

2024:PHHC:134783-DB



CRM-A-1052-2019(O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-A-1052-2019(O&M)

Date of Decision:-15.10.2024

State of Haryana

.....Appellant.

Vs.

Sahun

.....Respondent.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Shubhra Singh, Additional Advocate General, Haryana
Advocate for the Appellant.

JASJIT SINGH BEDI, J.

The present application under Section 378(4) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 15.06.2018 passed by Additional Sessions Judge, Faridabad.

2. The case of prosecution is that on 25.12.2006 at about 5.30 a.m. SI Maya Chand alongwith ASI Gyan Chand No.979, HC Partap Singh No.93, EHC Bijender Singh, Ct.Anand, No.283, Ct.Jasbir No.1784, Ct.Sandeep No.294, Ct.Rakesh No.2573 in Govt. vehicle no.HR-38-N0143 driven by driver Naresh Kumar No.2111, were present at Pali Ballabgarh road in connection with patrolling and crime detection duty. Two trucks were spotted coming from the side of village Pali. The Police signalled the



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vehicles to stop. The vehicles were stopped at a distance of about 30 feet from the barricade and its occupants started running away from the police. They were chased and in the process, one of them fired at the police party. One shot hit on the left palm of Ct.Jasbir Singh. The Police succeeded in nabbing one of the assailants namely accused Bashir on the spot while the remaining accused fled away. The arrested accused disclosed the names of other assailants as Akhtar, Bhagadi @ Ashu, Iqbal, Sahun s/o Safed Khan and Sahun s/o Ishaq. The vehicles abandoned by the assailants were bearing registration no.HR-55C-7437 and RJ-14AG-6155 and the same were taken into possession by the police.

3. The investigation was conducted by Inspector Jaibeer. Accused Bashir was arrested on the same day. Accused Akhtar was arrested on 2.1.2007 and a country made pistol was recovered from him. Subsequently accused Ashu was also arrested. Accused Sahun son of Safed Khan was arrested on 22.11.2007 and his challan was filed in the court. The present accused Sahun son of Ishaq Khan was declared a proclaimed offender and his P.O.challan was filed on 29.1.2008. Accused Ashu was arrested on 12.3.2009. Subsequently after trial, accused Akhtar and Bashir were convicted by the court of the then Addl. Sessions Judge, Faridabad vide judgment dated 12.2.2009 and accused Ashu was convicted vide judgment dated 12.5.2010 by the then Sessions Judge, Faridabad.

4. The present accused Sahun son of Ishaq Khan was joined in investigation after procuring his presence on production warrants on 3.11.2016. The spot of the alleged occurrence was got identified from him. After completion of investigation, his supplementary challan was filed in the



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court of the Area Magistrate, who complied with the provisions of Section 207 of the Code of Criminal Procedure and committed the case to the Court of Sessions vide order dated 01.05.2017.

5. Vide order dated 19.5.2017, Sahun was chargesheeted under sections 148, 186, 353, 307, 412 read with section 149 IPC, to which he pleaded not guilty and claimed trial.

6. In prosecution evidence, the following PWs were examined :-

PW1 : ASI Rakesh Kumar

PW2 : ASI Maya

PW3 : EHC Pankaj Kumar

PW4 : SI Mahavir Singh

PW5 : ASI Krishan Kumar

PW6 : Inspector Mahender Kumar

PW7 : ASI Suresh Kumar

PW8 : ASI Sarwan Kumar

PW9 : ASI Rajesh Kumar

PW10: Retd.ESI Satbir Singh

PW11: Retd.SI Ved Prakash

PW12: Retd.SI Bhim Singh

PW13: Dr.Hilal Ahmad

PW14: DSP Jaibeer Singh

PW15: Raj Kumar Sharma, RK

PW16: HC Jasbir Singh

PW17: Dr.Ajit Partap Singh

PW18: Insp/SHO Jai Bhan Tyagi



PW19: Insp.Rajpal

PW20 : HC Pratap (examined by Court Commission)

7. **PW1 ASI Rakesh Kumar** deposed that on 3.11.2016, accused Sahun son of Ishak Khan was produced on production warrants in the court of the Illaqa Magistrate. He was joined in investigation and his disclosure statement **Ex.PA** was recorded. Thereafter, the accused got demarcated the place of occurrence vide memo **Ex.PB**. He further deposed that on 25.12.2016 on completion of investigation, final report was prepared by Inspector Vinod Kumar.

In cross-examination, he stated that he had tried to join public witness in investigation but they had expressed their inability. No identification parade was got conducted by him from any of the witnesses of the occurrence. He admitted that the demarcated place was within his prior knowledge.

8. **PW2 ASI Maya Chand** deposed that on the day of the occurrence, he alongwith ASI Gian Chand, HC Pratap Singh, EHC Bijender Singh, Ct.Anand and other police officials were crime patrolling near Sanjay Colony, Nala and at about 5.30 a.m., he saw one dumper followed by one more truck 2515 coming from Pali side. On being signalled, both trucks stopped about 30-35 yards from the police party and the occupants started running on foot. They were chased and one of the accused fired at the police party, which shot hit Ct.Jasvir on his left palm. One of the assailants was apprehended at the spot, who disclosed his name as Bashir and also disclosed the names of absconders as Akhtar, Bhagari @ Ashu, Ikbal, Sahun s/o Safed Khan, Sahun son of Ishaq and Yunus s/o Yashmal. Bashir stated



that dumper no.HR-55-C-7437 was looted by them from Gurgaon by laying the dumper no.RJ-15AG-6155. This witness sent tehir **Ex.PC** and took Ct.Jasvir to Escorts Medical Centre for treatment. He identified the accused present in the court.

9. **PW3 EHC Pankaj Kumar** while deposing reiterated the version of PW1.

10. **PW4 SI Mahavir Singh** deposed that on 2.1.2007, he was associated in the investigation of this case with Insp. Jaibeer Rathee and ASI Mahender. Accused Akhtar was arrested in this case on the basis of secret information and on search, a country made pistol alongwith one empty cartridge was recovered from his right dub. This witness proved sketch memo **Ex.PD**, recovery memo **Ex.PD/1** and disclosure statement of accused Akhtar as **Ex.PE**. He identified case property, i.e., country made pistol and cartridge as **Ex.P1** and **Ex.P2** when produced in the court.

11. **PW5 ASI Krishan Kumar** tendered his affidavit **Ex.PF** stating therein that on 2.1.2007 Ct.Balbir Singh had deposited dumper No.HR-5C-7437 and 10 tyres vehicle bearing No.RJ-14-GA-6155 with him. He further deposed that vide receipt no.2 dt.2.1.2007 he handed over the said vehicles to ASI Jailal, NO.139.

12. **PW6 Inspector Mahender Kumar** deposed regarding arrest of accused Akhtar on receipt of secret information. On personal search of accused Akhtar, a country made pistol alongwith one empty cartridge was taken into possession. This witness proved its sketch as **Ex.PD** and recovery memo vide which country made pistol and empty cartridge were taken into possession, as **Ex.PD/1**. The same were sealed with the impression of JS in



his presence. Disclosure statement of accused Akhtar was proved as **Ex.PE**. In cross examination, this witness admitted that no public witness was joined into investigation

13. **PW7 ASI Suresh Kumar** in his deposition reiterated the version of PW1.

14. **PW8 ASI Sarwan Kumar, Draftsman** proved the scaled site plan **Ex.P1**, which was prepared by him on the direction of ASI Mahender and demarcation of SI Maya Chand.

15. **PW9 ASI Rajesh Kumar** tendered his affidavit **Ex.PW9/A** stating therein that On 2.1.2007 he was posted as MHC at CIA Sectore-30 and on that date, Insp.Jaibir Singh got deposited a country made pistol . 315 bore and an empty cartridge with him which was deposited by him in FSL Madhuban vide RC No.56 dt.12.1.2007 and till the time it remained with him, he did not tamper with it.

16. **PW10 Satbir Singh** deposed that on 12.03.2009 he joined investigation with ASI Bhim Singh alongwith HC Ramesh Singh for the present case. ASI Bhim Singh joined in the investigation accused Ashu from the court of Sh. Fakruddin JMIC, Faridabad as he was brought on production warrant. Accused Ashu was arrested by ASI Bhim Singh and he suffered his disclosure statement **Ex. PJ** which bore his signatures. This witness also proved demarcation memo **Ex. PK** vide which accused Ashu got demarcated the place of occurrence.

17. **PW11 Ved Parkash, Retd.SI** corroborated the version of **PW1** and deposed that demarcation memo **Ex.PH** bore his signatures as witness.

18. **PW12 Bhim Singh** while deposing corroborated the version of



PW10 and further deposed that the disclosure statement of accused Akhtar **Ex.PJ** and demarcation memo **Ex.PK** bore his signatures as a witness.

19. **PW13 Dr.Hilal Ahlmad** deposed that on 25.12.2016, he medico-legally examined Ct.Jasbir, who was brought to the hospital by Maya Chand, SI with alleged history of gun shot injury. He proved rukka as **Ex.PL** and MLR as **Ex.PM**.

20. **PW14 DSP Jaibeer Singh**, the IO of this case deposed that on 25.12.2006, he was posted as Inspector CIA Faridabad. On that day upon receiving information of firing near ganda nala Sanjay Colony, he reached the spot and thereafter on examining the place of occurrence, he prepared rough site plan **Ex. PN**. Then he took into possession one dumper bearing no. HR-55-C-7437 and other truck bearing no. RJ-14-GA-6155 vide seizure memo **Ex. PP**. Thereafter, he interrogated accused Bashir who suffered disclosure statement **Ex. PQ** regarding the incident. On 02.01.2007 he arrested accused Akhtar and interrogated him who suffered disclosure statement **Ex. PR** and as per his disclosure statement, he got recovered a country made pistol with empty cartridge. The said country made pistol and the empty cartridge was taken into police possession vide seizure memo **Ex PS** and after preparing a rough sketch of the country made pistol and the empty cartridge **Ex. PD**, the same were sealed into a parcel with seal impression 'JS'. Thereafter the seal was handed over to ASI Mahender Singh. On 25.12.2006 he moved an application **Ex. PT** for medical opinion about fitness of injured constable Jasbeer Singh. He recorded the statement of witnesses under Section 161 Cr. P. C. He identified the case property, i.e., country made pistol as **Ex. PU** and the cartridge as **Ex. PV**.



21. **PW15 Raj Kumar Sharma, Record Keeper** proved the summoned record of sessions case as per which accused Ashu was convicted by the court of Dr. B.B.Parsoon, ASJ, Faridabad in FIR No.382 of 2006.

22. **PW16 HC Jasbir Singh** deposed that on 25.12.2006 SI Maya Chand on receiving a secret information constituted a raiding party and laid a trap. After some time one dumper followed by a truck having ten tyres came from the side of Pali. On seeing the police party, the accused persons stopped both the vehicles and tried to run away. He further deposed that when accused persons were being chased, one of the accused opened fire which hit his left palm. He could not identify the said person.

23. **PW17 Dr.Ajit Partap Singh** deposed that being a Radiologist, on 25.12.2006 he examined the x-ray film of Jasbir Singh and prepared report **Ex.PW**.

24. **PW18 Insp/SHO Jai Bhan Tyagi** deposed that on 25.12.2006, FIR no. 1320 under section 395 IPC was registered in P.S. DLF Gurgaon on the complaint of Kalu. The looted vehicles were nabbed by the police on 25.12.2006 itself. On 2.1.2007, he came to P.S. Mujessar and after giving copy of FIR, he took into possession dumper NO.HR55C-7437 and ten tyres truck No.RJ-14GA-6155. He proved the receipt no.2 dt.2.1.2007 as **Ex.PX**.

25. **PW19 Insp.Rajpal** deposed that on receipt of tehrir **Ex.PC**, he lodged FIR **Ex.PY** and made endorsement **Ex.AA**

26. **PW20 HC Pratap (inadvertently marked as PW19) (examined by Court commission)** deposed that on 25.12.2006 , he was member of the police team. In his deposition, this witness reiterated the version of PW14 Jaibeer. In cross-examination, this witness conceded that



he did not see the accused Sahun at the spot because some of the accused were successful in fleeing away from the spot.

27. PWs EHC Raj Kumar, HC Ramesh Chand, SI/SHO Narender were given up by learned PP for the state being unnecessary. PWs Gian Chand and ASI Vijay were given up as they had expired.

28. All the incriminating circumstances appearing in the evidence were put to the accused in his statement recorded under Section 313 of the Code of Criminal Procedure. He controverted the same and pleaded false implication.

29. No evidence in defence was led.

30. Based on the evidence led the respondent/accused was acquitted by the court of Additional Sessions Judge, Faridabad vide judgment dated 15.06.2018.

31. It is the aforementioned judgment which is under challenge in the present case.

32. The Counsel for the appellant/State contends that the judgment of acquittal has been passed on conjectures and surmises. The prosecution had cogently and sufficiently proved the case against the accused. There was sufficient evidence for establishing that the accused was having knowledge that one of them was in possession of a firearm which could be used to fire a shot. There was evidence to show that the accused persons had tried to assault the police party. The arrested accused had named the accused in their disclosure statement. The accused had identified the place of occurrence. As the offence was established beyond reasonable doubt, leave be granted to file an appeal against the acquittal of the respondent/accused.



33. We have heard counsel for the appellant and have gone through the lower Court record.

34. The allegations that the accused was part of an unlawful assembly which looted the dumper number RJ-14-AG-6155 has not been substantiated as the driver and owner of the vehicle were not examined as prosecution witnesses.

35. The only witness, who deposed against accused, was PW1 ASI Rakesh Kumar, who proved disclosure statement of accused as Ex.PA and the memo of demarcation as Ex.PB. PW2 is ASI Maya Chand, retired Inspector, who proved incident dated 25.12.2016 and claimed that accused Bashir was apprehended who had revealed the names of all his accomplices and present accused Sahun was one of them. Only one accused, Bashir was apprehended on that day. PW3 EHC Pankaj Kumar, proved that on 3.11.2016 accused Sahun was joined in investigation after procuring his presence through production warrant. This witness also proved his disclosure statement (Ex.PA) and memo of demarcation (Ex.PB). The testimony of ASI Suresh Kumar (PW7) is of no use to the case of the prosecution because he claimed that accused Sahun was joined in investigation on 22.11.2007 and he had suffered his disclosure statement Ex.PG and he got demarcated the place of occurrence on 23.11.2007. Then he went on to identify accused Sahun as present in the court. In this manner, he stressed that accused was joined in investigation in the year 2007 and that he had demarcated the place of occurrence also in the year 2007 whereas the accused himself was arrested only on 3.11.2016. It is possible that this witness was deposing about another accused Sahun son of Safed Khan but



this witness wrongly identified the present accused Sahun son of Ishaq Khan as the person, who had suffered the disclosure statement in the month of November 2007.

36. PW20 (wrongly numbered as PW19) HC Partap Singh No.93 was got examined by this court on a Commission under section 285 Cr.P.C. He also proved the incident dated 25.10.2006 and deposed that Bashir had suffered a disclosure statement Ex.PQ in his presence and he had disclosed the names of his accomplices including the present accused. In cross-examination, he conceded that he had not seen accused Sahun at the spot but deposed that it was because the offenders had succeeded in fleeing away from the spot. He also admitted that it was dark at the relevant time.

37. Importantly vide judgment dated 11.2.2009 the court of the then ASJ, Faridabad had convicted accused Akhtar and Bashir under sections 148, 186, 353, 307 read with section 149 IPC. Accused Akhtar was also convicted under section 25 of Arms Act. Accused Ashu was also convicted vide judgment dated 12.5.2010 under section 148, 186, 353, 307, 412 read with section 149 IPC. The Convicts had assailed the said judgment of conviction in this Court. This Court held that the recovery of the property which was subject matter of charge under section 412 IPC was not effected in pursuance of any disclosure statement made by accused Ashu. It was observed that the case of the prosecution was that the alleged stolen vehicles were found at the spot when accused fled away. It was observed that the owners of the said vehicles were not examined during trial and no evidence was adduced to prove that any complaint was lodged with the police that the said vehicles were missing or stolen. In the absence of evidence on record



that the concerned vehicles were subject matter of dacoity, the offence under section 412 IPC could not be held to have been established against the accused and therefore the trial court had committed an error in holding the accused guilty for committing offence under section 412 IPC. The conviction and sentence of accused Ashu was set aside and he was acquitted of the said offence. On the same footing is the case of the present accused. The ingredients of Section 412 IPC are not made out as the owners and driver of said vehicles were not examined for proving dacoity.

38. This Court further made an observation with respect to the offence under Section 307 IPC. It was held that prosecution had failed to establish as to which accused had fired shots at the police party. These observations are applicable to the case of present accused as well. It cannot be held with certainty that the accused had the knowledge that one of the members had in his possession a .315 bore country made pistol and that he would fire with the same at the police party. Therefore, section 307 IPC read with section 149 IPC is not made out in this case.

39. Further when it is not proved that the accused were in possession of some stolen vehicles which were robbed by them, then it cannot be held that he was a member of an unlawful assembly. There is no evidence that accused was member of a gang which looted or robbed vehicles. Resultantly neither section 148 nor 149 IPC is being made out in this case.

40. As section 149 IPC itself is not made out and it has not been proved that the accused was a member of an unlawful assembly which was in possession of robbed or stolen vehicles and where there is no evidence for



proving that accused was in knowledge that one of them was in possession of fire arm which would be used for firing of shot, therefore benefit of doubt has to be given to the accused under section 353 IPC. Moreover, it is also pertinent to mention here that none of the police/official witnesses had seen accused present at the spot. The incident took place on 25.12.2006 in the wee hours of morning, i.e., at 5.30 a.m. It is an admitted case of the prosecution that at the relevant time, it was dark. The only evidence against the accused is the disclosure statement of accused Bashir. However, a perusal of Ex.PQ, disclosure statement of accused Bashir shows that although he stated that accused was one of the members who used to snatch/rob the vehicles, yet, he nowhere stated that at the time of alleged occurrence, accused Sahun was also present at the spot. As already discussed, there is not even an iota of evidence that the vehicles recovered from the spot were looted vehicles. In this manner, neither is it proved that the accused was a member of some gang of dacoits/robbers, nor is it mentioned in the disclosure statement of accused Bashir that he was present at the spot at the relevant time. Be that as it may, the disclosure statement otherwise has no evidentiary value.

41. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an



order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

42. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment of acquittal passed by the Additional Sessions Judge, Faridabad. Therefore, the application seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 15, 2024
Vinay

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