

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2094-SB-2004
Reserved on 14.07.2023
Pronounced on: 20.07.2023

Bhisham and othersAppellants

Vs.

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jasbir Singh Ahlawat, Advocate for the appellant.

Mr. Rajat Gautam, Addl.A.G., Haryana.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
428	19.11.1999	Old Faridabad	307/323/34 IPC & 25 of Arms Act

Case No.	RBT No.21 Date of decision: 26.08.2004 passed by Ld. Additional Sessions Judge, District Faridabad
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1. The petitioners who stand convicted by the trial court as well as the Sessions court, for the commission of offence punishable under Section 307/323/34 IPC & 25 of Arms Act had come up before this Court.
2. During the pendency of the appeal, appellant No.-1 Bhisham Singh expired on 08.11.2020, appellant No.2-Raju expired on 28.06.2016 and appellant No.3-Harpal expired on 08.09.2018. Thus the only surviving convict is Bir Singh-appellant No.4 and as such this Court shall restrict the appreciation of evidence qua him only.
3. As per the custody certificate before suspension of sentence, Bir Singh had undergone total sentence of 09 months and 07 days without remission. As per the prosecution version on 18.11.1999, at about 8:00 pm, accused Harpal, Bir Singh, Raju and Bhisham came to the house of Mehari-PW-2 where he alongwith Balbir, Mehar Singh, Albel and Meharban were sitting. They started hurling abuses upon Mehari and his brother-Mehar Singh that why they had filed complaint against-Jai Pal. After that accused Bhisham Singh gave a blow with the butt of his country made pistol on his head and accused-Harpal gave a *danda* blow on his left hand. Raju fired shot from his country-made pistol which hit lower side of his abdomen. Then second fire was shot by Bhisham Singh, which hit Mehar

Singh on his left thigh. After that they ran away. All the four accused were prosecuted in investigation and charges were framed against them under Section 307, 323, 34 IPC read with section 25 of the Arms Act.

4. In the trial, prosecution version remained the same and injuries which were attributed to victim were that Bhisham Singh had given one blow with the butt of his country made pistol and he had also fired shots with his country made pistol which hit Mehar Singh on his left thigh. Accused-Harpal gave *danda* blow, Raju fired shot with his country made pistol which hit Mehar Singh in his stomach and no specific injuries were attributed to the sole surviving convict-Bir Singh/appellant No.4.

5. PW-3 Mehar Singh and PW-8 Meharban testified in the similar lines and did not attribute any specific injury/weapon to the Bir Singh-appellant No.4. However, Bir Singh was roped with the aid of common intention and charges were framed against him with the aid of Section 34 IPC. Prosecution also examined PW-4-Dr. Sunita Gupta who corroborated the injuries. One Jai Pal Singh was also involved but he was not made accused and it shows that falsity of the complainant's version.

6. The sole surviving appellant No.4-Bir Singh was not charged for possession of any weapon and he was not charged under Section 25 of the Arms Act. The attribution was only to Bhisham and Raju, who have expired. Even the prosecution witnesses did not attribute any weapon including pistol to the sole surviving appellant No.4-Bir Singh. I have also gone through the record, there is no motive attributed to Bir Singh. Also there is no reason that why he would join hands with the other three accused and specially when he did not give any injury, assault fist or kick blow and was only a spectator. He has been arraigned as an accused with the aid of Section 34 IPC i.e. for common intention. A perusal of the entire judgment does not point out any cogent evidence to find involvement of Bir Singh and any evidence to show that he had shared common intention with the other three accused. But considering his absence of participation, the sentence which was imposed upon him was equal to all other accused. No reason has been mentioned in the impugned judgment for imposition of such a high stringent sentence on Bir Singh who did not even raise hand. In fact perusal of the sentence reveals that Bir Singh was also sentenced equally by the Ld. Sessions Judge., who did not consider his role and attribution. Infact the judgment against Bir Singh including other accused has been passed in a mechanical manner and the entire sentence has been imposed based on the guilt of other three main accused.

7. Hence, for all the aforesaid reasons, the convict is entitled to benefit of doubt because the prosecution has failed to prove its case beyond reasonable doubts.

Consequently, the appeal is allowed and the above mentioned judgment of conviction and

sentence dated 26.08.2004 passed by Ld. Additional Sessions Judge, is set aside and the accused-Bir Singh is acquitted of the charged offence. The fine amount, if deposited, be refunded to the accused. Bail bonds furnished by the accused are discharged.

Appeal stands allowed and all pending application(s), if any stand disposed of.

(ANOOP CHITKARA)
JUDGE

20.07.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.