

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

**Crl. Appeal No.-D-925 of 2019 (O&M)
Date of Decision: 16.02.2023**

Manesh @ Monu

... Appellant

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Abhaysher Singh, Advocate and
Mr. Akashdeep Singh, Advocate,
for the appellant.

Mr. Pawan Girdhar, Additional Advocate General, Haryana.

MANISHA BATRA, J.

1. The present appeal has been preferred against the judgment of conviction and order on quantum of sentence both dated 12.09.2019 passed in Sessions Case bearing No.CIS No. SC-213 of 2015 titled State of Haryana v. Manesh @ Monu and others whereby, the accused Manesh @ Monu had been held guilty for commission of offences punishable under Section 307 IPC, awarding sentence of rigorous imprisonment of 10 years and fine of Rs.50,000/- and in default of payment of fine, awarding simple imprisonment for 1 year; under Section 353 IPC awarding sentence of rigorous imprisonment of 2 years and to pay fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for 2 months and under Sections 25 (1A) and 27 (2) of

Arms Act, awarding sentence of rigorous imprisonment for a period of 7 years and fine of Rs.30,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months.

2. For the sake of convenience, the appellant- Manesh @ Monu shall be referred to hereinafter as accused Manesh.

3. The brief matrix of the case is that on 10.04.2015, a police party headed by Inspector Inderveer was present at Village Bhenderi, Kahelpa road situated at Gohana for conducting search of accused Manesh who was wanted in a criminal case bearing No.92 of 2015 registered at Police Station Civil Line, Sonapat when a secret information was received that the accused Manesh along with his companion would come from the side of Village Lakhan Majra to Gohana in a white Swift Desire car bearing registration No.HR-99UK (TP) 0981 for the purpose of getting medical treatment for foot injury caused to his companion and if intercepted, he could be apprehended. Believing the secret information to be true, the Inspector Inderveer immediately gave information to SI Satyawar, Incharge of SIT Staff Gohana to reach at the spot at Village Bhanderi and SI Satyawar along with other police officials immediately rushed to the spot. Three teams were formed headed by Inspector Inderveer, SI Raj Singh and SI Satyawar respectively who created nakas in the area. After 15 minutes, a white Swift Desire car driven rashly and negligently was found coming from Village Lakhan Majra side. On signal being given by the police to stop, its driver at once stopped the vehicle and on seeing the police party, tried to reverse the vehicle. Then, two youths who were sitting on the driver seat and conductor side of the vehicle alighted from the car being armed with firearms. They were tried to be stopped but they shot one fire each with

their respective weapons towards the police party with an intention to kill them. Constable Rajinder and Constable Niranjana who were present there had a narrow escape. Inspector Inderveer and SI Raj Singh also raised fire with their official revolvers in the air in their defence and apprehended those youths. On asking, they disclosed their names as Manesh @ Monu and Rajesh @ Banti @ Mustba. One carbine with two live cartridges and one revolver 38 bore was recovered from accused Manesh and one countrymade pistol and two live cartridges were recovered from accused Rajesh. The pistols as well as cartridges were taken into possession by the police. Sketches of pistols and cartridges were prepared and they were sealed. The accused Rajesh who was having an injury on the knee of his right leg was taken to hospital. Tehrir was sent to the police station. A case under Sections 307, 353 and 186 of IPC read with Section 25 of Arms Act was registered. Investigation proceedings were initiated. The accused were interrogated and suffered disclosure statements admitting their involvement in the subject crime. They also disclosed that the carbine and pistol recovered from them were taken from accused Udayveer. In pursuance of their disclosure statements, accused Udayveer was arrested on 15.05.2015. He too was interrogated and suffered disclosure statement. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused.

4. On finding a prima facie case for commission of offences punishable under Sections 307, 353 and Section 25 of Arms Act, the accused Manesh and Rajesh had been charge-sheeted accordingly. The accused Udayveer had been charge-sheeted for commission of offence punishable under Section 25 of Arms Act. Accused Udayveer @ Kala died

during trial and proceedings against him were dropped. Accused Rajesh had absented himself and was declared a proclaimed person.

5. To substantiate its case, the prosecution examined as many as 14 witnesses. The brief resume and introduction of the prosecution witnesses is given as hereunder:-

PW-1 HC Rakesh Kumar deposed about joining investigation on 11.04.2015 and about attesting memos of disclosure statements of accused Manesh @ Monu and Rajesh. **PW-2** Jadgish Chander, Halqa Patwari proved scaled site plan Ex.PW2/A of place of occurrence. **PW-3** Ankit was registered owner of Swift car bearing No.HR-99 UK (TP)-0981 and had taken it on superdari. **PW-4** Jasbir Singh, Reader to District Magistrate, Sonapat proved order sanctioning prosecution of accused Manesh @ Monu and Rajesh under Section 25 of Arms Act. **PW-5** Shishan Kumar deposed about registering formal FIR. **PW-6** Dr. Narender had conducted radiological examination of the injured accused Rajesh. **PW-7** SI Satyawan had joined investigation and was also part investigating officer of the case. **PW-8** Dr. Mishu Mangla had conducted medico legal examination of accused Rajesh @ Banti on 11.04.2015. **PW-9** PSI Yogender Singh was a formal witness. **PW-10** Constable Rajbir had delivered special reports. **PW-11** Constable Rajender had deposited case property in FSL Madhuban. **PW-12** Head Constable Dinesh was an attesting witness to the disclosure statement suffered by accused Udayveer (since dead). **PW-13** ASI Narender Singh, Malkhana Moharrir deposed about deposit of the case property under his charge on 11.04.2015 and about handing over the same for depositing in FSL Madhuban. **PW-14** Inspector Inderveer was the complainant as well as

part Investigating Officer of the case.

6. The statement of accused was recorded under Section 313 of Cr.P.C. He claimed himself to be innocent and pleaded false implication. However, no defence evidence had been adduced.

7. On appreciating the evidence produced by the prosecution and considering contentions raised by both the sides, the learned trial Court held the accused guilty for commission of offences punishable under Sections 307, 353 of IPC, Section 25 (1-A) and Section 27 (2) of Arms Act and sentenced him in the manner as indicated above.

8. Feeling aggrieved, the instant appeal has been preferred by the appellant-accused assailing the judgment of conviction and order on quantum of sentence.

9. Learned counsel for the accused strenuously argued that the findings as given by learned trial Court were suffering from several material infirmities and were not sustainable in the eyes of law. The case of prosecution rested upon the statements of police official interested witnesses which had not only remained uncorroborated from some independent and disinterested evidence but which were also inconsistent in material particulars, highly improbable and unnatural. The evidence as to recovery of a carbine and countrymade pistol from the accused was highly doubtful. The learned trial Court committed a grave error in holding the accused guilty for commission of offence punishable under Section 27 (2) of Arms Act while ignoring that charge under that provision had not even been framed as against the accused. A great prejudice had been caused to the accused due to this fact which had occasioned in failure of justice as no fair chance of defence could be availed by the accused qua that charge. No

assaulted any police official in execution of his duty or had prevented/deterred any police official from discharging his duty or had made any attempt to kill either of them. The carbine which was allegedly recovered from the accused was not found to be in working condition and was a damaged one and, therefore, the prosecution case that the accused had opened fired at the police officials with the said carbine had been belied. The learned trial Court did not apply its judicious mind and had committed a grave error in recording findings of guilt of accused. With these broad arguments, it was submitted that the impugned judgment was liable to be set aside, the appeal deserved to be accepted and the accused deserved to be acquitted of the charges for which he had been held guilty and convicted. In support of his argument, learned counsel for the appellant has placed reliance upon authority cited as **Kuldip Singh v. State of Delhi**, 2004 (1) RCR (Criminal) 292.

10. Per contra, it was argued by learned State counsel that the findings given by learned trial Court were well reasoned and did not warrant any interference. Due to non-framing of charge under Section 27(2) of Arms Act, no failure of justice or prejudice was proved to have been caused to the accused as he was well aware of the gist of charges as framed against him and had been given full opportunity to defend himself. The evidence produced on record was sufficient to prove that the accused along with the co-accused had assaulted members of police party by opening fire upon them with firearms while they were discharging their official duties and had made an attempt to kill them. The recovery of firearms from the accused had been well proved from the testimonies of PW-7 and PW-14. Their statements could not be discarded only because of their official status. It

was, therefore, argued that the appeal was devoid of any merits and was liable to be dismissed. Learned State counsel relied upon authorities cited as **Kamil v. State of Uttar Pradesh**, (2019) 12 SCC 600 & **Kammari Brahmaiah and others v. Public Prosecutor, High Court of A.P.**, (1999) 2 Supreme Court Cases 522 in support of his argument that if no failure of justice was proved to have been occasioned by not framing of charge, conviction would not be vitiated.

11. On a careful appraisal of the evidence produced on record and on giving due deliberations to the contentions as raised by both the sides, we are of the opinion that the findings as given by learned trial Court are not sustainable as several inconsistencies and infirmities have been noticed in the case of the prosecution as well as evidence led by it. As per the prosecution case, as many as 20 police officials were members of the raiding parties which were formed to apprehend the accused from the spot of occurrence. The prosecution, however, chose to examine only three of those witnesses namely, PW-1 HC Rakesh Kumar, PW-14 Inspector Inderveer who was the complainant and had also conducted part investigation in the matter and PW-7 SI Satyawan who was called at the spot by PW-14 and was an eye-witnessed as well as part Investigating Officer of the case. Though PW-1 HC Rakesh Kumar being member of the raiding party was presumed to have eye-witness the entire occurrence but his statement in the Court was restricted only about the allegation that the accused Manesh and Rajesh had suffered disclosure statements vide memos Ex.PW1/A and Ex.PW1/B respectively in his presence. He did not utter even a single word about his joining the raiding party on receipt of secret information and then about the accused making any attempt to kill police

officials by firing shots with firearms and then about recovery of firearms from them. Rather during his cross-examination, he categorically stated that no recovery whatsoever was effected in his presence. Therefore, by examining this witness, the prosecution could not derive any support to prove the allegations that the accused had been apprehended on the spot on the basis of some secret information and had made any attempt to kill the police officials and had assaulted them while in performance of their official duties.

12. The case of prosecution mainly rested upon the statements of PW-7 SI Satyawar and PW-14 Inspector Inderveer. On going through their statements, it is revealed that they are inconsistent in material particulars. PW-7 SI Satyawar was not an attesting witness to memo Ex.PW14/C qua recovery of carbine, countrymade pistol and two live cartridges allegedly from the accused Manesh and this memo was attested by two police officials namely, HC Rajender and ASI Somdutt who had not been examined by the prosecution. PW-7 though deposed about being present at the spot and about forming a raiding team but simply deposed that both the accused were searched and pistols were recovered from them. He did not say that some carbine was recovered from accused Manesh and also did not mention that number of firearms so recovered nor it was stated by him that cartridges were also recovered from the firearms. Then according to PW-14 secret information was received by him at 7:30 PM and immediately thereafter he had given information to SI Satyawar who had reached at the spot at about 8 PM at Village Bhandari but PW-7 contradicted him by saying that he received telephonic information at about 10 PM and had reached at the spot at about 10:40 PM. According to PW-14, SI Raj Singh

and himself had also raised fire in the air with their pistols in their defence but PW-7 did not say anything in this regard. PW-14 had stated that before apprehending the accused, they had made an exhortation while proclaiming that the accused was under police cover and they should surrender before the police and then the accused had surrendered after raising their hands, but PW-7 did not say so. PW-14 stated that the vehicle of accused had come at the spot one hour after receiving secret information i.e. at about 8:30 PM but PW-7 stated that the vehicle of accused had reached there at 11:45 PM. PW-7 stated that on seeing the police party, the driver of the car had stopped it had tried to turn it back and then opened fire upon the police party. It was not his version that occupants of the car had come out but PW-14 contradicted him by saying that the occupants of the car had alighted from the same after stopping it and had tried to flee away and then raised fire upon them with the arms. These inconsistencies cannot be stated to be minor and have assumed greater importance in view of the fact that the same are neither corroborated by any independent and disinterested evidence nor any genuine and serious efforts are proved to have been made by PW-14 for joining any independent evidence. PW-14 had acted on the basis of a secret information as such he had ample opportunity to join some public witness, at the time of forming nakas for apprehending the accused or even thereafter but did not do so. No doubt, the statements of police witnesses cannot be discarded merely because of their official status. However, in the absence of any independent corroboration, their statements are to be viewed with great caution. As the statements of PW-7 and PW-14 are found to be inconsistent on several material points and as their statements that PW-1 HC Rakesh Kumar was present with them during the

course of entire proceedings from the stage of forming nakabandi have been falsified from testimony of PW-1 coupled with the fact that there is no independent corroboration to their even otherwise contradictory statements, in our opinion, a doubt has reasonably been created that either the occurrence had not taken place at all as alleged by these witnesses or the same had not taken place in the manner as deposed to by them and, therefore, their statements cannot be acted and relied upon beyond doubt to prove the veracity of the version of the prosecution.

13. There is one more lacuna in the case of the prosecution. Admittedly, no police witness had been injured in the occurrence. The allegation was that the accused along with his co-accused had opened fire and that two police officials had also fired in self defence. The prosecution case was that two police officials namely, Constable Rajinder and Constable Niranjam who were members of raiding parties, had a narrow escape from the shots so fired by the accused. Neither of these two witnesses had been examined by the prosecution. Even PW-7 and PW-14 did not depose that the above named two police officials had been attempted to be shot at and had escaped from those shots. No cartridges or empties were tried to be recovered from the spot by the investigating officers. Neither any explanation was given in this regard by PW-7 and PW-14. All this goes to show that infact no shots were fired at either by the accused or by the police and that is why empties of such shots were not recovered. This fact in our considered opinion has also created a serious doubt about the truthfulness of the prosecution story, the benefit of which certainly goes to the accused.

14. It is also noteworthy that as per the prosecution case, one carbine along with two live cartridges and one 38 bore pistol were

recovered from the accused Manesh on the night of 10.04.2015. PW-14 deposed about taking this case property into custody and sealing the same at the spot with seal of PK. However, he did not say that he had handed over the seal to any other person. He stated that he had handed over the case property to SI Satyawar. PW-7 SI Satyawar also admitted that case property was handed over to him. However, it was not stated by him as to when it was deposited by him in the Malkhana or whether the same had been deposited in the Malkhana at all. PW-13 ASI Narendra Singh, Malkhana Moharrir stated that the case property was deposited in the Malkhana on 11.04.2015 and was handed over to PW-11 Constable Rajender on 08.06.2015 for depositing it with FSL. PW-11 Constable Rajender deposed about depositing three sealed parcels with FSL Madhuban on that date. Both PW-11 and PW-13 were not aware as to how many seals were affixed on the sealed parcels and that what those seals were. There was delay of about 2 months in sending the case property to FSL which was not explained. In view of the fact that PW-7 SI Satyawar did not say that he had even deposited the case property at the Malkhana, it cannot be stated as to whether it was deposited in proper custody and had been kept in a proper form so that this Court could be sure that what was seized only was sent to FSL. The evidence adduced is, therefore, insufficient to conclude that what was recovered from the accused alone was sent to FSL due to which the link evidence had become defective. However, the learned trial Court did not examine this aspect in a proper perspective and the benefit of this lacuna goes to the accused.

15. The prosecution had further relied upon the disclosure statement stated to be suffered by accused Manesh vide memo Ex.PW1/A.

PW-1 and PW-7 deposed that the accused had suffered such disclosure statement admitting his involvement in the case. The inculpatory part of disclosure statement alleged to be suffered by accused in the custody of police could not be considered to be admissible in evidence in view of the bar under Section 25 of Indian Evidence Act and also did not fall in exception carved out by Section 27 of the same Act due to the fact that no new or distinct fact was proved to have been discovered in pursuance thereof. Therefore, the evidence led by these witnesses as to making disclosure statement by the accused could not be considered to be admissible in evidence and in our opinion, the learned trial Court had wrongly relied upon the same. The remaining evidence which was produced on record by the prosecution was of formal nature and did not help the prosecution in any form in connecting the accused with the subject crime. The learned trial Court while appreciating the evidence produced on record, ignored the above mentioned lacunas in the case of the prosecution as well as evidence produced on record and, therefore, we are of the opinion that the findings of guilt of accused recorded by learned trial Court cannot be stated to be sustainable, as it has not been proved beyond doubt that the accused had made any attempt to kill any police official or had assaulted them while they were discharging their public duties. Therefore, it is held that the conviction of the accused for commission of offences punishable under Sections 307 and 353 of IPC is not sustainable and, therefore, the accused is acquitted of the charges framed under these sections.

16. So far as the recovery of firearms from the accused is concerned, since the statements of PW-7 and PW-14 who were the only

witnesses to such recovery are found to be contradictory on the point of

recovery also and the substantive evidence led by the witnesses is not considered to be worthy of credence beyond doubt, therefore, the subsidiary evidence as to recovery of firearms from the accused can also not be believed and accordingly the conviction of the accused under Section 25 of Arms Act can also not be held to be sustainable and is liable to be set aside.

17. So far as the conviction of accused under Section 27(2) of Arms Act is concerned, admittedly no charge had been framed under this provision. Undoubtedly, under Section 464 (2) of Code of Criminal Procedure, a charge can be framed even at the appellate stage if the Court of appeal is of the opinion that a failure of justice has infact been occasioned and as observed in **Kammari Brahmaiah's** case (Supra) and **Kamil's** case (Supra), non-framing of a charge does not vitiate the conviction if no prejudice is thereby caused to the accused and if the accused is aware of the gist of charges against him, however, in our opinion, there is no need to go into that question as the prosecution case in its entirety has been held to have not been proved beyond doubt on the basis of the evidence produced on record and, therefore, the allegation that the accused had used any firearm in contravention of the provisions of Arms Act and had committed offence punishable under Section 27(2) of IPC also does not stand proved. Keeping in view the totality and facts and circumstances of the case and the discussion foregoing, it is held that the case of the prosecution has not been proved beyond doubt. The learned trial Court had not properly appreciated the evidence placed on record and, therefore, the findings as given by the learned trial Court thereby holding the appellant guilty under the aforementioned sections have become liable to be set aside being not sustainable in the eyes of law. The same are accordingly set aside. The

accused stands acquitted. The appeal stands allowed. The accused be released from custody, if not required in any other case.

18. The criminal miscellaneous application(s) also stand disposed of as having become infructuous as the main appeal stands disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

16.02.2023
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No