

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

240

CRA-S-3192-2019

Date of decision: 14.03.2024

Kamal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Anil Ghanghas, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

MANJARI NEHRU KAUL, J.

1. The appellant is impugning the judgment of conviction dated 05.08.2019 and order of sentence dated 07.08.2019 whereby he was held guilty under Section 25 of the Arms Act, 1959 by the learned Additional Sessions Judge, Sonapat, in case FIR No.0013 dated 11.01.2018 under Sections 342, 379-A, 427 of the IPC and Section 25 of the Arms Act, 1959 registered at Police Station Kundli (Sonapat).

2. As per the case of the prosecution, on 11.01.2018, complainant, Naresh Kumar lodged a complaint with the police. He asserted that he was working as a driver for Ola Company, operating a car with registration No.HR-55AA-4987. On 10.01.2018, upon reaching TDI Kundli from Dwarka, Delhi, he received a phone call on his mobile phone regarding a car booking. At about 03:00 P.M., he arrived at a designated pick up point where three young boys boarded his car/cab. As the journey progressed towards Sonapat, these passengers brandished a pistol, robbed him of Rs.5,000/- and his mobile phone, after blind folding and gagging him with a handkerchief.

Subsequently, these three boys transferred the complainant to another vehicle and kept driving him to various locations before abandoning him at Burari Chowk, Delhi, warning him against reporting the incident, under the threat of death. Before abandoning him, the complainant was told about the location where his car had been parked. Upon locating his car, he discovered it in a damaged condition and his mobile phone had been left nearby. Following his complaint, an FIR was lodged leading to the arrest of the accused. During investigation, the disclosure statement of the accused was recorded leading to the demarcation of the crime scene. A disclosure statement was also recorded of appellant Kamal leading to the recovery of a country-made pistol along with one live cartridge and one empty cartridge from beneath a tree, adjoining the railway lines. The investigation culminated in the submission of a report under Section 173 of the Cr.P.C., leading to the framing of charges under Sections 392 read with Section 397, 365 and 427 read with Section 34 of the IPC and Section 25 of the Arms Act, 1959 against the accused. After the charges were framed since the accused pleaded not guilty, they were sent up to face trial.

3. The prosecution in support of its case examined as many as 10 witnesses including the investigating officer, Sub Inspector Inderjit, who stepped into the witness box as PW1 and complainant Naresh Kumar, who deposed as PW2. During trial, complainant PW2-Naresh Kumar reiterated the allegations levelled in the FIR, however, he categorically deposed that the accused were not those persons who had participated in the occurrence in question or who had snatched his money, car and mobile handset. Resultantly, complainant PW2-Naresh

Kumar was declared hostile during trial. Based on the evidence, the learned Trial Court acquitted the accused of the charges framed under Sections 392/397/365/427 of the IPC, however, appellant Kamal was convicted under Section 25 of the Arms Act, 1959 as recovery of a country made pistol along with cartridges was effected pursuant to his disclosure statement. The learned Trial Court while convicting the appellant sentenced him to the period already undergone by him and Rs.5,000/- as fine, along with a default clause.

4. Learned counsel for the appellant vehemently submitted that his conviction on the face of it was perverse and not based on any cogent much less convincing evidence, moreso since complainant PW2-Naresh Kumar had not even identified any of the accused during trial. The only evidence which was purportedly gathered by the investigating agency against the appellant was his disclosure statement pursuant to which recovery of a country made pistol along with one live cartridge and an empty cartridge was shown to be effected from an open place, and which was admittedly frequented by people. Learned counsel further asserted that such a disclosure statement had extremely weak evidentiary value; no independent witness was joined at the time of the alleged recovery even though it was from a public place, and still further the alleged recovery was shown to have been effected more than a month after the alleged crime, which clearly cast doubt on its authenticity and created a serious dent in the case of the prosecution. Learned counsel asserted that all these facts and circumstances were erroneously not appreciated by the learned Trial Court and furthermore, pertinently, other than the disclosure statement there existed no other

evidence to link the appellant with the allegedly recovered weapon or even the crime in question. Learned counsel vehemently submitted that even as per the case of the prosecution the weapon of offence i.e. the pistol had not even been used to inflict any injury upon the complainant or even fired in the air. In addition, it was also asserted by the learned counsel that the alleged recovery of the weapon of offence was also highly suspect as there was no documented entry qua the same in the records of the Police Station from whose jurisdiction it was recovered. A prayer was, therefore, made by the learned counsel for setting aside the impugned order.

5. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite vehemently argued that no doubt the complainant while stepping into the witness box during trial, failed to identify any of the accused including the appellant as a result of which he was declared hostile, however, the recovery of the weapon of offence, which had been brandished by the accused, during the occurrence in question was recovered only pursuant to the disclosure statement made by the accused-appellant, hence, even if the complainant had failed to identify the accused during trial, the learned Trial Court had rightly convicted the appellant under the Arms Act. Learned State counsel thus prayed for dismissal of the present appeal.

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

7. Admittedly, the key witness in the case in hand i.e. complainant PW2-Naresh Kumar failed to identify any of the accused including the appellant during trial, when he stepped into the witness

box as PW2, as a result of which he was declared hostile during trial. Notably, it was not even the case of the prosecution that the weapon recovered, pursuant to the disclosure statement of the accused, had been used in the alleged crime. Even as per the complainant, a pistol was merely brandished and not fired upon, when his mouth was gagged and he was blindfolded by the accused.

8. In the instant case, a country-made pistol along with one live cartridge and one empty cartridge was recovered, one month after the occurrence in question from a public place (Railway tracks), undoubtedly accessible to others. The prosecution miserably failed to establish any link between the recovered country-made pistol etc. and the crime in question, rendering the recoveries following the disclosure statement of the appellant-accused of no consequence. It is crucial to underscore that disclosure statements alone, without supporting evidence, are insufficient to secure conviction of an accused.

9. As a sequel to the above, in the absence of any cogent evidence and pertinently when the complainant admittedly failed to identify any of the accused including the appellant during trial, the learned Trial Court fell into error in convicting the appellant under Section 25 of the Arms Act. Accordingly, the instant appeal is allowed and the appellant is acquitted of the charges framed against him.

14.03.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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