

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2324-2022 (O&M)
Date of decision: 18.11.2022

Ramesh Kumar @ Lilu

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navjot Singh, Advocate (legal aid counsel)
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

CRM-43367-2022

For the reasons stated in the application, same is allowed and
delay of 48 days in filing the appeal is condoned.

CRM stands disposed of.

CRA-S-2324-2022

Prayer in this appeal is for setting aside the judgment of
conviction and order of sentence dated 27.07.2022, vide which appellant
Ramesh Kumar @ Lilu and co-accused Lal Bahadur @ Vikas were acquitted

of the charges under Sections 323, 307, 506 of the Indian Penal Code (for short 'IPC'), however, the appellant was convicted under Section 25 of Arms Act and was sentenced to undergo R.I. for a period of two years with a fine of Rs.1,000/- for the commission of said offence and in default of payment of fine, to undergo further R.I. for a period of 10 days.

Brief facts of the case are that on 27.08.2018, SI Jagdish Ram along with EASI Jai Lal, EASI Makhan Lal was present in Bhattu Mandi on patrol duty and he received a telephonic call from Police Station Bhattu Kalan regarding admission of injured Satbir Singh son of Lal Chand, resident of Thuian in General Hospital, Fatehabad, whereupon SI Jagdish Ram along with fellow officials reached there and after obtaining medical ruqa and MLR from Police Post General Hospital, Fatehabad, he sought the opinion of the doctor, who declared the injured unfit to make statement. Similarly, regarding admission of injured Sharwan son of Shamsher Singh, resident of Thuiyan in Beniwal Hospital, Bhattu Mandi, he sought the opinion of doctor, who declared the injured unfit for statement. Thereafter, on 28.08.2018, SI Jagdish Ram recorded statement of injured Satbir Singh Ex.P3, who stated that on 27.08.2018, he and Sharwan were irrigating the fields with tubewell water. At about 03:00 pm, Ramesh Kumar @ Lilu and his father Rattan, neighbours of their fields came and said that on that date, they will take the water, upon which the complainant said that after their turn, they may take the water, upon which Ramesh Kumar @ Lilu picked a

brick and hit the same on the waist and arm of Sharwan and then Ramesh Kumar and his father Rattan Singh left from there. Thereafter, at about 04:00 PM, Ramesh Kumar @ Lilu and Vikas son of Teja Singh came on a motorcycle. Vikas fired in air with a countrymade pistol and on his instigation, Ramesh, with the intention to kill him, fired a shot and the bullet hit him on the left side of his neck, upon which he fell down. He and Sharwan cried and on hearing their noise, Mohar Singh son of Jagdish and others came and on seeing them, the assailants fled away from the spot with their motorcycle, while extending threat to kill them on finding opportunity in future. Mohar Singh, after making arrangement of a vehicle, got them admitted in the hospital. He prayed for taking legal action against the assailants. On this statement, case was registered under Sections 323, 307, 285, 506 read with Section 34 of IPC and Section 25/54/59 of Arms Act. During investigation, accused Ramesh @ Lilu again suffered disclosure statement Ex.P24, in pursuance of which, he got recovered one countrymade pistol, the khaka of said pistol Ex.P25 was prepared and taken into police possession vide recovery memo Ex.P26. Rough site plan of recovery of pistol Ex.P27 was also prepared. In verification of investigation, Rattan Singh and Partap Singh were found innocent. After completion of other usual formalities of investigation, supplementary report under Section 173 Cr.P.C. was submitted against accused Vikas in the Court. After supplying copies of challan to accused persons free of costs in view of provisions of Section 207

Cr.P.C., the case was committed to the Court of Sessions by the learned Illaqa Magistrate.

Thereafter, the prosecution, in support of its case, examined 17 PWs. The accused were examined under Section 313 Cr.P.C. and they did not adduce any evidence in defence. The trial Court, thereafter, on appreciation of the evidence, recorded the following findings: -

“It appears that there is some compromise between the accused persons and the injured witnesses outside the Court and that is why the material private witnesses (PW5 and PW6) of the prosecution are not supporting the cause of prosecution. Whatever may be the reason, for not supporting the cause of prosecution, this Court is merely to assess the evidence as it has been led before it in a proper legal perspective and there is no denying fact that these star and material witnesses of the prosecution have not served the cause of prosecution regarding charges under Sections 323, 307 and 506 read with Section 34 of IPC. Learned Public Prosecutor for the State has made earnest efforts while cross-examining its own witnesses in order to elicit truth but the witnesses remained firm on their stance and not supported the prosecution case at all. It is established that the accused persons facing trial have not caused any injury to PW5 and PW6. It is also well established that the accused

persons facing trial have also not given any threat to Satbir Singh (PW5) and Sharwan (PW6).

This being so, the only irresistible conclusion is that the prosecution has utterly failed to bring home the guilt against both the accused persons namely Ramesh @ Lilu and Lal Bahadur @ Vikas with respect to charges framed against them for the offence punishable under Section 323, 307 and 506 read with Section 34 of IPC.”

However, with regard to charge under Section 25 of Arms Act, the trial Court convicted the appellant on the basis of statements of PW15 & PW17.

The operative part of the impugned judgment reads as under: -

“Now coming to the charge under Section 25 of the Arms Act is concerned, to prove the same, the prosecution has relied upon recovery memo (Ex.P26). From perusal of said recovery memo, it is clear that countrymade pistol .315 bore was recovered from accused Ramesh @ Lilu on dated 18.11.2018 in the presence of SI Jagdish Ram (PW17) and HC Poonam Chand (PW15). SI Jagdish Ram when appeared into the witness box as PW17 has stated that on 18.11.2018, Constable Poonam Chand remained associated with him in the investigation of this case. He further deposed that on interrogation, accused Ramesh @ Lilu suffered

his disclosure statement (Ex.P22) regarding his involvement in the present case. He further deposed that during police remand accused Ramesh @ Lilu again suffered his disclosure statement (Ex.P24) and as per his said disclosure statement, he got recovered one pistol .315 bore from bed situated in the room in his house. He has further deposed that said pistol was taken into police possession vide recovery memo (Ex.P26) which was signed by accused and witnessed by Constable Poonam Chand. HC Poonam Chand also supported the said version of SI Jagdish Ram (PW17) on the same lines. Further, as per case of prosecution, accused Ramesh @ Lilu failed to produce any license regarding possession of said pistol .315 bore. Further as per FSL report Ex.PZ, the countrymade pistol which has been recovered from accused Ramesh @ Lilu vide recovery memo Ex.P26 is a fire arm as defined in Arms Act, 1959 and its fire mechanism was found in working order. Further, as per FSL report, .315 bore fired cartridge has been found fired from countrymade pistol (which has been recovered from accused Ramesh @ Lilu vide recovery memo Ex.P26) and not from any other fire arm. It means that the countrymade pistol which was recovered from the accused Ramesh @ Lilu on 18.11.2018 is a fire arm as per provisions of Arms Act, 1959 and it was in

working condition. Further, the prosecution has proved required sanction order (Ex.P20). Hence, the prosecution has succeeded to prove the fact that on dated 18.11.2018, one countrymade pistol of .315 bore was recovered from the possession of accused Ramesh @ Lilu without any permit or license. So far as the argument of learned defence counsel regarding contradiction in the testimonies of material witnesses is concerned, HC Poonam Chand (PW15) and SI Jagdish Ram (PW17) are not alleged to have any animus or hostility against accused Ramesh @ Lilu prior to the incident and therefore, no motive can be ascribed to them to testify falsely in this case. There is no material contradiction in their testimonies. Certain discrepancies have also been pointed out by learned defence counsels in their statements. While appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of prosecution, must not prompt the court to reject the evidence in its entirety. Irrelevant details do not corrode the credibility of a witness and should be ignored. The court has to ascertain whether the evidence, read as a whole, appears to have a ring of truth. Once that impression is formed, it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw back

and infirmities pointed out in the evidence as a whole and weigh them to find out whether it is against the general tenor of the evidence given by the witnesses. The court is not supposed to give undue importance to contradictions and discrepancies which do not go to the root of the matter nor shake the basic version of the prosecution case. The evidence of the witness must be read as a whole. Police officials are involved in investigations day in and day out. A witness cannot be expected to possess a photographic memory and to recall the details of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be tuned to observe all the details. The court also cannot lose sight of the fact that the witnesses were recorded after some time of the incident. Human memory has its own shortcomings and minor discrepancies are bound to occur in the statements of truthful witnesses. This is a feature from which no criminal case is free. There may be discrepancies here and contradictions there, but so far as the time, place and manner of the recovery are concerned, statements of the witnesses are found to be consistent, faith inspiring and free from doubt. After a careful

and conscious scrutiny, court is of the view that the statements of crucial witnesses namely HC Poonam Chand (PW15) and SI Jagdish Ram (PW17) are cogent convincing and do not suffer from any infirmity the benefit of which accused can derive. As such, the contention in this regard raised by learned defence counsels is hereby repelled.

Learned defence counsel has argued that recovery memo (Ex.P26) cannot be relied upon because no independent witness was joined at that time by the investigation officer. However, this plea of learned defence counsel does not hold water because suffice, it to say that people are generally averse to join the police and depose in favour of the prosecution, as they are afraid of the fact that joining the police and deposing in favour of the prosecution may expose them to serious consequences. Moreover, as already noticed that PW17 SI Jagdish Ram is not alleged to have any ill-will or hostility against the accused prior to the day of the recovery. So, the contention raised by learned defence counsel to the effect that evidence of PW17 SI Jagdish Ram cannot be relied upon for want of corroboration by the evidence of independent witness, is repelled.

This being so, the only irresistible conclusion is that the

*prosecution has utterly failed to bring home guilt against the accused namely; Ramesh @ Lilu and Lal Bahadur @ Vikas with respect to charges framed against them for commission of offences punishable under sections 323, 307 and 506 of the IPC read with section 34 of IPC. Thus, benefit of doubt is extended to both the accused persons, facing trial. They are accordingly, acquitted of the charges for offence punishable under sections 323, 307 and 506 of the IPC read with section 34 of IPC by extending them benefit of doubt. Bail bond of accused Lal Bahadur @ Vikas stand discharged and he is directed to furnish bail bonds in compliance of provisions under Section 437-A of NDPS Act. **However, the prosecution has proved its case against accused Ramesh @ Lilu beyond shadow of reasonable doubt, under section 25 of Arms Act, 1959. Accordingly, accused Ramesh @ Lilu is hereby held guilty and convicted under section 25 of the Arms Act, 1959. Let accused Ramesh @ Lilu be heard on the quantum of sentence.***

Learned counsel for the appellant has submitted that the appellant is in custody for the last 06 months and 20 days. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in **Sumersinh Umedsinh Rajput @ Sumersinh Vs. State of Gujarat, 2008 (1) Crimes 57**, wherein it is held that where the accused is facing charge under Section

307 IPC read with Section 25 of Arms Act and if the prosecution failed to prove the substantive charge under Section 307 IPC, charge under Section 25 of Arms Act would also fail. It is thus argued that once the trial Court has acquitted both the accused under Sections 323, 307, 506 read with Section 34 IPC, on appreciation of the evidence that PW5 & PW6 have not supported the prosecution version, as noticed above, conviction of the appellant under Section 25 of Arms Act is also liable to be set aside, in view of judgment of the Hon'ble Supreme Court in **Sumersinh Umedsinh Rajput @ Sumersinh's** case (supra).

In reply, learned State counsel could not dispute that till date, no appeal has been filed by the State challenging acquittal of the appellant under Section 307 IPC, however, it is submitted that the trial Court has recorded a finding that in view of statements of PW15 & PW17, the appellant was found in possession of the weapon without there being any proper licence, therefore, the trial Court has rightly held the appellant guilty of the offence punishable under Section 25 of Arms Act and sentenced him to undergo R.I. for a period of two years.

After hearing learned counsel for the parties, I find merit in the present appeal.

Admittedly, appellant Ramesh Kumar @ Lilu and co-accused Lala Bahadur @ Vikas stand acquitted of the charges under Sections 323, 307, 34 IPC, therefore, in view of judgment of the Hon'ble Supreme Court in

Sumersinbh Umedsinh Rajput @ Sumersinh's case (supra), charge under Section 25 of Arms Act qua the appellant is not sustainable. Even otherwise, the appellant has already undergone 06 months and 20 days of sentence, which could be reduced.

Accordingly, the present appeal is allowed and the impugned judgment of conviction and order of sentence dated 27.07.2022 passed by the trial Court, convicting the appellant under Section 25 of Arms Act, is set aside and the appellant is acquitted of the charge under Section 25 of Arms Act.

Since the appellant is in custody, he be released forthwith, if not required in any other case.

[ARVIND SINGH SANGWAN]
JUDGE

18.11.2022
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No