

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.311

CRA-S-62-SB-2002 (O&M)
Reserved on:30.11.2022
Pronounced on:08.02.2023

Mukhwinder Singh @ Mukha and others

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. K.P.S.Virk, Advocate as Amicus Curiae and
Mr. Ashish Gupta, Advocate and
Mr. Gaurav Tangri, Advocate,
for the appellants.

Mr. M.S. Bajwa, DAG, Punjab.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 04.12.2001 passed by the learned Additional Sessions Judge, Kapurthala, whereby the appellants were convicted for the offence punishable under Section 397 IPC and sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs.1,000/- each with default stipulation. Appellant No.1-Mukhwinder Singh @ Mukha was further convicted for the offence punishable under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of 01 year. Both the sentences were ordered to run concurrently.

The prosecution case in brief is that the FIR in the instant case

was got registered by the complainant Mohan Singh by alleging that at about 4.30 p.m. on 10.05.1996, he was standing in front of his factory. In the meantime, the accused came on a scooter from the side of Gaushala Road and parked the scooter near him. The two pillion riders came to him and one of them took out a pistol from the pocket of his pant and pointed towards the complainant and asked him to hand over whatever he had with him. In the meantime, the other accused removed the gold chain weighing about 20 grams (2 tolas), on which 'MS' was inscribed. Immediately thereafter, all the three accused sped away towards Palahi Gate on the same scooter, on which there was no number plate. Mohan Singh raised the noise and in the meantime, PW-4 ASI Karamjit Singh reached there and the matter was reported to him.

On getting the information, the police had set up a naka on canal bridge on Khalwara Road. Inspector Baldev Singh along with other police officials was present there and in the meantime, the accused were noticed coming from the side of village Khalwara and were signalled to stop. They tried to run away, but were apprehended by the police officials. Sher Singh, accused, was driving the scooter and the other two were the pillion riders. On his personal search, a knife was recovered from Sher Singh, whereas from the personal search of Mukhwinder Singh, a loaded pistol of .12 bore with two live cartridges were recovered from the left side pocket of his pant. The personal search of Balwinder Singh, accused, was also conducted and one gold chain was recovered from the left side of the pocket of the shirt, on which 'MS' was engraved. The pistol and the cartridges were taken into possession by the police vide a separate memo,

which was attested by ASI Karamjit Singh, HC Gurmail Singh and Mohan Singh, complainant. A ruqa was sent to the police station and a formal FIR was registered. The accused were arrested and the scooter, without registration number plate, was also taken into possession by the police.

After necessary investigation, the final report under Section 173 Cr.P.C. was presented in the competent court by the police. Vide order dated 09.07.1997, all the accused were charge sheeted for the offences punishable under Section 397 IPC, whereas, Mukhwinder Singh was also separately charged under Section 25 of the Arms Act. All the accused pleaded not guilty and claimed trial.

During the course of prosecution evidence, nine witnesses were examined by the prosecution to prove the guilt of the accused. The prosecution examined PW-1 Mohan Singh, complainant, who supported the case of the prosecution, as mentioned in the FIR. He identified the accused as the persons, who snatched the chain from his neck. The prosecution further examined PW-2 Hari Dev, jeweller, who had issued the receipt Ex.PB to Mohan Singh, complainant. He had manufactured the chain for Mohan Singh, complainant and the weight of the gold chain was about 20 grams (2 tolas). In his cross-examination, he stated that he did not remember the month, when he manufactured the chain. PW-3 Constable Resham Singh had taken the special report regarding the case and handed over the same to the learned Magistrate on the same day. The prosecution further examined PW-4 ASI Karamjit Singh, who reached at the place of occurrence and also recorded the statement of the complainant. He along with Inspector Baldev Singh had held the naka and the accused were

apprehended at the spot and the arrest of the accused led to the recovery as stated in the FIR. The said witness was cross-examined in detail. PW-5 SI Ranjit Singh, SHO Police Station Talwara had prepared the final report under Section 173 Cr.P.C. The prosecution further examined PW-6 HC Swarna Ram, in whose presence, Mukhwinder Singh, accused, had suffered the disclosure statement and also disclosed the commission of other offences by him and his co-accused prior to his arrest on 10.05.1996. He was also a witness to various memos in this regard. The prosecution further examined PW-8 Shiv Kumar, who prepared the scaled site plan, Ex.PK. Apart from that, the prosecution examined PW-9 Inspector Baldev Singh, who was posted as SHO Police Station City Paghara on 10.05.1996 and he along with other police officials had set up the naka and had arrested the accused at the spot. Even, various weapons and the gold chain belonging to the complainant were recovered at the spot from the accused.

After closure of the prosecution evidence, the statements of the prosecution witnesses were recorded under Section 313 Cr.P.C. and they pleaded their false implication. It was stated that the police had taken them away from their houses and a false cases were planted on them by the police. The accused did not lead any evidence in their defence.

Learned counsel for the appellants vehemently argued that the alleged occurrence had taken place at about 11.30 a.m., but the FIR was registered in the instant case at about 5.30 p.m. on 10.05.1996. As per the learned counsel, the police had met the complainant on the way and after recording his statement, the ruqa was sent for recording of a formal FIR by the police station. Consequently, the delay was fatal to the case of the

prosecution and the story of the prosecution was liable to be discarded only on this ground alone. The submissions made by learned counsel for the appellants have been opposed by learned State counsel by contending that the FIR in the instant case was registered without any delay.

After hearing the learned counsel for the parties at length and going through the record of the case, I find that the delay in the instant case stood sufficiently explained. At about 11.30 a.m., the complainant Mohan Singh (PW-1) was present in front of the factory, when the accused came and had snatched the gold chain from him by showing him the pistol. Immediately thereafter, PW-4 ASI Karamjit reached there and the information was given to the police. Immediately thereafter, a naka was set up and the police team headed by PW-9 Inspector Baldev Singh apprehended all the three persons, who were coming on a scooter. At that stage, the first priority of the police was to apprehend the accused, who had snatched the gold chain from the complainant in a broad day light at a public place. Still further, the formal FIR was recorded at about 5.30 p.m. and therefore, the delay in lodging of the FIR was fully explained and does not affect the case of the prosecution in any manner.

Further, the complainant Mohan Singh had not mentioned the name of the accused in his statement Ex. PA, which showed that his statement was recorded before the arrest of the accused, otherwise after the arrests, the names of the accused could be easily mentioned in the FIR Ex.PA. Still further, even Mohan Singh, PW-1 did not make any effort to introduce any of the workers working in his factory nor he made any improvement in the prosecution version. From a perusal of the FIR Ex.PA,

it is evident that the complainant Mohan Singh had mentioned a vivid description of the entire occurrence, without any improvements or embellishments.

Learned counsel for the appellants vehemently argued that the accused had been falsely implicated in the instant case by the police. In fact, PW-1 Mohan Singh had admittedly no enmity with the present appellants. Moreover, even the accused could not lead any evidence to show that the police officials were inimical towards the present appellants and had any reason to falsely involve the appellants in a criminal case. Even no suggestions had been put to the various prosecution witnesses to show any reason for false implication by the police. Thus, there is no force in the submissions made by learned counsel for the appellants in this regard and the findings recorded by the learned trial Court are liable to be upheld.

Learned counsel for the appellants referred to various averments made by PW-1 Mohan Singh, in his cross-examination. However, the learned counsel could not point out any serious infirmity in the entire prosecution evidence, which was sufficient to reject the prosecution evidence. Rather, all the prosecution witnesses were subjected to incisive cross-examination by the learned defence counsel and their testimonies could not be shattered in any manner. Still further, even the appellant Mukhwinder Singh had no licence to keep the illicit arm in his possession and the recovery of pistol Ex.P-1 and the cartridges Ex.P2 to Ex.P4 were also proved from him and he has been rightly held guilty under Section 25 of the Arms Act. I have carefully perused the findings recorded by the learned trial Court while convicting the present appellants and find

no ground to interfere with the same.

Considering the facts and circumstances of the noted above, the present appeal is hereby dismissed, being devoid of any merits. Resultantly, the impugned judgment and order dated 04.12.2001 passed by the learned Additional Sessions Judge are upheld.

Pending application(s), if any, is also disposed off.

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.

In the end, I record my appreciation for Mr. K.P.S.Virk, learned Amicus Curiae, who had rendered his able assistance to this Court.

08.02.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO