

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

206

2022:PHHC:173577-DB

CRA-AD-35-2020

Date of Decision: October 10th, 2022

Krishan Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Ms. Shruti Mandhotra, Advocate
for Mr. Kunal Dawar, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Through this appeal, the complainant has approached this Court challenging the judgment dated 29.10.2019 passed by the Additional Sessions Judge, Palwal, acquitting respondent No.2 in FIR No.658 dated 31.08.2018 registered under Section 307 IPC and 25 of Arms Act.

2. It is the contention of learned counsel for the appellant that the trial Court has totally overlooked the aspect of recovery of licensed double barrel gun of the respondent and the medical evidence apart from ignoring the report of FSL Exhibit PX from the Ballistic Expert, which corroborate the aspect of not only the use of the gun, the offence having taken place and the injuries received by the appellant-complainant Krishan Kumar and his father Vijay Singh. It is submitted that merely because the Investigating Officer had not been examined by the prosecution, the case of the prosecution cannot be disbelieved. The double barrel gun was recovered from the possession of private respondent No.2 and the old enmity between the parties cannot be taken as a ground for falsely implicating respondent No.2 by the appellant-complainant. It is on this basis that the

counsel submits that the present appeal be allowed and respondent No.2 be convicted and sentenced by setting aside the impugned judgment of acquittal.

3. We have considered the submissions as have been made by the learned counsel for the appellant and with her assistance, have gone through the judgment passed by the trial Court as also the evidence, which has been produced by the counsel in Court during hearing. On considering the same, we are of the considered view that there is no illegality or flaw in the conclusions drawn by the trial Court leading to the acquittal of private respondent No.2. The reasoning as has been assigned is fully justified on proper appreciation of the evidence led by the parties.

4. Briefly the facts are that an FIR No.658 was registered on 31.08.2018 under Section 307 IPC and Section 25 of the Arms Act, wherein it was alleged that on 30.08.2018 in the evening, complainant Krishan Kumar and his father Vijay Singh were sleeping in the veranda of the room of his house. At about 9:00 PM, respondent No.2 fired from his licensed gun from his house. While abusing, the second shot was fired aiming at the gate of the house of the complainant. Complainant and others stood up when the third shot was fired by respondent No.2 from his double barrel gun with an intention to kill and its pellets hit the back of the complainant and on the left arm of his father Vijay Singh. Accused fled from the spot and thereafter his elder brother Dinesh also came, who witnessed the crime. His uncle Karan Singh came there, who took the complainant and his father to the hospital, where medical treatment was provided. Complaint Exhibit PW1/A was submitted by the complainant to ASI Satbir Singh for taking action in the matter. Respondent No.2 was arrested on 31.08.2018 and he

suffered his disclosure statement confessing his guilt in the matter and got recovered his double barrel licensed gun and its licence from the room of his house in the village, which was taken in possession as Exhibit PW4/B.

5. Challan was presented and the Judicial Magistrate 1st Class, Palwal, committed the case to the Court of Sessions on 12.10.2018, which was assigned by the Sessions Judge to the Additional District Judge. Charges were framed on 30.10.2018 against respondent No.2-accused under Section 307 IPC and Section 25 of the Arms Act, to which the accused pleaded not guilty and claimed trial. Evidence was led by the prosecution as well as the defence evidence was led by the accused-respondent No.2.

6. The learned trial Court has found discrepancies in the statement, which have been given by the complainant, who appeared as PW-1 as also PW-2, the father of the complainant. In the trial Court, PW-1 stated that the first two shots did not hit anywhere at his house and it was fired from a distance of 20 metres. He has not been able to point out as to the said shots were fired towards any particular member of the complainant's family. However, with regard to the third shot as fired, the same also did not leave any mark of pellets at any place in his house nor did any of the pellets were found stuck in the body of the complainant or his father. He further stated that he did not hand over the clothes bearing holes of the pellets either to the doctor or the police, although he admitted that it was smeared with blood. PW-1 has further stated that his uncle came after the accused had already run away, whereas in the FIR it is mentioned that his uncle Karan Singh was an eyewitness. The factum of there being a dispute between the parties over the passage stands admitted.

7. As regards PW-2 Vijay Singh is concerned, who is the father of

the complainant, the factum of previous enmity with the respondent-accused has been admitted. He has supported the version of the prosecution with regard to the three shots having been fired, however, in the cross-examination, he claimed that police never recorded his statement qua the incident. He has contradicted PW-1 by deposing that they slept at 9:00 PM and woke up from the sleep after the second shot. If that be so, how could he make a statement with regard to the mode and manner of firing of the first shot by the accused from his house and the second shot after coming to the house of the complainant and then firing at the gate of the complainant's house. The factum that he had aimed on the particular person while firing his third shot has also been not specified. Although PW-1 has stated that none of the pellets had hit his house in all the three shots but PW-2 has submitted that the pellets were embodied in the door frame. The factum that the police party had come to the house and inspected the scene crime, the complainant and he himself were in the hospital. If that be so, the Investigating Officer i.e. ASI Satbir Singh having not been examined, the rough site plan of the place of occurrence, which is said to have been exhibited at their instance, cannot be proved to be authentic one. Strangely, he has stated in the cross-examination that their clothes were not smeared with blood. He also stated that he had not noticed any empty cartridge lying at the spot. According to this witness, the occurrence lasted two minutes but PW-1 had given this period to be 15-20 minutes. As regards the distance from where the shots were fired is concerned, PW-2 has mentioned the said distance as 20 feet from them, whereas this distance was mentioned by PW-2 as 20 metres.

8. As regards the medical evidence is concerned, PW-6 Dr. Gagan

from Government Hospital, Palwal, has proved the MLRs of both the complainant as well as his father. He has testified that the Investigating Officer did not seek his opinion during investigation with regard to the weapon with which the injuries were caused. Above all, he has clarified that the injuries, which have been suffered by the appellant-complainant and his father PW-1 and PW-2 by stating that after seeing the CT scan report dated 31.08.2018 and FSL report Exhibit PX/1, his opinion was that there were no firearm injury on the person of the injured persons. Possibility of the injuries suffered by the complainant and his father by broken piece of glass from a fall could not be ruled out.

9. Apart from this, the respondent-accused has led evidence in defence and has produced DW-1 Ram Dayal, a former Sarpanch of village, who has given details with regard to the previous disputes between the parties, the compromise which was arrived at between the parties in the Police Station Sadar, Palwal, where he was also a witness. He also stated that the complainant party had barged into the house of the accused, who in order to disperse the crowd of complainant party, opened fire in air from his licensed weapon and that his house is adjoining to the house of the accused and the complainant, who after hearing gunshot sounds, came to the scene of occurrence within a minute and saw the father of the complainant and others going back to their house carrying *dandas*. He further stated that no one was injured in this shootout.

10. The trial Court has referred to the FSL report Exhibit PX of Ballistic Expert, where the expert could not detect any gunshot residue on the swabs of wounds on both the injured, which was sent by the Investigating Officer. That also rules out the possibility of gunshot injuries

on the person of PW-1 and PW-2.

11. The non-production of the Investigating Officer has led to non-proving of the rough site plan of the place of occurrence and certain other vital aspects regarding the investigation. Apart from this, no independent witness from the locality has been joined in the investigation, especially when it was known that there was already dispute between the parties, which would have lent additional strength to the credibility of the prosecution case.

12. All these contradictions and flaws, as have been pointed out by the trial Court persuades us to accept the view, as has been taken by the trial Court and do not find any ground to take a different view from the one as has been drawn by the trial Court on appreciation of the evidence.

13. In view of the above, the impugned judgment dated 29.10.2019 passed by the Additional Sessions Judge, Palwal, acquitting respondent No.2 of the charges framed against him is upheld and this appeal stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 10th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No