
(2008) 04 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 82-SB of 2008 (O and M) , Criminal Appeal No. 127-SB of 2008

Dilbag Singh and another

APPELLANT

Vs

State of Union Territory, Chandigarh
 Balbir Singh Vs
State (Chandigarh Administration)

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)(a), 25(1)(b), 25(1A)
Criminal Procedure Code, 1973 (CrPC) — Section 313
Explosive Substances Act, 1908 — Section 4, 5, 6
Penal Code, 1860 (IPC) — Section 120B

Citation : (2009) 4 RCR(Criminal) 768

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Hitesh Verma and Mr. H.S. Bhullar, Mr. Arvind Sandhu and Mr. G.S. Bhatia, for the Appellant; N.S. Shekhawat for the Union Territory, Chandigarh, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—This is a bunch of three appeals arising out of same FIR No. 59 dated 20-3-2006, registered under Sections 4, 5 & 6 of the Explosive Substances Act, 1908 (for short `the 1908 Act`) and Section 25 of the Arms Act, 1959 (for short `the 1959 Act`), at police station Sector 11, Chandigarh.

2. After consideration of the evidence on record, the learned Additional Sessions Judge, Chandigarh convicted the appellants under various provisions as enumerated below and further directed them to undergo imprisonment for different periods and also pay fine. All the substantial sentences were ordered to run concurrently. The details of conviction, imprisonment and fine imposed on the appellants is extracted below:

Name of accused

Under Section

Sentence

Dilbag Singh

5 of Explosive Substances Act, 1908.

Rigorous Imprisonment for five years and to pay a fine of Rs. 5,000/-, in default of payment of which to suffer further RI for six months.

Sukhwinder Singh

25(1-A) of Arms Act

RI for five years and to pay a fine of Rs. 5,000/-, in default of payment of fine further RI for six months.

Ranjit Singh

25(1)(a) of Arms Act

RI for three years and to pay a fine of Rs. 3,000/-, in default of payment of fine further RI for three months.

Balbir Singh

25(1)(a) of Arms Act

RI for three years and to pay a fine of Rs. 3,000/-, in default of payment of fine further RI for three months.

3. Briefly, the facts as noticed in the impugned judgment are that on March 20, 2006, the police party received information that four terrorists belonging to Babbar Khalsa International namely Sukhwinder Singh alias Sukhi, Balbir Singh @ Nepali, Dilbag Singh and Ranjit Singh were present at local Bus Stop on the side of Panjab University on the road dividing Sectors 12/14, Chandigarh.

4. Immediately the police party swung into action and after conducting the raid at the disclosed place at around 9-30 PM, the appellants were apprehended from the spot. The recovery of arms and ammunition made from the possession of the appellants is as under:

Sukhwinder Singh

One rifle AK 47, the magazine of which was found carrying 15 live cartridges.

Balbir Singh @ Nepali

0.38 bore revolver, from chamber of which 5 live cartridges were found.

Dilbag Singh

A bag containing one Kg. RDX powder, and 4 detonators

Ranjit Singh

0.12 bore gun with two live cartridges.

5. On a disclosure statement made by Sukhwinder Singh alias Sukhi on March 22, 2006, one bullet motor cycle No. CH01-Q-7202 was recovered, which was used by the accused for unlawful activities. During investigation, the police also took into possession photographs (Exhibit PR-1 to Exhibit PR-3) showing Jagtar Singh Tara an accused in the murder of Sardar Beant Singh, former Chief Minister of Punjab attending the marriage of Sukhwinder Singh @ Sukhi. He was a proclaimed offender at the time of occurrence. The fire arms and RDX recovered from the place at the time of their arrest and search were duly sealed. On testing, the arms and ammunition were found to be in working order and fit to fire. Even the other powder, which initially was opined to be RDX, was also confirmed in the test report by the CFSL, Chandigarh.

6. After investigation, challan was presented against the appellants under Sections 4, 5 & 6 of the 1908 Act and Section 25 of the 1959 Act. As the case was found to be triable by the Sessions Judge, the same was committed vide order dated July 10, 2006. Charges were framed against the appellants and on their pleading not guilty the trial commenced.

7. The case put up by the prosecution was that the appellants had collected under a criminal conspiracy to cause extensive damage to the human life and public property, which is fairly proved from the recovery of large quantity of ammunition and RDX from the appellants. Whereas the story put up by the appellants in their defence was that the case set up against them by the prosecution was a false and concocted story. The appellants had in fact been picked up from their respective residences and involved in the present case. There was no reason for them to be present at the spot at the alleged time. Considering the entire evidence in detail, the learned Additional Sessions Judge found the evidence led by the prosecution to be trustworthy and accordingly convicted and sentenced the appellants for commission of various offences, as stated above.

8. Learned counsel for the appellants submitted that the conviction of the appellants in the present case is on a highly improbable story put up by the prosecution, which is full of discrepancies. The appellants were made to face trial and are now undergoing imprisonment for no fault of their. The mere fact that the appellants have been given benefit of doubt for criminal conspiracy, was enough to extend the same benefit about other offences also. There was no person with the patrolling party, who could recognise the appellants at the spot. The information was given to the police party by some secret informer at a far off place. No independent witness was joined. Though 1 Kg powder was shown to have been recovered from Dilbag Singh-appellant, but it was not in the form of powder in its entirety but was in the form of brick weighing 625 grams and powder weighing 385 grams. Different seals were found at the time of testing as

against those which were allegedly put at the time of sealing.

9. An additional argument raised in the case of Balbir Singh appellant is that even if the case set up by the prosecution is accepted in its entirety for arguments sake, it is only that offence u/s 25(1)(b) of the 1959 Act is made out and not u/s 25(1)(a) thereof as Balbir Singh was found to be in possession of non-prohibited weapon. The maximum punishment for the offence u/s 25(1)(b) is three years and Balbir Singh-appellant has already undergone actual imprisonment for more than two years. Accordingly his sentence may be reduced to the period already undergone.

10. Heard learned counsel for the parties and with their assistance perused the record.

11. The prosecution produced as many as nine witnesses.

12. PW 1 Constable Yash Pal, Draftsman, Police Headquarters, Chandigarh proved the site-plan Exhibit PA prepared at the site of occurrence.

13. PW 2 HC Mahipal, Armour at Police Lines, Sector 26, Chandigarh, proved the report Exhibit PB regarding the arms and ammunition recovered from the appellants.

14. PW 3 is Inspector Ramesh Chand, Crime Branch, Sector 11, Chandigarh, who in his examination in chief stated that he being head of a police patrolling party and SI Balwan Singh, heading another police team from Operation Cell were in the area of local bus stop, Sector 11, Chandigarh when a secret informer told them about the presence of four terrorists belonging to Babbar Khalsa International on the road dividing 12/14 Sectors near bus stop. The information was immediately passed on to Inspector Satbir Singh, Incharge of the Crime Branch, who along with Inspector Vijay Kumar the then Incharge of Operation Cell, joined them and on raid at the disclosed place all the four accused/appellants were arrested. Arms, ammunition and RDX were recovered from their possession. The accused after arrest were produced before the Illaqa Magistrate at about 1.35 PM on March 21, 2006.

15. In cross-examination initially recorded, the witness stood by his statement recorded. However, when recalled for cross examination, he stated different place of recovery as against what was stated in his initial statement. However, subsequently in his cross-examination, he admitted that the informer was with the police party upto PGI chowk of Sectors 14/15 and 11/12. He stated that only four persons were present at the bus stop when the police party reached there. The efforts made at the spot to join the independent witnesses failed. A team headed by SI Balwan Singh from the Operation Cell visited Kumarhatti, District Solan (Himachal Pradesh), to look for Jagtar Singh @ Tara on the basis of information extracted from Balbir Singh @ Nepali.

16. PW 4 SI Kirpal Singh, Crime Branch, Sector 11, Chandigarh corroborated the statement made by PW 3 Inspector Ramesh Kumar about the occurrence and

arrest of the accused from the spot.

17. On the basis of the disclosure statement made by Sukhwinder Singh appellant on March 22, 2006, one motorcycle and photographs were recovered from his residence.

18. Another important witness is PW 8 A.K. Dalela, Scientific Officer, CFSL, Chandigarh, who proved his test report, opining that the powder recovered from the accused was RDX, which was 625 grams in the shape of a brick and 385 grams in the form of powder.

19. PW9 Major Karambir Singh from Bomb Disposal Unit, New Delhi proved his report Exhibit PW-9/A, vide which four detonators were destroyed.

20. In his statement recorded u/s 313 Cr.P.C., Balbir Singh appellant stated that he has been falsely implicated in the case. He was picked up on the night intervening 20/21-3-2006 from Gurdwara Sahib, Kumharhatti where he was serving as a Granthi.

21. Similar is the statement of the other appellants, stating that they were picked up from their respective houses and have been falsely involved in the present case.

22. The appellants produced as many as 14 witnesses in their defence.

23. DW1 Jaswinder Singh, a businessman from Kurali stated that on March 20, 2006, father of Sukhwinder Singh told him on telephone that his son was taken away by some unknown persons and he asked for help. He advised father of Sukhwinder Singh to inform the matter to the local police, as he was at Delhi at the relevant time. On coming back to Kurali, he came to know that Sukhwinder Singh had been taken away by the Chandigarh Police. The witness is silent on the issue as to whether the matter was reported to the police at Kurali or as to whether the same was pursued with the Chandigarh police later on or not.

24. Another witness produced by Sukhwinder Singh appellant is PW 2 Harpal Singh, a labourer, who stated that he saw Sukhwinder Singh in front of Gurdwara Sahib, while being taken away in a Santro car. When he tried to contact him on his phone, he did not receive any response. From the newspaper of March 22, 2006, he came to know that Sukhwinder Singh had been taken away by Chandigarh Police. However, he did not remember the mobile number of the appellant. He did not even disclose as to from which phone number he had tried to contact accused Sukhwinder Singh and how he recognised Sukhwinder Singh in a moving car.

25. Naurang Singh father of Sukhwinder Singh appellant appeared as DW-3. His statement did not correspond with what was stated by Sukhwinder Singh in his statement u/s 313 Cr.P.C. Sukhwinder Singh had stated that when the police party talked to him, he asked them to come to his shop known as Jassi Studio, located at Morinda-Ropar road, whereas Naurang Singh DW-3 had stated that

Sukhwinder Singh was busy at the relevant time in a meeting of press correspondents at market of Kurali. Sukhwinder Singh stated that the police party reached his shop on the information submitted by his father and from there he was taken away. Nothing was stated by Naurang Singh DW-3 about intimating the local police about his son being missing, though he was a government servant.

26. Mohinder Kaur DW-4 is sister-in-law of Dilbag Singh. In spite of the fact that she stated that Dilbag Singh was taken away by the police after searching their house on March 21, 2006 at midnight but no intimation was given to any person.

27. DW-5 Naib Singh is a resident of village Burjwala, to which Dilbag Singh belongs. He has stated that Harpreet Singh, grand son of Dilbag Singh came to his house at about mid night to inform that his grand father had been taken away by some police personnel. There is no reason coming forth as to why only he was informed about this fact and not the local police.

28. DW 6 HC Jai Singh posted at police station Dharampur proved the DDR recorded at police station Dharampur.

29. DW 7 Pyare Lal, President of Gram Panchayat Chewa and Kumarhatti deposed that Balbir Singh alias Nepali was present in Gurdwara Sahib upto 9.30 P.M. on March 20, 2006. The next day he was informed about the fact that Balbir Singh had been picked up by the police personnel. But he also could not take any action as there is no record available for the same.

30. DW-8 Ajit Kaur, another resident of Kumarhatti has stated that at about 4.00/5.00 AM in the morning of March 21, 2006, she saw police personnel of Punjab Police forcibly taking away Balbir Singh in a van. The matter was immediately reported to Pyare Lal DW-7. She further volunteered to state that Balbir Singh has been implicated in a false case as if she knew about this fact.

31. DW 9 Jagjit Kaur is wife of Balbir Singh appellant. She also corroborated what was stated by Pyare Lal DW-7 and Ajit Kaur DW-8. Her statement was exactly in the same lines. Though there is some discrepancy wherein Jagjit Kaur has stated that she raised Lalkara when the police officials came and were taking away her husband in the police van, whereas Ajit Kaur never stated that she was alerted with the alarm raised by Jagjit Kaur. Jagjit Kaur has stated that in her presence 5/6 police personnel had taken away Balbir Singh. As to what Ajit Kaur was doing in the early morning in the Gurdwara, is not borne out from the record.

32. DW 10 is Charanjit Singh, who also stated in the same lines that Ranjeet Singh appellant was taken away from his house at about 2.30/2.45 AM on March 21, 2006. He overheard the noise. He was smart enough even to recognise the police personnel, who were admittedly in plain clothes.

33. Kuldip Singh DW-11, Panch of village Santokhgarh stated that at about 2.30 AM on March 21, 2006, while he was busy in preparing Gur of sugarcane at his house, he heard noise from the house of Ranjeet Singh appellant. This witness

also recognised the policemen, though in civil dress. How did he recognise, is not borne out from his statement.

34. Ajaib Singh DW-12 resident of village Santokhgarh stated that on March 21, 2006, he was busy in getting a bore drilled for his water pump at his house when at about 2.30 AM he heard noise from the house of Ranjeet Singh appellant. As to how far is his residence from the house of Ranjeet Singh is not clear from his statement.

35. From the statements of DW11 Kuldip Singh and DW 12 Ajaib Singh, it seems that the village remains awake throughout the night and continue working as Kuldip Singh states that he was busy in preparing Gur at 2.30 AM, whereas Ajaib Singh stated that he was getting a bore drilled for a water pump at 2.30 AM.

36. DW 13 Sucha Singh, who remained Sarpanch of village Santokhgarh for about 14 years, stated that on March 20, 2006, on the asking of Ranjeet Singh accused he was sleeping in front of the shed meant for cattle. He also recognised the policemen in plain clothes while taking away Ranjeet Singh appellant. The story put up by Sucha Singh DW 13, who remained Sarpanch for 14 years, being asked by a co-villager to sleep in front of the cattle shed, is highly improbable.

37. A reference to the complaint made to the Human Rights Commission by DW 10 to DW 13 also does not carry any weight for the reason that the stamp papers were purchased collectively from the same stamp vendor on 06-07-2006 and were got typed and attested simultaneously on the same date, i.e. much after the occurrence.

38. DW 14 Smt. Ranjit Kaur wife of accused Ranjeet Singh appellant stated that her husband was taken away by the police at 2.30 AM on March 21, 2006.

39. The entire evidence in defence led by the appellants with a view to prove that they were picked up from their respective houses and were implicated in the false case, does not inspire confidence. In fact from the language of the statements, it is evident that they were tutored.

40. Learned counsel for the appellants have tried to point out discrepancies in the evidence led by the prosecution and also submitted that the unimpeachable evidence led by them in defence has been discarded wrongly.

41. Minor discrepancy in the statement of Ramesh Chand Inspector PW 3 when recalled for cross-examination about the place of recovery, cannot result in giving the benefit of doubt to the appellants for the simple reason that he in his examination-in-chief had stated different place of recovery. Even in his cross-examination, he had submitted that the rough site-plan tallies with the fair site-plan. There is no reason forthcoming as to why this question was not put to this witness when he had appeared and was cross-examined also and why lengthy cross examination was there only when he was recalled.

42. The issue regarding identity of the accused raised by learned counsel for the

appellants also does not have any legs to stand. The submission is that once the accused were not personally known to the police party, how they were recognised when even the informer had not accompanied the police party. However, from the material on record, it has been established that the information to the police party by the informer was that four persons belonging to Babbar Khalsa International were present at the bus stop on road dividing sectors 12/14 and when the police party reached there, only four accused persons were standing there and when apprehended, the information proved to be correct as large quantity of ammunition and explosives were recovered from their possession. The incident occurred at 9.30 PM. There is no material no record to show that any other persons were also present at the spot, which could have made it difficult for the police party to recognise the accused at the spot.

43. Another issue raised by learned counsel for the appellants in Dilbag Singh's case also falls flat i.e. at the time of recovery it was stated that about 1 Kg of RDX powder was seized, whereas it was found that a part of it was in the form of brick and the remaining part was powder. In my view, merely form of recovery of the substance from the accused mentioned initially would not make any difference, as ultimately it was found that the contents thereof were RDX.

44. As far as non-joining of independent witnesses on the spot is concerned, it has come in evidence of the prosecution that they had made efforts for the same, but no one volunteered. The incident occurred at 9.30 PM. Firstly, number of people would not be available at that time. Secondly, in a case where large quantity of arms, ammunition and explosives are recovered, people may be reluctant to join and merely on that ground the case set up by the prosecution cannot be thrown.

45. Same is the position with regard to minor discrepancies pointed out by learned counsel for the appellants regarding preparation of documents, where there is some alleged discrepancy in the recording of time or date. The fact cannot be lost sight of that the incident occurred at 9.30 PM, the documentation was during midnight.

46. No benefit can be derived by the appellants even from the contents of the DDR (Exhibit DA) registered at police station Dharampur, for the simple reason that the same was made part of the challan by the prosecution itself. The FIR number is already mentioned in the DDR, which as per the material on record was registered after the accused had already been arrested at the spot.

47. Under the circumstances, there arises no question of the police party going to Kumarhatti to arrest Balbir Singh @ Nepali. The time of incident when the police party had crossed Dharampur towards Kumarhatti is mentioned as 4.30 AM. The evidence led by the prosecution to the effect that in fact on the disclosure of Balbir Singh @ Nepali, the police party had gone to Kumarhatti in search of Jagtar Singh alias Tara, seems plausible. Balbir Singh @ Nepali had already been arrested from the spot.

48. Hon"ble Supreme Court in State of U.P. Vs. Satish, observed that miscarriage of justice arising from acquittal of guilty is not less than conviction of an innocent. Para 24 thereof is referred below for the purpose:

"There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not.(See Bhagwan Singh and Others Vs. State of Madhya Pradesh, . The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, Ramesh Babulal Doshi Vs. State of Gujarat, Jaswant Singh Vs. State of Haryana, Raj Kishore Jha Vs. State of Bihar and Others, , State of Punjab Vs. Karnail Singh, and State of Punjab Vs. Pohla Singh and Another, ."

49. The judgments of this Court in Passi alias Parkash v. State of Haryana, 2000 (1) RCR(Criminal) 435 (P&H), Nachhattar Singh v. State of Punjab and others, 2003 (1) RCR(Crl.) 68 (P&H), Gurdial Singh v. State of Punjab, 2004 (2) RCR (Crl.) 745 (P&H), and Kuldip Singh v. State of Haryana, 2004 (4) RCR (Crl.) 103 (P&H) have been referred to by learned counsel for the appellants in support of the argument that once no independent witness had been joined at the place of recovery, the conviction is liable to be set aside. However, a perusal of the aforesaid judgments reveals that the same are on their own facts. In one case the recovery was at a busy place, whereas in another case, the accused was arrested more than a month after registration of the FIR. In one of the cases, the arms and ammunition allegedly recovered were not properly sealed and there was substantial delay in testing thereof, whereas in the present case the time of recovery is 9.30 PM. The place of occurrence was not surrounded by the people. Even otherwise, the case of the prosecution is that their request to the persons, whosoever were close thereby to join as independent witness did not yield any result. If the story put forth by the prosecution is to be disbelieved merely on that count, the result thereof would be that the police implicated the appellants

in the case by planting large quantity of arms, ammunition and RDX and the motive therefor is totally missing. There is no reason forthcoming to implicate all the four accused/appellants at Chandigarh in one case at the same time.

50. Though the appellants have been acquitted of the charge u/s 120-B IPC, with regard to criminal conspiracy, yet seeing the nature of arms, ammunition and explosives recovered from their possession, they are not entitled to be given benefit of doubt. Had they been successful in using the arms, ammunition and explosives, the result would have been devastating.

51. For the reasons stated above, I do not find any merit in the present appeals and the same are hereby dismissed.