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

SR. No.2517

**CRA-S-2446-SB-2012 (O&M)
Decided on:03.07.2023**

Manoj Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr.Vishal Sharma, Advocate,
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. The present appeal is directed against the judgment of conviction dated 31.07.2012 and order of sentence dated 03.08.2012 passed by the learned Additional Sessions Judge, Gurgaon, whereby the appellant, namely, Manoj Kumar, was convicted for the offence punishable under Section 25 of the Arms Act and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1500/- alongwith a default stipulation.

2. Brief facts, which are necessary for the just and effective disposal of the present case are that the instant case was registered on the basis of the complaint moved by Balwan Singh son of Mohan Lal, resident of Gari Harsaru, District Gurgaon. As per the complainant, at about 08.30 PM on 18.09.2010, when he returned from the temple, he noticed that his children were standing in front of their house. He enquired from the children as to what happened and was informed that Udai Singh and Manoj

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son of Lilu Ram, both accused, were standing on the roof of the house of Udai Singh. The house of Udai Singh was on the back side of his house. After that, he went behind his house and found that Udai Singh and Manoj, both accused, were standing on the roof of Udai Singh and they started abusing him on seeing him. The complainant asked them not to abuse him. On that, Udai Singh abused and asked Manoj Singh to fire on the complainant. Manoj took out his pistol and fired upon the complainant with an intention to kill him but he escaped. Thereafter, the complainant reported the matter to the police and the FIR was registered against Udai Singh and Manoj (appellant) under Sections 307/34 IPC and Section 25 of the Arms Act.

3. After necessary investigation, final report under Section 173 Cr.P.C. was presented against both the accused, namely, Udai Singh and Manoj Kumar. Since the case was triable by the Court of learned Sessions Judge, the same was committed to the learned Sessions Court for trial by the learned Judicial Magistrate 1st Class, Gurgaon. Finding a *prima facie* case, charge under Section 307/34 IPC was ordered to be framed against both the accused and charge under Section 25 of the Arms Act was framed only against Manoj Kumar, present appellant. Both the accused claimed trial. Ultimately, after completion of the trial, accused Udai Singh was ordered to be acquitted, whereas Manoj Kumar, the present appellant, was acquitted of the charge under Section 307 IPC, however, he was held guilty for the commission of the offence under Section 25 of the Arms Act and was sentenced as mentioned above.

4. Before proceeding further, it would be apt to refer to the evidence led by the prosecution in support of the charge. The prosecution

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examined PW-1 Inspector Satender Kumar, SHO, Police Station, Udyog Vihar, Gurgaon, who had prepared the report under Section 173 Cr.P.C. and forwarded the same to the Illaqa Magistrate. ASI Arvind Kumar, Reader to Joint Commissioner of Police, Gurgaon, was examined as PW-2, who exhibited the sanctioned order as Ex.PC. The prosecution further examined PW-3 HC Ajay Kumar, in whose presence ASI Rambir Singh, Investigating officer had interrogated Manoj Kumar, the present appellant, who made a disclosure statement Ex.PE to the effect that he had kept concealed countrymade pistol in his room of the tube-well in his village on the laft. The disclosure statement was signed by the appellant and was attested by HC Ajay Kumar and constable Pawan Kumar. On 28.10.2010, the appellant got recovered one countrymade pistol in pursuance of his disclosure statement. The sketch EX.PF was prepared by ASI Rambir Singh and the pistol was converted into sealed parcel with the seal 'RB' and was taken into possession vide memo Ex.PG. In his cross-examination, the witness admitted that no public witness was joined at the time of interrogation of accused Manoj and the accused had made disclosure statement on 27.10.2010. Even the recovery had taken place at 10.00 am on 28.10.2010. The door of the room was closed, but not locked. Even no public person was present in the fields at the time of recovery. However, this witness denied the suggestion that the place of recovery was accessible to everyone and anybody could have gone and kept the recovered articles. He further stated that the accused Manoj had brought out the countrymade pistol. The prosecution further examined PW-4 ASI Mahesh Kumar, in whose presence Rambir Singh, ASI/IO had inspected the place of occurrence and lifted one fired cartridge case from the spot and converted the same into sealed parcel

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with the seal 'RB' and taken into possession vide memo Ex. PH. The said memo was attested by ASI Mahesh Kumar, PW-4 and Balwan Singh. During the course of his deposition, a sealed parcel was opened and one fired cartridge case was taken out and was shown to him. He identified the same as the same cartridge case Ex.P2, which was lifted from the spot. He also remained with the Investigating Officer during investigation as well. The prosecution further examined PW-5 Balwan Singh, complainant, who turned hostile and did not support the case of the prosecution. He was shown the application/complaint Ex.PJ and he stated that it did not bear his signatures and he did not file such application to the police. Mohan Lal, father of the complainant, was examined as PW-6 and he did not support the case of the prosecution. C. Radhey Sham was examined as PW-7, who had taken the case property from the police station and had deposited the same with the FSL Madhuban. He clearly stated the seals remained intact throughout and his statement was recorded by the Investigating Officer. PW-8 C. Jagdish was also joined in the process of the investigation and the appellant was interrogated in his presence. PW-9 ASI Satyadev had registered the FIR Ex.PJ/2 on receipt of ruqa Ex.PJ and he had also sent the special reports to different authorities as well. Smt. Shakuntla, wife of complainant, appeared as PW-10 and did not support the case of the prosecution and was declared hostile. PW-11 HC Krishan Kumar was posted as MHC in Police Station, Sector-10-A, Gurgaon and the case property was deposited with him by the Investigating Officer. PW-12 Girish Kumar, Draftsman had visited the spot and prepared the scaled site plan Ex.PO by order and on the demarcation of ASI Mahesh Kumar. PW-13 ASI Rambir Singh was the investigating Officer and supported the case of the

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prosecution. Finally, Constable Mangal Singh was examined as PW-14, who had delivered the special report to the learned Illaqa Magistrate.

5. It is pertinent to mention here that the countrymade pistol recovered from the present appellant was sent to the FSL and the report Ex.PD was received from FSL, Madhuban. As per the FSL report, Ex.PD, the countrymade pistol recovered from the present appellant was a fire arm as defined in Arms Act and its firing mechanism was found in working order. Even it was also concluded that .315 bore fired cartridge case, which was recovered from the spot, had been fired from the countrymade pistol chambered for .315 cartridges, which was recovered from the appellant and the cartridge case was fired from the pistol recovered from the present appellant.

6. After the closure of the prosecution evidence, the statement of the present appellant was recorded under Section 313 Cr.P.C. and he pleaded his false implication in the present case and the prosecution witnesses had deposed falsely. The appellant did not lead any evidence and defence.

7. I have heard learned counsel for the parties and with their able assistance; I have carefully perused the trial Court record.

8. Learned counsel for the appellant vehemently argued that the most material witnesses of the prosecution i.e. PW-5 Balwan Singh, complainant, PW-6 Mohan Lal (father of the complainant) and PW-10 Shakuntla (wife of the complainant) had not supported the case of the prosecution and the entire story of the prosecution is liable to be disbelieved by this Court. Further, learned counsel contended that the entire case of the prosecution was based on the testimonies of certain official witnesses, who were interested in the success of the prosecution case and were highly

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inimical towards the appellant. In spite of sufficient opportunity, they opted not to associate independent witnesses in the present case and the evidence led by the prosecution is liable to be disbelieved. Even the prosecution witnesses themselves admitted that no efforts were made to join the independent witnesses. Apart from that, the present appellant was convicted under Section 25 of the Arms Act for keeping in his possession a countrymade pistol, which was shown to have been fired on the date of alleged incident. However, the recovery of the fire arm had taken place from the fields, which were open and accessible to everyone. Even the present appellant was not in conscious possession of the said place and the prosecution could not lead any evidence to connect the place of recovery with the present appellant. Apart from that, there were serious contradictions in the testimonies of PW-3 HC Ajay Kumar and PW-13 Rambir Singh, ASI/Investigating Officer, which rendered the prosecution case to be highly doubtful.

9. On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the appellant and submitted that the learned trial Court had already recorded detailed findings on the submissions made by learned counsel for the appellant and the said findings are liable to be upheld. Learned State counsel submitted that even though PW-5 Balwan Singh, PW-6 Mohan Lal and PW-10 Shakuntla had turned hostile, still there was sufficient evidence in the shape of various official witnesses, who had no reason to depose falsely against the present appellant and their testimonies inspired confidence. Thus, the learned State counsel prayed for upholding the impugned judgment and dismissal of the present appeal.

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10. Having heard the learned counsel for the parties and perusing the trial court record, this court is of the considered opinion that there is no substance in the submissions made by learned counsel for the appellant. Even though, PW-5 Balwan Singh, complainant, as well as his wife and father had turned hostile, still there was sufficient incriminating evidence on record to prove the complicity of the present appellant in the commission of crime. Apparently, the criminal justice system was set into motion by the complainant by moving a complaint Ex.PJ before the police and on the strength of the same, the FIR Ex.PJ/2 was registered by PW-9 ASI Satyadev against the present appellant and his co-accused. Even the special reports were immediately sent through Constable Mangal Singh. Thereafter, the present appellant was arrested by ASI Rambir Singh on 25.10.2010. On suffering of disclosure statement Ex.PE on 27.10.2010 by the present appellant, a countrymade pistol was recovered from him. When the cartridge case and the countrymade pistol recovered from the present appellant were sent to FSL, the FSL prepared a report Ex.PD, and as per the same, the countrymade pistol recovered from the present appellant was a fire arm as defined in the Arms Act and even .315 fired cartridge case recovered from the place of occurrence had been fired from the countrymade pistol recovered from the present appellant and not from any other fire arm even of the same make and bore/caliber because every fire arm has its individual characteristic marks. Consequently, even though PW-5 Balwan Singh, PW-6 Mohan Lal and PW-10 Shakuntla had turned hostile, still there was sufficient evidence in the shape of PW-3 HC Ajay Kumar, PW-4 ASI Mahesh Kumar, PW-13 ASI Rambir Singh and other official witnesses, which unerringly established the guilt of the present appellant under Section

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25 of the Arms Act. In fact, this Court has perused the testimonies of various official witnesses, as referred above, and it can never be stated that the depositions of the above said witnesses lack credibility. In fact, the courts quite often impress and insist for independent corroboration of the prosecution evidence as a rule of caution and not as a rule of law. To lend credibility to the case of the prosecution, it is always advisable to associate independent witnesses at the time, when the investigation process is going on. However, in case, due to certain circumstances, the prosecution could not associate the independent witnesses, then the entire prosecution case cannot be thrown away only on this ground alone. The testimonies of the official witnesses cannot be discarded only on the ground of their official status. If the courts find that the official witnesses had withstood the test of cross-examination and inspired confidence, the same can be relied upon by the courts. In the present case also, the official witnesses had specifically deposed against the present appellant and their testimonies were found worth placing reliance. Thus, the learned trial Court has correctly relied upon the testimonies of various official witnesses and the submissions made by learned counsel for the appellant in this regard are liable to be rejected.

11. Still further, the submission made by learned counsel for the appellant that the place of recovery of the fire arm was accessible to all, is not acceptable to this Court. The present appellant was interrogated by PW-13 ASI Rambir Singh, IO in the presence of PW-3 HC Ajay Kumar and C.Pawan Kumar. During interrogation, the appellant suffered his disclosure statement Ex.PE and got recovered one countrymade pistol in pursuance to the disclosure statement, which was taken into possession vide memo Ex.PG, which was again attested by PW-3 HC Ajay Kumar and C. Chander

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Pal. PW-3 HC Ajay Kumar specifically denied the suggestion that the place of recovery was accessible to everyone and anybody could have gone and kept the recovered articles. Even from the perusal of the site plan, it is apparent that the place of recovery was exclusively within the knowledge of the present appellant, which led to recovery of the countrymade pistol from him. In fact, there was sufficient evidence on record to show that the present appellant only had the knowledge about the weapon of offence and he himself led the police party to the place of recovery. Still further, there is no substance in the arguments made by learned counsel for the appellant that the appellant was not in conscious possession of the countrymade pistol. As observed above, in pursuance of the disclosure statement, the present appellant led the police team to the place of recovery in the fields and the police team was taken to a room, from where the recovery of countrymade pistol was effected at the instance of the present appellant.

12. Learned counsel for the appellant referred to certain minor inconsistencies appearing in the testimonies of PW-3 HC Ajay Kumar and PW-13 ASI Rambir Singh, Investigating officer. In fact, the learned trial Court had already recorded detailed findings with regard to the prosecution evidence and the said findings are liable to be upheld by this Court. Even otherwise, the official witnesses had appeared before the trial Court after a gap of several months and certain minor inconsistencies are bound to creep in the testimonies of official witnesses. Such inconsistencies and contradictions can never be made the basis of acquittal of the accused, when the evidence led by the prosecution is found to be cogent and convincing. The testimonies of various official witnesses were unblemished and there was no reason to discard their testimonies. Apart from that, the defence

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could not lead any evidence to show or prove that the official witnesses had any reason to falsely involved the present appellant in a criminal case. Thus, there is no substance in the submissions made by the learned counsel for the appellant.

13. In view of the above, this Court is of the considered opinion that there is no reason to deviate from the well reasoned findings recorded by the learned trial Court and thus, the impugned judgment of conviction is upheld. However, this Court cannot loose sight of the fact that the present appellant was aged about 35 years at the time of framing of charge. He is the sole bread earner of the family and has faced the agony of trial/appeal for the last more than 13 years. Vide the impugned order of sentence, he was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.1500/-. As per the learned counsel for the State of Haryana, the present appellant has undergone 23 days of actual sentence out of total sentence of one year, awarded by the learned trial Court. Consequently, the ends of justice would be suitably met, if his substantive sentence is reduced to the one already undergone by him.

14. Keeping in view the above discussion, the impugned judgment of conviction dated 31.07.2012 passed by the learned Additional Sessions Judge, Gurgaon, is upheld. However, the order of sentence is modified to the extent that the substantive sentence of imprisonment awarded by the learned trial Court is reduced to the period already undergone by the appellant. Further, the amount of fine is enhanced from Rs.1,500/- to Rs.20,000/- which shall be deposited by the appellant with Punjab and Haryana High Court Bar Association Lawyers' Family Welfare Fund within a period of 03 months; failing which, the appellant shall undergo rigorous

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imprisonment for a period of 03 months as observed by the learned trial Court in its order of sentence dated 03.08.2012.

15. With the above modification, the present appeal stands disposed of in the above terms. Pending application(s), if any, shall also stand disposed of.

16. Case property, if any, be dealt with, and, destroyed, after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

03.07.2023
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO