

In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-D-696-DBA-2004
Reserved on: 24.7.2024
Date of Decision: 2.8.2024
- State of Haryana

.....Appellant
- Versus
- Samshu and another

.....Respondents
2.

CRA-S-2278-SB-2003 (O&M)
- Samshu and another

.....Appellants
- Versus
- State of Haryana

.....Respondent
3.

CRR-431-2004
- Tofik

.....Petitioner
- Versus
- Samshu and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pawan Girdhar, Addl. A.G. Haryana
for the appellant (in CRA-D-696-DBA-2004)

Mr. D.P.S. Kahlon, Advocate
for the appellants (in CRA-S-2278-SB-2003)
for the respondents (in CRA-D-696-DBA-2004 and
in CRR-431-2004)

Mr. Dhruv Singh, Advocate for
Mr. Sunil Panwar, Advocate
for the petitioner (in CRR-431-2004)

SURESHWAR THAKUR, J.

1. Since both the above appeals (supra) as well as the criminal revision (supra) arise from a common verdict, made by the learned trial Judge concerned, hence all the appeals/revision (supra) are amenable for a common verdict being made thereons.

2. All the appeals/revision (supra) are directed against the impugned verdict, as made on 14.11.2003, upon session case bearing No.51 of 14.08.2002, by the learned Additional Sessions Judge, Gurgaon, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 307/34 of the IPC, besides under Section 25 of the Arms Act, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts for an offence punishable under Section 324 read with Section 34 of the IPC. Importantly also the learned trial Judge concerned, acquitted the accused for a charge drawn against them for an offence punishable under Section 307 read with Section 34 of the IPC, besides under Section 25 of the Arms Act. Moreover, through a separate sentencing order of 15.11.2003, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

“xxx

I therefore, sentence each accused to undergo RI for two years and to pay a fine of Rs.3000/- for offence u/s 324 IPC, in default of payment of fine each to further undergo RI for three months. Out of the fine, if recovered an amount of Rs.5000/- be paid to injured Tofik as compensation. File be consigned to record room after due compliance.”

3. Since both the accused-convicts became aggrieved from the above drawn verdict of conviction, besides also, became aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became

imposed, upon them, by the learned convicting Court concerned, thereupons they choose to institute thereagainst criminal appeal bearing No.CRA-S-2278-SB-2003, before this Court.

4. The State of Haryana as well as the complainant-injured has also filed criminal appeal bearing No.CRA-D-696-DBA-2004 and criminal revision bearing No.CRR-431-2004, thus respectively, seeking the recording of finding of conviction qua the convicts-accused, thus for an offence punishable under Section 307 read with Section 34 of the IPC, besides also for an offence punishable under Section 25 of the Arms Act, thus in addition to the offence(s) for which they are already convicted.

Factual Background

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PB/1 is assigned. The narrations carried in Ex.PB/1 are, that on 22.9.2001 while on patrol duty, ASI Om Prakash received information through Rahim Khan that his son Tofik has been shot by Shamshu and is presently admitted in Safdarjung Hospital, New Delhi. On this, ASI Om Parkash reached Safdarjung hospital and after obtaining the opinion of the doctor on duty, recorded statement of Tofik to the effect that on 21.9.2001 when he was sitting on the cot in his fields Rehmu son of Saroop Khan came and had altercation with him and also gave him fist and slap blows. When he tried to ran away in the meantime, Samshu son of Chhote Khan also arrived armed with a gun and fired a shot which hit on his right knee. On hearing the noise of gun shot, his father Rahim Khan, and elder brother Deen Mohd. came there and upon seeing them the accused ran away towards the village. His uncle Umardin also came at the spot. He further stated that about one year back Samshu, Rehmu, Riyaju and Hari

Khan had caused injuries to his father regarding which a case is pending in the Court. The accused pressurized to compromise that matter and on their denial to do so and due to the enmity, Samshu fired on him, and Rehmu gave fist and slap blows. On the above statement a case under Sections 307/34 of the IPC and under Section 25 of the Arms Act, was registered and after completing the necessary formalities of investigation the accused were challaned and sent up to the learned trial Court for trial.

Committal Proceedings

6. Since the offences punishable under Section 307 of the IPC, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 2.1.2002, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of offences punishable under Sections 307/34 of the IPC, besides under Section 25 of the Arms Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 12 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, they choose to lead two witnesses in their defence evidence.

Submissions of the learned counsel for the appellants-accused

9. The learned counsel for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel and complainant

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts-appellants, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convicts-appellants, be dismissed. Furthermore, he has also argued that the convicts-appellants be also convicted for an offence punishable under Section 307 read with Section 34 of the of the IPC, besides for an offence punishable under Section 25 of the Arms Act, thus in addition to the offences for which they are already convicted.

Analysis of the deposition of eye witnesses to the occurrence who respectively stepped into the witness box as PW-2 and PW-3

11. Both the witnesses (supra), in their respectively made depositions, as comprised in their respective examinations-in-chief, respectively ascribed to the convicts-appellants, thus the incriminatory role, inasmuch as, qua convict Samshu though wielding the incriminatory weapons of offence i.e. gun, rather inflicting injuries on the person of injured Tofik, whereas, the other co-accused belabouring the victim injured through delivering kick and fist blows upon him.

that both of them, were aware of the identity(ies) of the convicts-appellants. Resultantly, when there is also no efficacious cross-examination made upon both the eye witnesses (supra), thus suggesting, that the present convicts-appellants were unknown to both of them nor when any affirmative answer thereto became meted, thus by the eye witnesses (supra). Therefore, the first time identification, by them thus in Court vis-a-vis the identities of the convicts concerned, rather even without prior thereto any valid test identification parade being held, rather does not make the apposite identifications, rendered only in Court to be lacking in any evidentiary vigor.

13. Be that as it may, an incisive and wholesome reading of the depositions of the said eye witnesses to the occurrence unfolds that; a) both of them did not either grossly improve nor grossly embellished upon their previously recorded statements in writing, b) both of them have in respect of the crime event thus made a version in complete alignment with the version embodied in the FIR, c) both of them have narrated an ocular account vis-a-vis the crime event which is but free from any taint of any *inter se* or *intra se* contradiction. Resultantly, therebys the eye witness account as became rendered by them vis-a-vis the crime event, rather is to be assigned the completest evidentiary vigor, wherebys the prosecution has been able to cogently establish the charge drawn against the accused.

Signatured disclosure statement of convict Samshu Ex.PF

14. During the course of investigations, being made into the appeal FIR, convict-appellant Samshu, made a signatured disclosure statement, to which Ex. PD is assigned. The signatured disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x

I had fired with gun which was got washed by me and concealed in residential room. Empty cartridge was thrown on the way after making fire. Except me, nobody is in the knowledge of gun. After making demarcation, I can got recovered the same. The disclosure statement of the accused was recorded upon which the accused and witnesses have appended their signature.

x x x x x”

15. The disclosure statement (supra), carries thereons the signatures, of the convict concerned. In his signed disclosure statement (supra), convict Samshu, confessed his guilt in causing injuries on the person of the injured, hence with the user(s) by him of the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, in the residential room. Moreover, the said signed disclosure statement does also makes speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

16. Significantly, since the appellant has not been able to either ably deny his signatures as occur on Ex.PF nor when he has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recovery is either contrived or invented. Therefore, the said memo is concluded to be holding the utmost evidentiary tenacity.

17. Significantly also since post the making of the said signed disclosure statement, by the convict to the investigating officer concerned,

the convict concerned, through recovery memo Ex.PF/1, thus caused the recovery of the weapon of offence to the investigating officer concerned. Consequently, when the said made recovery is also not suggested by any cogent evidence to be a planted recovery. Resultantly, the effect thereof, is that a valid recovery being made vis-a-vis the incriminatory weapon of offence, thus by the convict, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statement, by the convict concerned, besides the pursuant thereto effectuation of valid recovery of the incriminatory weapon of offence, thus by the convict concerned, to the investigating officer concerned, but naturally corroborates and supports the unblemished and credible eye witness account (supra), as becomes rendered vis-a-vis the crime occurrence, thus by the ocular witnesses (supra).

Corroboration from medical evidence

18. PW-11 Dr. Anil Bhola medically examined the injured person and prepared the apposite medico legal report in respect of the injuries entailed on the person of the injured, thus in pursuance to the relevant assault becoming made on his person, rather at the instance of both the accused. To the said MLR Ex.PZ becomes assigned. The relevant injuries as noticed by PW-11 on the body of the injured are extracted hereinafter,. The contents of the said MLR is ad verbatim extracted hereinafter.

Injuries on the person of injured Joginder Singh

“I) Fire arm caused burst wound about 5cm x 2 cm muscular deep at lateral aspect of lower part of right leg, point of entry from right ankle and point of exit upper part of wound, wound was obliquely placed. X-ray right lower part of left AP lateral view was advised. Patient was referred to Safdarjung hospital for further appropriate management.”

19. Given the rendition of a credible ocular account by the witnesses (supra), vis-a-vis the crime event, thereby when ocular account assumes primacy over medical account, besides when the drawings of the disclosure statement and the consequent thereto recovery, as became effectuated of the crime weapon, rather becomes assigned the utmost evidentiary sanctity, thus begets an inference that the prosecution has successfully established the guilt of the accused.

Report of Ballistic Expert

20. Moreover, when for reasons stated hereinafter, the report of the FSL concerned, does also pronounce that the recovered firearm, as became sent for examination to the ballistic expert, thus in sealed cloth parcels, rather was the relevant firearm wherefrom the bullets, hence became fired, besides pronounces that the said firearm was in a working condition. In sequitur, with this Court assigning credence to the testification(s), of the ocular witness to the occurrence, and, when in tandem therewith, the ballistic expert, has also made an opinion qua the fired cartridge, becoming fired, from country made SBBL gun, as became recovered through recovery memo Ex. PF/1, at the instance of the accused. Consequently, the charge drawn against the accused is to be concluded to become invincibly proven but only to the extent qua the findings of conviction as become recorded by the learned trial Court concerned.

FINAL ORDER

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21. The State of Haryana as well as the victim-injured become aggrieved from the finding of acquittal, as made vis-a-vis the convicts-

appellants vis-a-vis the charge drawn against them for an offence punishable

under Section 307 of the IPC, besides under Section 25 of the Arms Act, whereupons the appeal/revision (supra) have been made before this Court. However, for the reasons to be assigned hereinafter both the revision and the appeal are hereby dismissed. The reasons for dismissing both the appeal/revision emanates from the hereinafter alluded facts;

I) The injuries existing on the person of injured-Joginder Singh, became disclosed in Ex.PZ, to be occurring not on a vital portion of the body of the injured, but to be occurring on the lower part of his right leg.

II) In sequel, therebys the accused had no *mens rea* to eliminate the deceased nor therebys the said injury was a life endangering injury.

III) The recovered weapon of offence was a single barrel gun. The said fact is declared in the report of Ballistic expert. Therefore, when the only shot which became fired from recovered gun, thus became fired on a non vital portion of the body of the injured, wherebys this Court has concluded that the same was not a life endangering injury. If so, reiteratedly since the weapon of offence used by the accused was a single barrel gun wherefrom only a single cartridge was amenable to be fired, and, which did become fired therefrom besides struck the non vital portion of the body of the injured, therefore, when but no other cartridge was available to be fired from the single barrel gun.

IV) In sequel, the accused had no *mens rea* to cause any life endangering injury upon the injured nor the accused were liable

to be convicted for an offence punishable under Section 307 read with Section 34 of the IPC.

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22. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellants-convicts by the learned trial Judge concerned, do not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellants are on bail, thus they are ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

23. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

24. Records be sent down forthwith.

25. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 2nd, 2024
Ithlesh

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