

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

CRA-S-551-SB-2013

Date of decision: 27.01.2023

**Babu Khan****....Appellant****Versus****State of Haryana****...Respondent*****CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL***

Present:- Ms. Gurpal Kaur Dulat, Advocate  
for the appellant (Legal Aid Counsel)

Ms. Kirti Singh, DAG, Haryana.

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**VIKRAM AGGARWAL, J (ORAL)**

1. The present appeal assails the judgment of conviction dated 30.04.2012 passed by the Additional Sessions Judge, Palwal, vide which the appellant was convicted under Section 307 of the Indian Penal Code, 1860 (for short the 'IPC') and Section 25 of the Arms Act, 1959. Vide order of sentence of even date, the appellant was sentenced to undergo rigorous imprisonment for a period of 07 years along with fine of Rs.2,000/- for commission of offence punishable under Section 307 IPC. In default of payment of fine, 02 months rigorous imprisonment was ordered. Under the Arms Act, the appellant was sentenced to undergo rigorous imprisonment for a period of 07 years along with fine of Rs.1000/-, in default of payment of which further rigorous imprisonment for 02 months was ordered.

2. On a complaint submitted by one Jyoti, FIR No.159 dated 25.05.2011, under Section 307 of the Indian Penal Code, 1860 and Section 25 of Arms Act, 1959, registered at Police Station Hodal, District Palwal.

The allegation was that on 25.05.2011, the appellant had come to

their house and while the appellant was misbehaving with the mother of the complainant, namely Jai Rani and on objection having been raised by Jai Rani, the appellant opened fired upon her. Jai Rani received a bullet injury on her chest. She was rushed to the hospital where she was medico-legally examined and subsequently the bullet was removed. After the registration of FIR, investigation commenced. On completion of the investigation, final report under Section 173 Cr.P.C. was submitted. Charges were framed and trial commenced. The prosecution examined 15 witnesses to prove its case. After the conclusion of the evidence and recording of statement of accused under Section 313 Cr.P.C., the appellant was convicted and sentenced in the manner referred to above.

4. Aggrieved by the decision of the trial Court, the present appeal has been preferred.

5. I have heard the learned counsel for the parties and have perused the record.

6. Learned counsel for the appellant has submitted that the learned trial Court erred in convicting the appellant despite the fact that neither the complainant nor the injured had supported the case of the prosecution. Learned counsel has contended that the learned trial Court has wrongly placed reliance upon the alleged recovery of the countrymade pistol along with three live cartridges and one empty shell from the appellant along with the report of the FSL in coming to the conclusion that the guilt of the appellant stood proved. Learned counsel has submitted that the recovery of the countrymade pistol does not stand proved and has referred the recovery certificate Ex. P-1 in this regard. It has further been contended that the injured Jai Rani duly appeared as PW-9 and the complainant-Jyoti appeared as PW-10 but did not utter even a single word against the appellant. It has been contended that under these circumstances, there was no

occasion for the trial Court to convict the appellant.

7. Learned counsel has argued that no independent witness was joined at the time of the alleged recovery of the countrymade pistol and cartridges and therefore, no reliance could have been placed upon the same. With regard to the recovery memo Ex.P-1, it has been submitted that the signatures of the accused were not obtained on the same and, therefore, no reliance could have been placed upon the same also. Learned counsel has contended that the appellant had been falsely implicated and then wrongly convicted by the learned trial Court.

8. On the other hand, Ms. Kirti Singh, counsel representing the State of Haryana has supported the judgment of the trial Court. It has been submitted that the report of the FSL makes it clear that the bullet recovered from the chest of the injured Jai Rani was the same which had been fired from the countrymade pistol recovered from the the appellant and in view of the categoric report of FSL, the trial Court rightly convicted the appellant. Learned counsel has referred to the evidence of the official witnesses and has contended that the same was consistent and trustworthy.

9. I have considered the submissions made by learned counsel for the parties.

10. Admittedly, the injured Jai Rani (PW-9) suffered a fire-arm injury and a bullet was removed from her chest. The incident is alleged to have taken place at about 10.00/10.30 A.M., on 25.05.2011. The injured Jai Rani was rushed to one Om Spero Hospital, Palwal. The medico-legal report is on record as Ex.P-2 which shows that she was taken to the hospital at about 1.00 P.M. She was taken to the hospital by her son Deepak after receiving the gunshot injury at about 10.30 A.M. on 25.05.2011, when Jai Rani was at her residence. The MLR does not mention anything about the person who had fired at Jai Rani. One thing which is

little strange is that when Jai Rani had suffered a bullet injury at 10.30. A.M., why she was taken to the hospital after two and a half hours. It does not appeal to the human mind that someone would not be taken to the hospital for two and a half hours after having suffered a bullet injury. The injured Jai Rani could very well has lost her life during this period. Even if this fact is not considered, there are other factors which go to show that the prosecution was not able to prove its case against the appellant beyond reasonable doubt.

11. Admittedly, neither Jai Rani PW-9 nor her daughter Jyoti PW-10, who was the complainant, supported the case of the prosecution. They stated in so many words while appearing as witnesses that the appellant had not caused any injury to Jai Rani. The other independent witnesses also did not support the case of the prosecution. The prosecution case therefore hinges only on the statement of the official witnesses. No doubt the report of FSL which is on record as Ex.PX is very clear and it states as under:-

*“1. The countrymade pistol marked W/1 (Chambered for .315” cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*

*2. The .315” fired cartridge case marked C/1 & .315” fired bullet marked BC/i have been fired from Countrymade Pistol marked W/1 & not from any other firearm even of same make and bore/caliber because every firearm has got its own individual characteristic marks.*

*3. Report in original from Serology Division is enclosed herewith.”*

12. There is no doubt in the aforesaid fact. However, the issue which would have to be determined is whether the countrymade pistol along with cartridges etc. was recovered from the appellant and whether the prosecution was able to prove this fact. In the considered opinion of this Court, the answer is in the negative. A bare perusal of the recovery memo Ex.P-1 says it all. It does not

mention anything about the place of recovery, the manner of recovery or the time

of recovery. It mentions the FIR number. It is not understood that when the appellant was arrested on the same day after a few hours, how the FIR number finds mentioned on the recovery memo. The Investigating Officer did not find it important to mention the place of recovery, the time of recovery or the manner of recovery. He also did not find it important to obtain the signatures of the accused on the recovery of memo. No doubt, the obtaining of signatures of the appellant on the recovery memo is not mandatory but it assumes importance once the main witnesses do not support the case of the prosecution and the case of the prosecution rests only on the recovery memo. This Court is of the firm opinion that the prosecution failed to prove the recovery of the countrymade pistol along with cartridges etc., from the appellant. To top it all, there is no independent witness to the recovery memo also. It is a know fact that independent witnesses are hard to be found and harder to be joined in investigation. However, this fact does assume importance when the main witnesses do not support the case of the prosecution. In the case of *Girdhari Vs. State (NCT) of Delhi, 2012(1) RCR (Criminal) 951*, the Hon'ble Supreme Court of India was dealing with the conviction of one Girdhari for the murder of one Kalu Ram Bhagat. Kalu Ram Bhagat practised witchcraft to cure sick persons. One Ram Karan had requested him to cure his children Naresh and Karan aged 11 and 8 years, respectively. Both children, however, died a shortwhile later. During this period, Kalu Ram Bhagat had also attempted to commit rape upon the wife of Ram Karan. Annoyed with Kalu Ram Bhagat, Ram Karan hatched a conspiracy with five hired assassins, one of whom was Girdhari. The assassins had to kill Kalu Ram Bhagat on payment of Rs.2,00,000/-. After the commission of the offence, Girdhari was arrested and on his disclosure statement all other accused were arrested. The alleged murder weapon which was a daranti was recovered from a sugarcane field. Ram Karan

was discharged during investigation. Three other accused were acquitted on the issues of identification. Girdhari and one Man Singh were convicted. In separate appeals Man Singh was also acquitted by the High Court but Girdhari was convicted for the murder of Kalu Ram Bhagat. He then filed an appeal before the Hon'ble Supreme Court of India and while acquitting him the Hon'ble Supreme Court of India opined that the recovery memo Ex.P-14/O had not been witnessed by anyone and had the signature of only the police officer. The Hon'ble Supreme Court, therefore, held that no credence could be attached to such a recovery especially when the other evidence was extremely sketchy and uncertain. While holding so, the Hon'ble Supreme Court of India observed as under:-

*“7. We are indeed surprised that a leading question could be permitted to be put to an accused and that too in the examination in chief. It is significant that this witness was not declared hostile. Likewise, we have gone through the evidence of P.W. 5 Ram Avatar, another son of deceased, Kalu Ram who could not identify Girdhari even in court and pointed out towards Man Singh as being Girdhari. Reliance has however, been placed by the State Counsel on the statements of P.Ws. 3, 4 and 26 to prove the appellants' identity. We have gone through these statements as well and find that they do not in any manner help the prosecution. P.W. 3 Sushil Kumar, is the son of Niranjana Singh and, therefore, the grand son of Kalu Ram Bhagat. He identified Man Singh and Girdhari correctly in Court and this was not challenged in cross examination. We have also gone through the evidence of P.W. 4 Mehar Chand, son of Bodhan Singh, the second deceased and he did not identify the appellant in court. Likewise, P.W. 26 - Ranjit Singh a neighbour of Kalu Ram Bhagat, deposed in his examination in chief that the appellant was one of the persons who had taken Kalu Ram away on the 25th of February, 1989, but in his cross examination he admitted that he had not made such a statement to the police under [Section 161](#) of the Cr.P.C.*

8. *We therefore, find that out of the five witnesses of last seen only P.W. 4 has to some extent identified the appellant as being one of the culprits. This identification was made for the first time in court during the recording of the evidence. This statement, therefore, has very little evidentiary value. We are, therefore, of the opinion that this evidence does not by itself inspire confidence. The only other evidence against the appellant is the recovery of the daranti. The appellant was arrested on the 14th of March, 1989 and was taken for the recovery of the weapon on the very same day. Curiously, however, we see the recovery memo Exhibit 14/O dated 14th of March, 1989 has not been witnessed by any one and bears the signatures of only the police officer. We are, therefore of the opinion that no credence can be attached to such a recovery as well more particularly, as the other evidence is extremely sketchy and uncertain. We need to reiterate that Ram Karan the main accused who had hired the other five to do away with Kalu Ram Bhagat was discharged by the trial court due to lack of evidence whereas four of the other accused had earlier been acquitted on virtually the same evidence. We are of the opinion that the appellant Girdhari's case cannot, be in any manner, be distinguished from that of the other accused. We, accordingly, allow this appeal and order his acquittal."*

13. As observed in the earlier part of the judgment, in the present case also the recovery memo Ex.P-1 does not bear the signatures of the appellant. It bears the signature of only two police officers. It does not give any detail viz the place of recovery, the time of recovery or the manner of recovery. The complainant and the injured as also the other independent witnesses have not supported the case of the prosecution. Under these circumstances, the trial Court erred in placing the reliance upon the recovery memo Ex.P1 and holding that the recovery of the countrymade pistol along with live cartridges etc. from the appellant stood proved. Since, the recovery is not proved, the report of FSL

Ex.P/X becomes non-consequential so far as the appellant is concerned.

14. In view of the aforementioned facts and circumstances, the present appeal is allowed. The judgment of conviction and order of sentence passed by the trial Court are set aside and the appellant is acquitted of the charges framed against him. The bail bonds and surety bonds stand discharged.

(VIKRAM AGGARWAL)  
JUDGE

27.01.2023  
R. Sharma

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*