

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

CRA-S-2212-SB-2004
Date of decision: 14.12.2023

Gian Singh and another ...Appellants

Versus

State of Punjab ...Respondent

CRA-S-2213-SB-2004
Date of decision: 14.12.2023

Gian Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Ms. Rimple Saini, Advocate for the appellants.

Mr. Rozal Kumar Aggarwal, DAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. This judgment will dispose of the afore-titled two criminal appeals arising out of same incident relating to FIR No.223 dated 29.09.2002 registered under Sections 307/34 of IPC and Section 27/54 of Arms Act Police Station Sadar Gurdaspur.

2. Criminal Appeal No. 2212-B-2004 has been filed by Gian Singh and his son Surinder Singh @ Bau against the orders dated 30.10.2004 and 01.11.2004 whereby both the appellants were convicted and sentenced to RI for 3 months each and to pay a fine of Rs.200/- each and in

case of default of payment of fine to further undergo RI for a period of 10 days under Section 336 of IPC by the Court of Additional Sessions Judge (ad-hoc), Fast Track Court, Gurdaspur. Criminal Appeal No. 2213-SB-2004 is filed by appellant Gian Singh against the orders dated 30.10.2004 and 01.11.2004 whereby the appellant was convicted and sentenced to RI for 3 years and to pay a fine of Rs.1,000/- and in case of default of payment of fine to further undergo RI for a period of 2 months under Section 27 of Arms Act by the Court of Additional Sessions Judge (ad-hoc), Fast Track Court, Gurdaspur.

3. In Criminal Appeal No.2212-SB-2004, the brief facts of the case of prosecution are that on 29.09.2002 lintel of the roof of house of PW-3 Bachan Kaur was being laid and behind the house of PW-3 Bachan Kaur there was house of appellant Gian Singh. During the process of laying of lintel some construction material fell in the house of Gian Singh. On which Gian Singh and his son Surinder Singh started arguing with PW-3 Bachan Kaur and they threatened to teach a lesson to her. In the meantime, PW-2 Manjit Singh also came there and tried to stop both the parties from fighting with each other. At about 4:45 PM appellant Gian Singh told his son Surinder Singh @ Bau to bring gun from his house and then Surinder Singh brought 12 bore gun and then he fired gun shot and pellets hit in chest of PW-1 Davinder Pal Singh (complainant). Then Gian Singh took the said gun from his son Surinder Singh and fired two shots and certain pellets hit on the left hand of PW-1 Davinder Pal Singh, who raised alarm, on which Gian Singh and Surinder Singh fled away from there along with the gun.

Injured Davinder Pal Singh was taken to Civil Hospital, Gurdaspur where

he was medico legally examined and provided treatment. Injured Davinder Pal Singh got recorded his statement Ex.PW-10/B with the police and resultantly, FIR Ex.PW-10/B was registered in the police station concerned. SI Sawinder Singh Investigating Officer inspected the place of occurrence and prepared its rough site plan Ex.PW-10/B. Three empty cartridges of 12 bore bearing No.AF-12 Special were taken into possession by the police from the place of incident vide memo Ex.PW-3/A. Appellant Gian Singh was arrested on 02.10.2022 and he suffered disclosure statement Ex.PW-10/F and got effected recovery of 12 bore single barrel gun kept concealed by Gian Singh in his residential house. The said licenced gun was taken into possession by police vide memo Ex.PW-10/G. The arms licence Ex.PW-12/A of the said gun was also taken into possession by the police. Appellant No.2 Surinder Singh was also apprehended by the police. On completion of investigation, the challan was presented and the case was committed to the Court of Session vide commitment order dated 12.12.2002.

4. The trial Court framed charges under Section 307 read with Section 34 of IPC against both the accused to which they had not pleaded guilty and claimed trial.

5. In order to prove its case, prosecution examined PW-1 Davinder Pal Singh who sustained injuries at the time of occurrence, PW-2 Manjit Singh who is father of the injured, PW-3 Bachan Kaur PW-4 HC Dalwinder Kumar, PW-5 Constable Amir Masih, PW-6 Mulkh Raj, PW-7 Janak Singh Dhanjal, PW-8 Constable Surinder Singh, PW-9 Dr. Vijay Kumar, PW-10 SI Sawinder Singh, PW-11 Constable Kashmir Singh, PW-12 ASI Pritam Singh and PW-13 Harbhajan Singh.

6. The accused were examined under Section 313 of Cr.P.C. They pleaded innocence and further took plea of false implication.

7. After hearing the counsel for the parties, the learned trial Court acquitted both the accused of offence punishable under Section 307 of IPC on the ground that injured namely PW-1 Davinder Pal Singh and another material witness Manjit Singh father of the injured have not supported the case of prosecution while appearing in the witness box. However, the trial Court convicted both the appellants under Section 336 of IPC and sentenced them to imprisonment as has been detailed in the second paragraph of this judgment.

8. In Criminal Appeal No.2213-SB-2004, the brief facts of prosecution case are that at the time of the aforesaid occurrence, appellant Gian Singh and his son Surinder Singh caused injuries to Davinder Pal Singh with the help of licenced 12 bore gun of appellant Gian Singh and the recovery of the said gun was effected at the instance of appellant Gian Singh vide recovery memo Ex.PW-3/B and the site plan of place of said recovery is Ex.PW-3/C. On completion of investigation, police presented challan under Section 27 of Arms Act against appellant Gian Singh. The case was committed to the Court of Session vide commitment order dated 12.12.2002.

9. The trial Court framed charge under Section 27 of Arms Act to which appellant Gian Singh pleaded not guilty and claimed trial.

10. In order to prove its case, prosecution examined PW-1 Mulkh Raj, PW-2 SI Joginder Singh, PW-3 SI Sawinder Singh, PW-4 HC Gurmit Singh and PW-5 Bachan Kaur.

11. Accused Gian Singh was examined under Section 313 of Cr.P.C. He pleaded innocence and false implication as well.

12. After hearing the counsel for the parties, the learned trial Court convicted and sentenced appellant Gian Singh under Section 27 of Arms Act as has been detailed in the second paragraph of this judgment.

13. The appellant Gian Singh and Surinder Singh being aggrieved have filed CRA-S-2212-SB-2004 against the judgment and order whereby they were convicted and sentenced to imprisonment under Section 336 of IPC. Appellant Gian Singh being aggrieved has filed CRA-S-2213-SB-2004 against the judgment and order whereby he was convicted and sentenced to imprisonment under Section 27 of Arms Act.

14. I have heard the counsel for the parties.

15. The counsel appearing on behalf of the appellants submits that both the appellants were falsely implicated. It is further contended that the star witness Davinder Pal Singh while appearing in the witness box as PW-1 has not supported the case of prosecution. That even father of Davinder Pal Singh namely Manjit Singh while appearing in the witness box as PW-2 was declared hostile witness and he also failed to identify the culprits who fired shots at his son. It is further contended that PW-3 Bachan Kaur and PW-13 Harbhajan Singh are not reliable witnesses. That even otherwise the prosecution has failed to prove that the empty cartridges which were recovered from the place of incident were fired from licenced gun of appellant Gian Singh. It is further contended that appellants could not be convicted under Section 336 of IPC merely on the basis of the recovery of aforesaid licenced gun from the premises of appellant Gian Singh. It is

further submitted that there is nothing on the record to prove that the said licenced gun was misused by the appellants. It is further contended that the prosecution has miserably failed to prove its case under Section 336 of IPC against both the appellants and under Section 27 of Arms Act against the appellant Gian Singh.

16. The State counsel while supporting the impugned judgments and orders *inter alia* contends that no doubt PW-1 Davinder Pal Singh and PW-2 Manjit Singh resiled from their previous statements but PW-3 Bachan Kaur and PW-13 Harbhajan Singh stated on oath that at the time of occurrence gun shots were fired by both the appellants with the licenced gun of appellant Gian Singh. It is further argued that at the time of spot inspection three empty cartridges were recovered from the spot which were taken into possession by the police vide memo Ex.PW-3/A and the said empty cartridges were also produced and marked as Ex.P-2 to Ex.P-4 during trial. Further aforesaid gun used in commission of crime was recovered at the instance of appellant Gian Singh from his residence on the basis of disclosure statement Ex.PW-10/F suffered by him while in police custody.

17. I have considered the submission made by counsel for the parties.

18. FIR was registered on the basis of the statement of PW-1 Davinder Pal Singh wherein he alleged that at the time of occurrence both the appellants caused fire arm injuries to him. However, while appearing in the witness box PW-1 Davinder Pal Singh was declared hostile witness and he stated that the appellants did not fire any gun shots aiming towards him.

PW-1 further stated that he does not know as to who caused injuries to him.

Even his father who is also stated to be eye witness, while appearing in the Court as PW-2 Manjit Singh failed to support the case of the prosecution. No doubt, PW-3 Bachan Kaur supported the case of the prosecution. However, in her cross examination PW-3 admitted that she was having enmity with appellant Gian Singh since long and PW-3 further stated that she had already filed ¾ civil and criminal cases against said Gian Singh. In the given circumstances, on account of her previous enmity, much weightage cannot be given to her testimony while keeping in mind the fact that injured eye witness has not supported the case of prosecution. Admittedly, PW-13 Harbhajan Singh who also supported the case of prosecution, was real brother of PW-3 Bachan Kaur and it is natural for him to support his sister who is having litigation with the appellants for last so many years and even his testimony cannot be relied upon in the absence of any independent corroboration.

19. As per prosecution version, police effected recovery of three empty cartridges from the place of incident vide memo Ex.PW-3/A. The police also recovered gun of appellant Gian Singh vide memo Ex.PW-10/G and the concerned gun was marked as Ex.P-5. There is no report of FSL or ballistic expert to establish that the said empty cartridges Ex.P-2 to Ex.P-4 were found to be fired from gun Ex.P-5 belonging to appellant Gian Singh. Also the prosecution has failed to prove that the pellets recovered from body of PW-1 Davinder Pal Singh matched with aforesaid empty cartridges Ex.P-2 to Ex.P-4. Further the prosecution has also failed to establish that the said pellets are of the cartridges fired from gun Ex.P-5 belonging to appellant Gian Singh. Merely because the appellant Gian Singh was owner

of gun Ex.P-5, that did not bring out a case under Section 336 of IPC against both the appellants. The prosecution has also failed to prove that appellant Gian Singh used his gun at the time of alleged occurrence.

20. In the light of the above discussion, the prosecution has failed to prove its case under Section 336 of IPC against appellants Gian Singh and his son Surinder Singh beyond a shadow of doubt. The prosecution has also failed to prove its case beyond reasonable doubt against appellant Gian Singh under Section 27 of Arms Act.

21. Consequently, both the appeals are allowed and appellants Gian Singh and Surinder Singh are acquitted of the charge under Section 336 of IPC and Gian Singh is acquitted of offence punishable under Section 27 of Arms Act.

22. Both the appeals are allowed in aforesaid terms.

23. Summoned record of the trial Court be returned.

14.12.2023

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No