



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

261

CRM-A-462-MA-2016**Date of decision: 05.09.2024****State of Haryana**

....Appellant

V/s

Imran and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Yuvraj Shandilya, AAG, Haryana,
for the appellant.

Mr. Shiva Khurmi, Advocate,
Amicus Curiae on behalf of the respondents.

MANJARI NEHRU KAUL, J. (ORAL)**CRM-7799-2016**

This application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. is for condonation of delay of 90 days in filing the appeal.

For the reasons stated in the application, the same is allowed.

Delay of 90 days in filing the appeal is condoned.

CRM-A-462-MA-2016

1. The State of Haryana is before this Court to challenge the judgement/order dated 06.08.2015 vide which the learned trial Court acquitted the respondent-accused by extending the benefit of doubt to them.



2. Since none is appearing on behalf of the respondent, Mr. Shiva Khurmi, Advocate, enrolment No.1453-2015, who is present in Court, is appointed as amicus curiae to assist this Court on behalf of respondent.

3. The impugned judgment passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, concerns a case wherein the State of Haryana brought charges against the respondent-accused alleging that they were conspiring to commit a robbery and were then found in possession of illegal arms and ammunition on 26th of March 2015. The trial Court upon examination of the material on record including the evidence led by the prosecution extended the benefit of doubt to the respondent-accused by holding that there was not sufficient corroboration of the evidence led.

4. As per the case set up by the prosecution, on 26th of March 2015, ASI Ram Kumar (PW-5) informed Head Constable Azad Singh telephonically, requesting that an official be sent to the Shadipur Toll Tax Barrier. ASI Rajesh Kumar (PW-2) met PW-5 ASI Ram Kumar and other police personnel. ASI Ram Kumar gave information about a robbery being planned by the respondent-accused near Panjupur bridge. Acting on this tip, a police raiding party was formed and the accused-respondents were apprehended at the scene.

5. Upon their arrest, respondent-Imran was allegedly found with a country made pistol, respondent-Furkan was holding an iron rod, and



respondent-Irfan had a torch. A live cartridge was also recovered from respondent-Imran. The recovered items were seized and sealed, leading to the registration of FIR Exhibit-PH/1. The seized items were subsequently examined by PW-1-Bhim Singh (Armourer), who reported on the functionality of the fire-arms. After completion of investigation and obtaining necessary sanctions, the investigating agency filed a charge-sheet. After the challan was presented, the accused-respondents were charged under Sections 398, 401 of IPC and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

6. In support of his case, the prosecution examined as many as 5 witnesses, PW-1-Bhim Singh (Armourer), PW-2-ASI Rajesh Kumar, PW-3- Raj Kumar, Reader, PW-4 H.C.Raj Kumar and PW-5- ASI Ram Kumar.

7. In the statements recorded under Section 313 Cr.P.C., the respondents-accused pleaded their innocence.

8. In defence, one DW-1 Smt. Sagiran was examined who deposed that on 26.03.2015 at about 3:00/4:00 p.m., Furkan and Imran had come to her room after attending a marriage, from where they were then apprehended by the police.

9. The case of the prosecution relied primarily on the testimonies of PW-2 ASI Rajesh Kumar, PW-4-HC Raj Kumar and PW-5 ASI Ram Kumar, who detailed the arrest and recovery of the weapons. Additionally, the report by PW-1 Bhim Singh, Armourer was presented to prove that the recovered fire-arm was operational.



10. Learned State counsel has vehemently argued that despite all the prosecution witnesses being consistent in their testimonies, the trial Court gravely erred in discarding their testimonies by emphasizing on certain discrepancies, which however were inconsequential; coupled with the fact that all the witnesses cited were official witnesses; there was absence of any independent witness. It has further been argued that mere non test-firing of the recovered weapon could not be said to be detrimental to the case of the prosecution.

11. Learned Amicus Curiae has opposed the submissions made by learned counsel for the appellant-State and argued that the impugned judgment is a well reasoned one which does not warrant any interference. Learned Amicus Curiae has highlighted significant discrepancies, particularly regarding the location where the respondent-accused were allegedly planning the robbery and where they were subsequently apprehended with a fire-arm, iron rod and torch. It has been asserted by the learned Amicus Curiae that these inconsistencies are crucial when compared with the varying testimonies of prosecution witnesses, who provided conflicting accounts of the location of the accused on the fateful day. Moreover, learned Amicus Curiae has submitted that the prosecution had presented two contradictory versions. One prosecution witness PW-2-ASI Raj Kumar stated that the accused had made no attempt to flee when the police arrived following secret information, while another witness, PW-4-HC Raj Kumar claimed to the contrary, asserting that the accused did attempt to escape. It has been argued that this clearly points to a fabricated case, as the respondent-



accused were not at the location from which they were allegedly apprehended. Instead, they were present in the room of DW-1-Smt. Sagiran, who testified before the trial Court that on the fateful day accused-Furkan and Imran had returned from a wedding and were in her room when the police arrived and arrested them.

12. I have heard learned counsel for the parties and have perused the relevant material placed on record.

13. Upon a careful perusal of the evidence and other material on record, this Court has no hesitation in concurring with the findings recorded by the learned trial Court that there are indeed significant inconsistencies and deficiencies in the case of the prosecution, which undoubtedly undermine the reliability of the evidence presented against the accused.

14. First, the testimonies of the key prosecution witnesses PW-2 ASI Raj Kumar and PW-5-ASI Ram Kumar, present conflicting descriptions of the scene of the arrest. While PW-2- ASI Raj Kumar described the location as a forest area, PW-5-ASI Ram Kumar, on the other hand, stated that the respondent-accused were apprehended on a public road. This material discrepancy raises serious doubts as to the credibility of the account presented by the prosecution, moreso when as per DW-1- Smt. Sagiran, the two accused-Furkan and Imran were apprehended from her room.



15. Additionally, although PW-2-ASI Raj Kumar claims to have sought public witnesses from the nearby Toll area, no names were recorded. This further casts doubt on the credibility of the prosecution version.

16. Moreover, the conflicting testimonies regarding the behaviour of the respondent-accused also raises a big question mark with respect to the case of the prosecution. While PW2-ASI Raj Kumar stated that the accused offered no resistance, PW-4-HC Raj Kumar, on the other hand, testified that the accused attempted to flee. This inconsistency further severely undermines the narrative of the prosecution.

17. Regarding the recovery of the fire-arm, the prosecution was not able to conclusively even prove that the recovered fire-arm was operational at the time of the arrest of the respondents. PW1-Bhim Singh, Armourer, in his report confirmed the mechanical functionality of the fire-arm, but the absence of a test fire did create a gap in the case of the prosecution. Without any definitive proof that the fire-arm was capable of being used, the charge of illegal possession of a functioning weapon stood unsubstantiated.

18. The burden of proof in criminal cases rests on the prosecution to establish guilt beyond a reasonable doubt. In the instant case, the numerous inconsistencies in the testimonies of the prosecution witnesses, lack of independent corroboration, and the failure to conclusively prove the

functionality of the weapon creates significant doubt regarding the guilt of the accused-respondents.

19. For the aforementioned reasons, this Court has no hesitation to concur with the findings recorded by the learned trial Court that the prosecution failed to meet its burden of proof and the benefit of doubt was rightly extended to the accused.

20. Appeal stands dismissed.

September 05, 2024
poonam

(MANJARI NEHRU KAUL)
JUDGE

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