

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

363

CRA-S-1282-SB-2004
Decided on : 10.01.2023

Narender Singh
Versus
State of Haryana
... Appellant(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Raman Chawla, Advocate
for the appellant(s).
Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J.

1. By way of present appeal, appellant – Narender Singh s/o Balu Ram, has challenged the judgment of conviction and order of sentence dated 12.06.2004, passed by Ld. Addl. Sessions Judge, Hisar (in short, ‘Ld. Trial Court’), in Sessions Case No.08 of 2002, dated 05.03.2002, arising from FIR No.313, dated 21.11.2001, under Sections 307 of IPC & 25 of the Arms Act, registered at Police Station Adampur, District Hisar.
2. Accused-appellant was held guilty for commission of offences punishable under Section 307 of IPC and Section 25 of the Arms Act, and was ordered to undergo sentence(s), as detailed in the following table:

Name of Convict	Under Section	Sentence	Fine	In Default
Narender Singh	307 IPC	03 years RI	Rs.5000/-	03 months SI
	25 of Arms Act	01 year RI	Rs. 1000/-	01 month SI

All the substantive sentences were ordered to run concurrently.

However, the period of detention already undergone by the accused-

appellant, if any, was ordered to be set off against the substantive sentence.

3. Case framed up by the prosecution is that on 21.11.2022, a medical ruqa along with MLR of injured Bansilal s/o Bal Mukund was received in the Police Station Adampur. SI/SHO Perhalad Singh along with other police officials reached to the Govt. Hospital, Adampur, and there recorded statement of injured Bansilal. Said statement as reproduced in the impugned judgment, says as under:-

“Complainant Bansilal in his statement Ex.P12 stated that he is an agriculturist by occupation and they are three brothers and the elder brother of the father of the complainant had expired about 20-22 years ago and fields of Narender is adjoining the fields of the complainant and the complainant is having the water turn (Warabandi) first and then after the water turn is that of Narender accused. There is litigation in between the complainant and Narender accused regarding one acre of land. On the fateful day the complainant has called Narender son of Lakhpatti Aunt of the complainant for digging the well and the water turn of the complainant was also for the same day from 3.00 p.m. to 4.00 p.m. For the last irrigation turn the complainant utilized the water for the turn of Banwari son of Khayali and on the fateful day the complainant gave water of his turn to said Banwari. About 4.00 p.m. the complainant, his brother Atma Ram and Narender son of the aunt of the complainant were present in the field and Narender accused came on a motor cycle and stopped his motor cycle at a distance of one acre and from a distance of 50 yards Narender

accused fired in the air with his pistol and after firing in air Narender came near to the complainant and asked the complainant why he has given water turn to Banwari and after saying so the accused Narender fired at the complainant which hit on the left arm. After the firing the complainant and other people present there tried to caught the Narender, but he ran away along with pistol and then after the complainant was shifted to Hospital by Narender son of the Aunt of the complainant and brother of the complainant Atma Ram. On his statement of the complainant the instant case was registered and on completion of the formalities of the investigation, challan was put up in the Court of Illaqa Magistrate, Hisar for trial of the accused under Section 307 of Indian Penal Code and 25 of the Arms Act.”

4. Subsequently, after committing of the case to the Court of Sessions, charges were framed on 13.03.2002, for commission of offence punishable under Section 307 of IPC, and Section 25 of the Arms Act. Prosecution examined total 11 witnesses, i.e. Daya Nand MHC (PW1), C. Ram Phal (PW2), Krishan Kumar Reader (PW3), Dr. T.S. Bagri (PW4), Bansi Lal – complainant (PW5), ASI Santa Singh (PW6), Prem Kumar (PW7), Narender Kumar (PW8), Atma Ram (PW9), SI Perhalad Singh (PW10), and HC Sher Singh (PW11).

As documentary evidences, certain statements, recovery memos, and other documents were made available on record as Ex.P1 to Ex.P30.

5. Prime and only one argument of the appellant in the present

appeal is that all the star witnesses of the prosecution, i.e. complainant/injured Bansilal, who appeared as PW5, Narender Kumar s/o Nihal Singh, who appeared as PW8, and Atma Ram, who appeared as PW9, have not supported the version of prosecution in its entirety, and thus, they were declared hostile. While saying so, counsel for the appellant reads out examination-in-chief of all these three witnesses, and same is reproduced herein below:-

“PW5 – Bansilal

On 21.11.2001 at about 4.00/4.30 P.M. I was present in my field. At that time I was alone in my field. I heard sound of firing and some pellets also hit on my left arm. The person who fired the shot was not identified by me. After firing the shot the assailant ran away. After sometime many persons from my village came and they took me to Civil Hospital, Adampur. I could not recognize the person who fired at me. The accused present in the Court did not cause any injury with fire arm to me. (At this stage, learned Public Prosecutor requests that the witness is suppressing the truth and has resiled from his previous statement and be declared hostile and that he may be allowed to cross-examine the witness. Heard. Request allowed).

xx xxx xx xxx”

“PW8 – Narender Kumar

I do not know anything about the present case. On 21.11.2001 I was present in my house and came to know that some one had caused injury to Bansilal and thereafter I came

to Hospital Mandi Adampur. Nothing was recovered in my presence by the police. Though I had to sign on blank papers on the asking of police under threat. The accused Narender had not caused any fire arm injury on the person of Bansilal in my presence. (At this stage, learned Public Prosecutor states that the witness is concealing the true facts and he be declared hostile and that he may be allowed to cross-examine the witness. Heard. Request allowed.)”

“PW9 – Atma Ram

I do not know anything about the present case. I was present in my house on 21.11.2001 and came to know that some one had fired at Bansilal who was working in his field. On this I went to our fields and shifted Bansilal to Govt. Hospital, Mandi Adampur. Accused Narender present in the Court had not fired at Bansilal in my presence. (At this stage, learned Public Prosecutor states that the witness is concealing the true facts and he be declared hostile and that he may be allowed to cross-examine the witness. Heard. Request allowed.)

6. Undoubtedly, statements of said witnesses cannot be of any help to the prosecution, still another set of material is available on record, i.e. statement of SI Perhalad Singh (PW10), who had recorded initial statement of the injured – Bansilal, and also effected recovery of clothes of the injured. In the process of investigation, said witness proved recovery of empty cartridge as Ex.MO-3, as also country-made pistol which was got recovered by accused, as Ex.MO-4. Said witness lastly proved filing of report under Section 173 Cr.P.C. Examination-in-chief of SI Perhalad Singh

(PW10), reads as under:-

“On 21.11.2001, I was posted as S.I./S.H.O. P.S. Adampur. On that day on receipt of rukka alongwith MLR of Bansi Lal alongwith one shirt. I prepared seizure memo of shirt of Bansi Lal Ex.P-22 which was attested by Sher Singh. After converting of the same in a sealed parcel with my seal bearing instruction PS. The seal after use and retaining its specimen was handed over to PW-2 Sher Singh.

Thereafter I went to hospital at Adampur and recorded the statement of Bansi Lal Ex.P-12 which was signed by him and the same was attested by me. Thereafter I made the endorsement Ex.P-23 and sent the same through C. Krishan Kumar for registration of case, on which FIR P-13 was recorded by Satbir Singh ASI. After that I recorded the statements of Pws Atma Ram u/s 161 Cr.P.C.

On 22.11.2001 I went to the spot and prepared the site plan on point out of Narender PW which is Ex.P-24 with correct marginal notes. I had also taken into possession the motorcycle a Hero Honda being without number plate bearing chassis number 01F-13F-048806 vide the seizure Ex.P-20 which was attested by PW Narender S/O Dayal Singh. I also recorded the statement of Narender.

On 1.12.2001 I was present in the G.H. Adampur and medical officer produced before me a sealed parcel containing piece of bullet duly sealed in by Medical Officer along with a sealed envelope, which were taken into possession and seizure

memo is Ex.P-25 which was attested by H.C. Sher Singh. I also recorded the statement of H.C. Sher Singh. Thereafter, I received a secret information about the Narender accused at bus stand Adam Pur. Accordingly, I went there and arrested him. After the arrest of the accused he was produced before the Court and obtained one day police remand. On interrogation he made disclosure statement Ex.P-26 to the effect that a pistol and empty cartridge had been concealed in bath room in the residence of his friend Balbir Singh at Delhi. No other person had any information or knowledge of the concealment, and the same could be got recovered. Disclosure statement Ex.P-26 was recorded and the same was signed by the accused Narender at point A and was also attested by Pws Bhkuha Ram and Inder Pal. On the basis of the disclosure statement the accused produced before the Magistrate and two days remand was allowed in order to effect the recovery. The accused on 31.12.2001 again made disclosure statement Ex.P-26 to the effect that the pistol which was used in the commission of offence on 21.11.2001 by him for firing at Bansi Lal, had been concealed alongwith empty cartridge wrapped in a polythene in a cow shade in the residential house, the same could be got recovered by pointing out the place and no other person had any information and knowledge about it. Ex.P-16 was signed by the accused Narender in token of its correctness and same was attested by PW Prem Kumar and Sher Singh.

On the same day the accused led the police party to effect

the recovery of pistol and empty cartridge in pursuance of his disclosure statement to the place of concealment and got recovered the countrymade pistol of 315 bore alongwith empty cartridge of the same bore. I prepared the sketch of the pistol Ex.P-18 and converted the same into a sealed parcel and sealed the same with seal bearing PSS. And was taken into possession vide seizure memo Ex.P-17. The cartridge was also made in to separate parcel and was sealed with seal of PS and also taken into possession through recovery memo Ex.P-17. The seizure memo was attested by Prem Kumar and Sher Singh. I also recorded the statement of the PWS. I also recorded the statement of PWS. U/S 161 Cr.P.C. Rough site plan of the place of recovery P-27 was prepared by me with correct marginal notes. Thereafter I returned to police sation and deposited the case property with MHC and the accused was lodged in police lock up. On 24.12.01 I moved an application Ex.P-8, before Medical Office, G.H. Adampur for obtaining the nature of injuries sustained by injured Bansil Lal. On receipt of medical opinion Ex.P-9, I returned to the police station. I also recorded the statement of PWS Daya Nand and C. Ram Phal U/S 161 Cr.P.C. The scaled site plan was also got prepared by Ashok Patwari and recorded his sttement U/S 161 Cr.P.C. The sanction order of Distt. Magistrate Hisar is Ex.P-28 and the FSL report is Ex.P-29 and P-30. At the stage (the sealed parcel has been opened) bearing seal of FSL opened) and the pistol Ex.MO4 taken out). It is the same which was got recovered by

the accused Narender present in the Court. At this stage another sealed parcel bearing seal of FSL has been opened). Empty cartridge is Ex.Mo-3 taken out which was got recovered by the accused. Country made pistol got recovered by the accused Ex.MO-4. On completion of investigation report U/S 173 Cr.P.C. was prepared by me which bears my signature.”

7. Similarly, in regard to the injury sustained by injured Bansilal, Dr. T.S. Bagri (PW4) deposed as under:-

“xx xxx xx xxx

On examination patient was conscious. Vital were stable. Pupils were normal. The patient was holding left forearm in right hand. The following injuries were found on his person:-

- 1. 0.6 x 0.6 cm. oval lacerated wound of entry present over the posterior aspect of left fore-arm, starting 6 cm. below lateral epicondyle of humerus. The edges of the wound were inverted, collar of abrasion present around the wound. Fresh bleeding was present from the wound. Corresponding hole was present over the arm of kurta worn by the patient. Patient was advised X-ray.*

The nature of injury was kept under observation. The weapon used was fire arm and probable duration of injury was within 6 hours. The kurta worn by the patient was handed over to the police. Ex.P4 is the correct copy of the original MLR which I have brought today and Ex.P5 is the copy of diagram

showing the seats of injuries. I sent ruqa Ex.P6 to the SHO Police Station, Adampur regarding admission of patient Bansil Lal.

On 26.11.2001 the bullet removed from the body of patient Bansil Lal by me and the same was handed over to SHO P.S. Mandi Adampur in a sealed packet alongwith an envelop having fire sealed addressed to Fire Arm Expert, Madhuban containing forwarding letter. Copy of MLR and sample seal. My report in this behalf is Ex.P7. On 24.12.2001 SHO Police Station Adampur moved an application Ex.P8 regarding the nature of injury on the person of Bansil Lal on which I opined vide Ex.P9 that the injury on the person of Bansil Lal was grievous in nature. I also conducted the X-ray examination of injured Bansil Lal. In the X-ray a single metallic foreign body was seen in left elbow region and fracture of upper end of radius without callus formation. My report in this behalf is Ex.P10. The X-ray film is Ex.P11.

At this stage one sealed parcel bearing seal of FSL opened and shirt Ex.MO1 taken out. It is the same which was handed over by me to the police. At this stage another sealed parcel bearing seal of FSL opened and bullet was taken out. It is the same which was removed from the body of Bansil Lal. The same is Ex.MO-2.”

8. From the said deposition, it is clear that on 26.11.2001, a bullet was removed from the body of injured Bansil Lal, and was handed-over to SHO, PS Mandi Adampur.

9. There is another witness namely C. Sher Singh (PW11), who proved the disclosure statement (Ex.P16), and as signed by accused-appellant Narender Singh also, and he is the attesting witnesses of the said statement. Subsequently, accused-appellant, took the police party to village Sarangpur, and from the disclosed place got recovered pistol used in the crime, which is of 315 bore, and also got recovered one empty cartridge, and the same were taken in to possession.

10. Thus, after referring the aforementioned evidence, as reproduced herein-above, and the other formal evidence deposed by the Government official witnesses, counsel for the appellant submits that case of the prosecution is not fully proved, more so, all the material witnesses including of the injured, have turned hostile. Thus, appellant deserves clear acquittal.

11. On the contrary, learned State counsel submits that although some of the prosecution witnesses turned hostile for the reasons best known to them, but there is no material or plausible explanation available on record that for what reason prosecution would drag the appellant in such a criminal case without any reason or basis. Learned State counsel also argues that witnesses may speak lie, but circumstances speak otherwise. While submitting so, learned State counsel refers to the statements of the official witnesses by saying that the recovery of pistol from the disclosed place of the accused-appellant is clearly proved.

12. I have considered the submissions addressed by the respective counsel for the parties and perused the relevant material on record thoroughly with their able assistance.

13. Undoubtedly, witnesses failed in performing their duty, but still

there is enough evidence/material available on record to prove direct connectivity of the bullet recovered from the body of the injured Bansilal, which was fired from the pistol got recovered by the appellant. In this regard, there is a sound reasoning recorded by the Ld. Trial Court itself in paragraph No.13 of the judgment impugned herein, and same is again reiterated here by this Court. Paragraph No.13 of the impugned judgment reads as under:-

“13. Now turning to the circumstantial evidence in the present case the strongest circumstance which establishes the present case is that the bullet recovered from the body of accused was fired from the pistol recovered from the accused. The FSL report Ex.P29 and Ex.P30 reflected that the bullet recovered from the body of the injured PW5 Bansilal and pistol recovered from the conscious possession of accused Narender alongwith shirt worn by the injured at the time of occurrence were sent to FSL and according to report Ex.P29 FSL opined as under: -

- 1. The countrymade pistol marked W/2 (chambered for .315” cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*
- 2. .315” fired cartridge case marked C/1 .315 fired bullet marked BC/1 have been fired from country made pistol W/1 and not from any other firearm even of the same make and bore/calibre, because every firearm has got its own individual characteristic marks.*
- 3. Hole in the shirt contained in parcel No.1 has been caused by bullet projectile.*
- 4. Report in original from Serology Division is enclosed herewith.*

According to report Ex.P30 human blood was detected on

the shirt (kurta) and as such from the report Ex.P29 and Ex.P30 it is established on record that bullet recovered from the body of injured PW5 Bansi Lal was fired from the pistol recovered from the accused Narender and in case the recovery during investigation of these items i.e. bullet, pistol and kurta is established by the prosecution beyond all reasonable doubt, certainly the report of FSL leads to only irresistible conclusion that fire arm injury caused to PW5 Bansi was inflicted by accused Narender with his country made pistol.”

14. Counsel for the appellant tried to project some dent in the manner of recovery of pistol from the conscious possession of the accused-appellant, but nothing material could be pointed out in that regard, therefore, it was a half hearted attempt. No other point has been urged by the counsel for the appellant.

15. There is already observation made by Hon'ble Apex Court **Mohd. Anwar Vs. State of Delhi**, 2000(1) RCR (Criminal) 279, where the conviction under Sections 302 & 307 of IPC, was upheld when the bullet recovered from the body of the deceased was matched with the fired revolver, which was recovered from the accused. Reliance is also placed upon another judgment of the Hon'ble Apex Court rendered in case of **Kalua Vs. State of Uttar Pradesh**, AIR 1958 SC 180, wherein, it has been held that once from the expert report it is established that the cartridges, which were found near the dead body of the deceased were same, which were fired from the recovered pistol, there should not be any room for thinking in the circumstances established that anyone other than the accused might have shot at the deceased.

16. In view of the facts and circumstances discussed herein-above, this Court does not find any substantial reason to interfere in the impugned judgment, by which the appellant has been held guilty, primarily on the technical and scientific ground. Hence, present appeal *qua* conviction part stands dismissed.

ORDER OF SENTENCE:-

17. Counsel for the appellant himself has pointed out that relationship between the parties, i.e. appellant and the injured-complainant, is that they are members of one family, and even compromise had arrived at the time, when trial was pending before Ld. Trial Court. Therefore, learned Trial Court while taking a lenient view, sentenced the appellant for undergoing rigorous imprisonment of three years along with fine amount of Rs.5000/- for the offence punishable under Section 307 of IPC, and further to undergo rigorous imprisonment of one year along with fine amount of Rs.1000/- for the offence punishable under Section 25 of the Arms Act. Therefore, counsel for the appellant reiterates the same stand, and submits that now for an offence, having happened in the year 2001 of single shot injury, and subsequently, there being no other instance of involvement of the appellant in any other incident of fight or giving injury to anyone; a lenient view is required to be taken by applying the theory of reformation.

18. Learned State counsel has also produced the custody certificate dated 02.01.2023, of the appellant in Court today, which is taken on record. As per said custody certificate appellant had undergone sentence period of 06 months and 04 days uptill 07.06.2002, and there is no other instance recorded in the said custody certificate in which appellant can be said to be involved. Therefore, considering the facts and circumstances; that incident

had occurred 21 years back; nature of offence; factum of compromise as relied upon by counsel for the appellant and same was noticed by Ld. Trial Court also; and that no other instance of involvement of appellant in any criminal activity has been recorded in custody certificate, this Court finds it suitable to pass the order of sentence for the period as already undergone by the appellant till date. However, other part of sentence i.e. imposing of fine or compensation (if any) etc. would remain intact without any change.

In view of the terms and observations made herein-above, present appeal stands **disposed of** with aforesaid modifications in the order of sentence dated 12.06.2004, passed by Ld. Trial Court.

(SANJAY VASHISTH)
JUDGE

January 10, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*