectively.

PW-13 Jasbir, Clerk from the office of District

Magistrate, Rohtak, verified the genuineness of the arms license issued to the accused.

PW-14 SI Kulbir Singh, Incharge of Malkhana of Police Station , Sadar Rohtak, deposed regarding the deposit of case property with him. He further deposed that on 3.11.2014 he had handed over those parcels to Constable Rohtas for depositing the same with FSL, Madhuban. He tendered in evidence his affidavit Exhibit PU. PW-4 Constable Rohtas, a formal witness, who had taken the sealed parcels to FSL Madhuban, tendered in evidence his affidavit Exhibit PG.

PW-15 Samunder Singh, who had recorded the formal FIR on receipt of Ruqa in that regard stated that after registration of the FIR, special reports had been sent to Illaqa Magistrate and other senior officers through Constable Sunita Devi.

PW-16 SI Jai Narian – Investigating Officer of the case, deposed regarding the investigation conducted by him.

PW-17 Sangeeta – wife of injured Sandeep had also not supported the prosecution version at all and she too was declared a hostile witness with permission granted to the Public Prosecutor to cross examine her. In her cross examination she stated that neither the accused had suffered any disclosure statement Exhibit PM in her presence nor in pursuance of said disclosure statement had got effected any recovery, rather she stated that she had come to the spot after the occurrence was over and she had seen her husband lying injured at the first floor of the house.

With that the prosecution evidence got concluded.

6. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him, but he denied the allegations, pleading innocence. The accused did not lead any evidence in defence.

7. After hearing the arguments, learned trial Court convicted and sentenced the accused as detailed above, which left him aggrieved and he has filed the present appeal. Notice of the appeal was given to the State. The appeal was admitted for regular hearing vide order dated 8.11.2016. Since the imprisonment awarded to the accused was three years only and his sentence has been suspended by the trial Court after pronouncement of judgment of conviction and order of sentence, that order was ordered to continue. Now the appeal has come up for final hearing.

8. I have heard learned counsel for the appellant, learned State counsel and learned counsel for the complainant. besides going through the record.

9. In this case, the crucial witnesses for the prosecution happened to be PW-2 Sandeep – Injured, as well as PW-1 Murti Devi and PW-17 Sangeeta, who according to the prosecution case had witnessed the incident. But none of those PWs supported the prosecution story and did not say anything incriminating against the accused Ashok Kumar. All of them were declared hostile witnesses at the instance of Public Prosecutor and the Public Prosecutor was

granted opportunities to cross examine such PWs , which he availed of, but without much success. That cross examination conducted by the Public Prosecutor failed to extract anything favourable to the prosecution and incriminating qua the accused. Thus all these three witnesses having let the prosecution down, a major blow was dealt to the prosecution case. The trial Court has although noticed these facts, but then relying upon the circumstantial evidence, went on to give a finding that the case of the prosecution against the accused stood proved conclusively and affirmatively. Such conclusion reached by the trial Court seems to have been influenced much by the fact that as per report from FSL, Madhuban, the bullet was opined to have been fired from the the licensed revolver of accused and that bullet/empty shell had been recovered from the place of incident and the hole in the curtain also opined to have been caused therewith. May it be so, but unless the prosecution brought sufficient cogent and reliable evidence on the file to show that it was accused Ashok Kumar who had fired a shot from his licensed revolver at his own brother Sandeep with an intention to kill him, neither charge for offence under Section 307 IPC nor offence under Section 27 of the Arms Act, can be said to have been proved against him. The eye witnesses, including the star witness of the prosecution, Sandeep – injured, having not supported the prosecution story, the trial Court was not justified in returning the finding of guilt against the accused and the judgment of conviction and consequent order of sentence passed against the appellant cannot be said to be the result of proper

appraisal of evidence and correct interpretation of law. As per the criminal jurisprudence applicable in our country, the prosecution is required to prove its charge beyond the shadow of reasonable doubt and benefit of doubt goes to the accused. Here from the evidence adduced by the prosecution, more than a reasonable doubt arose in the mind as to whether the incident had taken place as claimed by the prosecution or that the accused had committed any offence.

10. Thus the impugned judgment cannot stand the judicial scrutiny and is liable to be set aside. The appeal has got merit and the same is accepted.

11. Resultantly, the appellant is acquitted of the charge framed against him.

01.08.2022
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(H.S. Madaan)
Judge

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