

(2016) 05 P&H CK 0221
In the Punjab And Haryana At Chandigarh
Case No : CRA-S No. 4890-SB of 2015 (O & M)

Balbir and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 148, 149, 307, 452

Citation : (2016) 3 AICLR 688 : (2016) 3 LawHerald 2349

Hon'ble Judges : Mr. Kuldeep Singh, J.

Bench : Single Bench

Advocate : Mr. Rakesh Nehra, Advocate, for the Appellant; Mr. Pawan Gaur, DAG, Haryana, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. Kuldeep Singh, J.(Oral) - This appeal is directed against the judgment dated 26.10.2015 passed by learned Addl. Sessions Judge, Jhajjar, vide which all the accused-appellants were convicted and sentenced as under:

Name of the accused

Offence

Sentence

Fine

In default of payment of fine

Balbir

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

25 of Arms Act

3 years

5,000/-

2 months S.I.

Krishan

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

Deepak

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

25 of Arms Act

3 years

5,000/-

2 months S.I.

Kapil

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

Manjeet

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

25 of Arms Act

3 years

5,000/-

2 months S.I.

Rahul @ Raju

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

Sunil @ Seena

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

Anil

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

25 of Arms Act

3 years

5,000/-

2 months S.I.

Sri Pal

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

Harbir

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

Ajay

149 r/w 148, 452, 307 IPC

3 years R.I.

5,000/-

1 month S.I.

148 r/w 149 IPC

1 year

1,000/-

7 days S.I.

452 r/w 149 IPC

1 year

1,000/-

7 days S.I.

All the substantive sentences were directed to run concurrently.

2. Brief facts of the case are that on 16.03.2013, the Police Control Room, Jhajjar received a telephone information regarding firing incident near Jakhoda School. A police party headed by S.I. Jai Kishan visited the place of occurrence, where Ramal Singh, Poonam and Himanshu were found lying injured. The injured were removed by the police to the Govt. Hospital, Bahadurgarh. It was found that the remaining injured, namely Suresh, Arvind, Karamjeet had already been referred to PGIMS, Rohtak. The police party visited PGIMS, Rohtak and collected the MLRs of the injured. There the statement of Arvind son of Ramal Singh was recorded. As per statement of Arvind-complainant, there was an old enmity between his family with the family of Hem Chander and Krishan. On the last evening Harbir, Sri Pal, Rahul @ Raju visited the shop of his father Ramal and extended threat to eliminate him. His father lodged a complaint to the this effect at Police Post, Assaudha. The police came to the village but due to intervention of respectable persons of the village, one day time was requested for compromising the matter. On the day of occurrence i.e. 16.03.2013 at about 6.30 p.m., Arvind along with his father Ramal Singh, mother Bimla, grandmother Murti Devi, his wife Manju, sister Poonam, nephew Himanshu, chacha/uncle Suresh, chachi/aunt Daya, cousin brother Karamjeet were present in their house. In the meantime, Balbir armed with pistol; Krishan, Deepak and Kapil armed with gun; Manjeet armed with pistol; Harbir, Anil, Darshan, Anoop armed with pistols; Rahul @ Raju armed with knife; Gaurav and Sri Pal armed with guns; Yudhvair, Darshna, Geeta, Sunil @ Seena, Ritu, Ajay, Sonu, Nepal and Deepak trespassed into their house. On entering the house, the accused persons gave exhortation to finish all the family members of Ramal. Therefore, all the accused indiscriminately started firing on the family members of the complainant. Due to which, Arvind received gun shot injury on the right arm from the gun of Deepak. His father Ramal, uncle Suresh, cousin Karamjeet, sister Poonam, nephew Himanshu and grandmother Murti Devi also sustained firearm injuries. The accused persons also hurled brick-bats and stones in the house of the complainant. The family of the complainant made a call to the police on help line No.100. On seeing the police party, the accused fled away with their respective weapons.

3. On the basis of the said statement, the case under Sections 148, 149, 307, 452 IPC and 25 & 27 of the Arms Act, 1959 (in short "the Arms Act") was registered against the accused. After completion of the investigation, the challan was presented in the Court of learned Illaqa Magistrate. Learned Magistrate

committed this case to the Sessions Court as the offence punishable under Section 307 IPC is exclusively triable by the court of Sessions. All the accused were charge-sheeted for the commission of offences punishable under Sections 149 read with Section 148, 452, 307 IPC. Accused Balbir, Deepak, Kapil, Manjeet, Anil, Sri Pal, Harbir and Krishan were also charge-sheeted for the commission of offence punishable under Section 27 of the Arms Act. Accused Balbir, Deepak, Manjeet and Anil were also charge-sheeted for the commission of offence punishable under Section 25 of the Arms Act for keeping in their possession unlicensed arms weapons without having any permit or licence.

4. In support of its case, the prosecution examined Ramal as PW1, Murti Devi as PW2, Suresh as PW3, Karamjeet as PW4, ASI Jagmal Singh as PW5, Arvind as PW6, Poonam as PW7, Bimla as PW8, Himanshu as PW9, EASI Surender Kumar as PW10, EASI Jai Chand as PW11, H.C. Sanjay Kumar as PW12, Inspector Vijay Singh as PW13, ASI Jagmal Singh as PW14, EASI Raj Roop Singh as PW15, Wazir Singh as PW16, Dr. Sushant Sharma as PW17, Dr. Lalit Chopra as PW18, SI Jai Kishan as PW19, SI Balraj as PW20, ASI Pawan Kumar as PW21, HC Jai Singh as PW22, Manju as PW23, Daya as PW24, Constable Sandeep Kumar as PW25, Constable Anil Kumar as PW26, Dr. Sushil Kumar Yadav as PW27, EASI Jogender Singhas PW28, HC Sant Kumar as PW29, H.C. Jitender as PW30, Dr. Vivek Phogat as PW31 and Dr. Dinesh Kumar as PW32.

5. In the statement recorded under Section 313 Cr.P.C., all the accused persons pleaded innocence and did not lead any evidence.

6. After hearing learned public prosecutor, learned counsel for the accused and going through the case file, learned Addl. Sessions Judge, Jhajjar, convicted and sentenced all the accused as aforesaid.

7. I have heard learned counsel for the parties and have also carefully gone through the case file.

8. Learned counsel for the appellants has vehemently argued that conviction of the accused-appellants for the commission of offences punishable under Sections 149 read with Section 148, 452 and 307 IPC is not sustainable in the eye of law.

9. It has also been argued that in this case, all the injured were examined and they turned hostile.

10. The complainant party led by Arvind, complainant, PW6 along with injured Ramal, PW1; Karamjeet, PW4; Suresh, PW3; Poonam, PW7 and Himanshu, PW9 turned hostile and did not support the prosecution case.

11. Similarly, other witnesses, namely, Murti Devi, PW2; Bimla, PW8; Manju, PW23; Daya, PW24 also did not support the prosecution case.

12. The complainant took the stand that some unknown persons trespassed their house with pistols and guns and gave injuries to his family members. The co-accused, who are facing trial, are his co-villagers and they did not commit any

offence nor inflicted any injury to them.

13. The other injured simply stated that they had not made any statement to the police.

14. Needless to say that though the witnesses were declared hostile and even in the questions in the nature of cross-examination by the prosecution, they did not support the prosecution case.

15. Learned Addl. Sessions Judge, Jhajjar while convicting the accused under Sections 149 read with Section 148, 452 and 307 IPC, while referring to the statements of hostile witnesses, referred to the FSL report (Ex.PY), which shows that the cartridge marked as C/16 recovered from the place of occurrence, was fired from 0.315" rifle marked as W/3 recovered from accused Kapil.

16. Learned Addl. Sessions Judge, Jhajjar, while stating about the crime, observed as under:

"13. This court can't shut its eyes to the hard realities of life, especially in the rural area, when every type of pressure tactics is initiated by the accused party, soon after the registration of FIR against them by the complainant party, viz. by registering the cross-case; mobilising the village panchyats for out of court compromise; tendering monetary compensation; extending threat to eliminate the witnesses; ostracise from community/society etc. Thus, it is easily discernible what has happened between the complainant party and the accused party behind the curtains, with facilitation of their respective counsels & others for winning over the prosecution witnesses in both the cross-cases. The offence under Section 307 IPC is a non-compoundable offence. Thus, it am of the view that indirectly allowing the parties to compromise, or to resile from the previous statement will make the whole Criminal Justice Delivery System a mockery. In this regard, I fortify my view in the light of judgment of Hon'ble Supreme Court in case, Zahira H. Sheikh v. State of Gujrat 2004(2) R.C.R. (Criminal) 836. It is the duty of the court to separate the grain from the chaff, and to reach at the bottom of truth. Now, the question arises, whether accused persons can be convicted on the basis of evidence on record, in spite of the fact that all the material witnesses turned hostile."

17. I am of the view that the accused-appellants cannot be convicted on the basis of conjectures, surmises and supposition. Here the complainant and all the injured as well as eye witnesses turned hostile. They do not say that accused-appellants are the same persons, who with intention to commit the crime, entered into their house and caused injuries to them. Though the injuries were found on the person of the injured but the court cannot presume that it must have been caused by the accused-appellants. The statement of Investigating Officer is not sufficient to prove the crime, since, the Investigating Officer does not claim that he is eye witness of the crime. The police reached at the spot after the crime was committed and after they received the information in the Police Control Room on help line No.100.

18. It being so, the conviction of the accused under Sections 149 read with Sections 148, 452 and 307 IPC is not sustainable in the eye of law and is hereby set aside.

19. Consequently, all the accused stand acquitted of the offences punishable under Sections 149 read with Section 149, 452 and 307 IPC.

20. Now, coming to accused-appellants Balbir, Deepak, Anil and Manjeet, it comes out that illicit weapons were recovered from their possession. They were arrested during the investigation of the present case.

21. From the statement of SI Jai Kishan, PW19, it comes out that on 24.03.2013, accused-appellant Balbir during interrogation made a disclosure statement Ex.PW19/M to the effect that he had kept concealed one pistol of .315 bore in his fields at village Jakhoda. In pursuant to his disclosure statement, he got recovered . 315 bore pistol. The rough sketch of the pistol Ex.PW19/O was prepared and the pistol was taken into possession through recovery memo Ex.PW19/P.

22. Similarly, on 27.03.2013, accused Anil also suffered a disclosure statement Ex.PW15/D. In pursuant to his disclosure statement, he got recovered .315 bore pistol. The rough sketch of the pistol Ex.PW15/D-1 was prepared and the pistol was taken into possession vide recovery memo Ex.PW15/D-2.

23. Similarly, accused Deepak also suffered a disclosure statement Ex.PW15/F to the effect that he had kept concealed one country made pistol of .32 bore in the poultry farm of Nepal son of Hem Chander. In pursuant to his disclosure statement, he got recovered .32 bore pistol. The rough sketch of the pistol Ex.PW15/F- 1 was prepared and the pistol was taken into possession vide recovery memo Ex.PW15/F-2.

24. On 28.03.2013, accused Manjeet was interrogated and upon interrogation, he suffered a disclosure statement Ex.PW12/A to the effect that he had kept concealed one country made pistol in a polythene under the bridge of Jakhoda by-pass. In pursuant to his disclosure statement, he got recovered .12 bore pistol. The rough sketch of the pistol Ex.PW12/B was prepared and the pistol was taken into possession vide recovery memo Ex.PW12/C.

25. The statement of S.I. Jai Kishan, PW19 is corroborated by the statement of EASI Raj Roop, PW15. Therefore, from the statements of the said witnesses, it is proved that country made unlicensed pistols of .315 bore were recovered from accused Balbir and Anil, whereas from Deepak .32 bore pistol was recovered and from accused Manjeet, one country made pistol of .12 bore was recovered. There is nothing much to impeach the testimony of said recoveries.

26. It is stated before this Court that accused Deepak is working as Constable in the Delhi Traffic Police.

27. It being so, there is no reason to plant a false case upon the aforesaid four

accused regarding the recovery of country made pistols.

28. As a result of the foregoing discussion, I am of the view that offences under Sections 149 read with Section 148, 452 and 307 IPC are not proved against all the accused beyond all reasonable doubts. Accordingly, they stand acquitted of the said offences.

29. However, it is proved beyond all reasonable doubts that accused Anil, Balbir, Manjeet and Deepak were in possession of illicit country made pistols without having any licence for the same. Therefore, they were rightly convicted for the commission of offence punishable under Section 25 of the Arms Act.

30. Learned counsel for the aforesaid four accused-appellants has prayed for leniency in the sentence.

31. Keeping in view the facts and circumstances of the case, the sentence of rigorous imprisonment for 3 years awarded under Section 25 of the Arms Act to accused-appellants Balbir, Anil, Deepak and Manjeet is reduced to 2 years. However, the remaining part of the sentence under the said section is maintained.

32. As a result of the foregoing discussion, the appeal qua Balbir, Anil, Deepak and Manjeet is partly allowed and partly dismissed, whereas qua the remaining accused-appellants, the appeal is allowed in to to. All the accused-appellants except Balbir, Anil, Deepak and Manjeet, who are on bail, their bail bonds and surety bonds stand discharged, whereas accused Balbir, Anil, Deepak and Manjeet are ordered to be arrested and committed to jail to undergo remaining part of the sentence.