

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-153-SB-2014
Date of Decision: 03.05.2023

Gurmukh Singh		Appellant
	Vs.	
State of Punjab		Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Amar Jeet Singh, Advocate
for the appellant.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

In sessions case No.798 of 2013 arising out of case FIR No.128 dated 12.11.2012, registered at Police Station Bahav Wala, under Sections 307, 336, 506, 353 & 186 of the IPC read with Section 25 & 27/54/59 of the Arms Act, the appellant Gurmukh Singh was tried by the Court of Learned Additional Sessions Judge, Fazilka. Vide judgment dated 16.12.2013, though he was acquitted of the other charges but was convicted for committing offences under Sections 336 & 506 of the Indian Penal Code. Vide a separate order of even date, he was sentenced to pay a fine of ₹200/- for committing offence under Section 336 of the IPC. He was also sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/- for committing the offence under Section 506 of the IPC with default sentence of three months.

2. It is against the aforesaid judgment of conviction and order of

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sentence that this appeal is filed.

3. It is contended by learned counsel for the appellant that Trial Court failed to acknowledge that all the material witnesses including complainant had turned hostile and so, there was no credible evidence to establish the guilt of the appellant. The story of the prosecution is highly improbable, as it is unbelievable that a person after committing an offence initially escapes from the spot and then comes back only to be arrested from the spot. Learned Trial Court failed to take into consideration the cross-examination of complainant Gamdoor Singh, where he explained that his signatures were obtained on blank papers so as to falsely implicate him. Besides, there was no source of light at the place of occurrence, as the alleged occurrence took place at about 11:00 p.m. The pallets allegedly recovered from the place of occurrence were not sealed. No Test Identification Parade was conducted and so, for all these reasons, the conviction cannot be sustained.

4. Learned State counsel, on the other hand, supported the impugned judgment.

5. I considered submissions of both the sides and have perused the record.

6. Prosecution case, in brief, was that on 12.11.2012, Gamdoor Singh (PW-1) came to the police station alleging that he had gone to his fields to water the same as per his turn but accused Gurmukh Singh closed the sanctioned outlet by putting plastic bag therein and when complainant protested, accused threatened to kill him. On this complaint, HC Baghel

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Singh (PW-7) and HC Vinod (PW-4) accompanied him to the spot at about 10:30 p.m. where accused allegedly raised lalkara threatening to see anybody, who opens the outlet. It is alleged that accused fired 5-7 shots in the air with the firearm and when HC Baghel Singh and HC Vinod told him not to fire, as they were police officials, accused still fired two more shots towards them with intention to kill them. After coming back to the police station and recording statement of complainant, FIR was lodged.

7. After concluding investigation, challan was filed. Accused faced trial for offences under Sections 307, 336, 506, 353 & 186 of the IPC and Section 27 of the Arms Act, as per the charge-sheet but has been convicted only for the offences under Sections 336 & 506 of the IPC as stated earlier.

8. It is revealed from the testimony of Gamdoor Singh (PW-1) and that of Darshan Singh (PW-2), the alleged eye-witness, who had accompanied the police officials that none of them supported the prosecution case.

9. As per the testimony of PW-1 Gamdoor Singh, it is some unknown person, who had blocked the authorized outlet through which he used to irrigate his fields and that unknown person had fired shots with intention to kill. He specifically stated that accused present in the Court was not the assailant. After being declared hostile, he was confronted with the complaint made to the police as well as the supplementary statement recorded under Section 161 Cr.P.C. but he resiled from the same. He also disclosed that it was very dark at the time of occurrence; that he was alone at

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the spot and could not identify the assailant. To the same effect is the statement of PW-2 Darshan Singh.

10. Trial Court appears to have been swayed by the testimony of (PW-4) Head Constable Vinod and (PW-7) Head Constable Baghel Singh, who had accompanied the complainant to the spot and supported the prosecution version. However, cross-examination of both these witnesses reveal that they reached the spot at about 10:30 p.m. in the night and it was very dark at that time with no source of light. There were only fields at the spot, as the area is not surrounded by any Abadi. Nobody was injured in the incident. Both of them admitted clearly that no Test Identification Parade was conducted.

11. Apart from the abovesaid circumstances appearing in the statements of PW-4 and PW-7, statement of (PW-3) SI Jatinder Singh, Investigating Officer of the case is also material, who admitted during his cross-examination that there was no source of light at the spot; that no Test Identification Parade was conducted; that Head Constable Vinod and Head Constable Baghel Singh were never called for Test Identification Parade; that nobody was injured in this case and that no memo was prepared when the case property was handed over to the Moharrir Head Constable at the Police Station.

12. In the abovesaid circumstances, when it is established from the testimony of witnesses that though occurrence took place at about 10:30 p.m., with no source of light, it is highly doubtful as to how the two police officials i.e., Head Constable Vinod and Head Constable Baghel Singh

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identified the accused, particularly when there is no evidence on record that they knew the accused earlier. It is admitted position that no Test Identification Parade was ever conducted. Complainant Gamdoor Singh and alleged eye-witness Darshan have not supported the prosecution case.

13. In all the aforesaid circumstances, the conviction as recorded by the Trial Court cannot be sustained. As such, this appeal is accepted. Impugned judgment of conviction and order of sentence are hereby set aside.

May 03, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No