
(2014) 06 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : CRA-S-927-SB of 2009

Mohd. Hanif

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Explosive Substances Act, 1908 — Section 4, 5
Passports Act, 1967 — Section 3
Penal Code, 1860 (IPC) — Section 201, 302, 489-B, 489-C

Citation : (2014) 06 P&H CK 0021

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Advocate : Luvinder Sofat, AAG, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.P. Nagrath, J.—Appellant is the resident of Jamerwal, P.S. Damka, District Sayalkot in Pakistan. The Pathankot Police seized a huge cache of arm and ammunition from the appellant on 05.09.2004. The charges against the appellant are for possessing 20 fake currency notes of the denomination of Rs. 1000/- each, total Rs. 20,000/- and committed offence u/s 489-C of Indian Penal Code (IPC); huge arm and ammunition, for offence u/s 25 of the Arms Act, 1954 (which in fact should be 1959); 5 kgs. of RDX, three batteries, one time device, two time-pencils, five fuse wires meant for igniting RDX for a blast, under Sections 4/5 of the Explosive Substances Act and for travelling in India without any valid passport for offence u/s 3 of the Indian Passport Act.

2. The prosecution version in brief is that on the night of 04/05.09.2004, police party headed by PW-10 SI Parmod Kumar, the then Assistant Sub-Inspector (ASI) Incharge, Police Post Nangal Bhur, Police Sadar, Pathankot, was holding naka at T-point Defence Road on Pathankot-Jammu G.T. Road under the

supervision of Manwinder Singh, Superintendent of Police, Pathankot, on the directions of Senior Superintendent of Police, Gurdaspur. At about 02.30 a.m., the police party spotted one Tata Sierra vehicle of white colour without number plate, coming towards that side. ASI Sulakhan Singh a member of police party, gave signal with torch light to the driver of the vehicle to stop. The occupants of the car tried to flee but the police party placed barricades on the road. The vehicle hit against the barricades. There were five occupants in the Tata Sierra, who alighted from the vehicle and tried to run away in different directions by firing from their respective weapons. ASI Parmod Kumar fired two shots in the air to scare the miscreants and one of them, namely; the appellant was apprehended by the police party headed by ASI Parmod Kumar.

3. The appellant has so many aliases as Shakurullah @ Amar Singh Gill @ Mohd. Jameen. He was holding. 30 bore mauser made in China, which was recovered from his right hand. Four live cartridges of .30 bore were found in the magazine of mauser and from personal search of the appellant six live cartridges of same bore were also recovered from the pocket of his shirt.

4. Ex. PF, the rough sketch of the pistol was prepared and attested by witnesses. The pistol and the cartridges were prepared into separate sealed parcels and sealed with seal impression "PK" and taken into possession vide panchnama Ex. PD. The appellant could not produce any licence to hold weapon. From further search of the accused two mobile phones, one of Philips and the other of Nokia having sim cards of specific cell numbers as mentioned in the memo Ex. PC were also recovered for which separate parcels duly sealed by the investigating officer were prepared.

5. A wallet of black colour was recovered from the back pocket of trousers of the appellant, which contained the currency notes of Rs. 547/- with so many visiting cards of different persons for which personal search memo Ex. PE was prepared. These visiting cards including cards of various persons most of which purport to be of certain advocates and one learner's licence etc. Ruqa was sent to the police station on the basis of which FIR Ex. PX was registered.

6. Sukhwinder Singh, DSP Pathankot also reached the spot and further investigation was conducted. Recovery of more arm and ammunition and other articles was made from possession of the appellant in pursuance of the disclosure statement made by him u/s 27 of Evidence Act. The weapons were got tested from the Forensic Science Laboratory (FSL) to find their working condition. The reports of FSL were received and on receipt of sanction order from the District Magistrate, the challan against the appellant was presented.

7. It may be stated that the other occupants of Tata Sierra were also apprehended by different police parties and separate FIRs were registered. The instant FIR No. 127 dated 05.09.2004 and FIR No. 129 dated 05.09.2004 were investigated by PW-10 ASI Parmod Kumar.

8. The prosecution examined ten witnesses in support of its case.

9. The appellant was examined u/s 313 Cr. P.C. and he was questioned on all the material circumstances appearing in the prosecution evidence against him. The appellant denied those circumstances and pleaded that he was arrested on 01.09.2004 alongwith certain other persons, namely; Sarup Singh and Nirmal Singh. Those persons filed writ petition in this Court on account of which false cases were registered against the appellant and others.

10. In defence the appellant examined DW-1 Daljit Kaur, the official from Judicial Record Room, Gurdaspur and DW-2 Rattan Lal, Record Keeper from Sessions Court, Gurdaspur.

11. Learned trial Court convicted the appellant of the charges u/s 5 of Explosive Substances Act; Section 25 of the Arms Act, 1959 and Section 3 of the Indian Passport Act. The appellant was, however, acquitted of the charge u/s 489-C IPC on account of discrepancy in the number of currency notes which were recovered and got tested from the expert. Learned trial Court sentenced the appellant to undergo rigorous imprisonment for ten years and to pay fine of Rs. 5000/-, in default of payment of fine to further undergo rigorous imprisonment for six months u/s 5 of Explosive Substances Act; rigorous imprisonment for five years and to pay fine of Rs. 5000/-, in default of payment of fine to further undergo rigorous imprisonment for six months u/s 25 of the Arms Act; and rigorous imprisonment for six months u/s 3 of Indian Passport Act. All the substantive sentences of imprisonment were to run concurrently.

12. For the past several dates there has been no representation from the appellant though the appeal was preferred through an advocate. I have heard learned State counsel and have carefully gone through the record of trial Court with the able assistance of learned State counsel.

13. learned State counsel has also produced on record the custody certificate of the appellant indicating that the appellant was released on 13.02.2014 on completion of sentence awarded in the instant FIR by also undergoing the imprisonment in default of payment of fine and granting him certain remissions. However, the appellant is still undergoing trial in a case pending before the Additional District and Sessions Judge No. 17, Jaipur Metro.

14. There is in fact an overwhelming evidence led by the prosecution in support of the charges against the appellant and discussed by learned trial Court in the right perspective. It would be appropriate to first of all refer to the testimony of SI Parmod Kumar as PW-10. He stated about spotting Tata Sierra vehicle at about 02.30 a.m. and that the miscreants tried to run away. PW-10 testified that appellant was apprehended by this party and various recoveries were made from possession of appellant. The mauser is Ex. P1, four live cartridges Ex. P2 to Ex. P5, two magazines Ex. P6 and Ex. P-7 and six other live cartridges of same bore Ex. P8 to P13. The mobile phones recovered from him are Ex. P14 and P15.

15. According to PW-10, DSP Sukhwinder Singh PW-6 had also reached the spot later on. PW-10 further stated that on further interrogation in the presence of

PW-6, the appellant suffered a disclosure statement in pursuance whereof he got recovered fake currency notes of Rs. 20,000/-, one AK-56 rifle, two magazines, 70 live cartridges of AK-56 bore, two pistols of .30 bore alongwith 75 live cartridges of the same bore, four magazines, two magazines alongwith 70 cartridges, one PTD, two time-pencils, five fuse wire, 5 kgs. of RDX and three batteries, which he had kept in a gunny bag on the bank of Upper Bah Doab Canal (UBDC) under the bushes/sarkandas, by removing the bushes with his own hands. Ex. PA the statement of the appellant was reduced in writing which was signed by him in Urdu and attested by other police officials and also the DSP.

16. The aforesaid recovered articles were also produced during examination of PW-10. AK-56 rifle is Ex. P16, magazines of this bore are Ex. P17 and P18, which were contained in the sealed parcel and opened in the Court. 70 live cartridges of AK-56 are Ex. P19 to P88, two pistols of .30 bore Ex. P-89 and P-90, four magazines Ex. P91 to P-94 alongwith 75 live cartridges of .30 bore Ex. P95 to Ex. P169. Envelope containing 5 kgs. of RDX is Ex. P170, three batteries Ex. P171 to Ex. P173, one PTD device Ex. P174, two time-pencils Ex. P-175 and P176, five fuse wires Ex. P177 to Ex. P181 and fake 20 currency notes of denomination of Rs. 1000/- each are Ex. P182 to P202.

17. PW-10 also stated that from the bulk quantity of RDX sample of 100 gms. was separated and prepared into sealed parcel. All these parcels were sealed with seal bearing impression "PK" of PW-10 and "SS" of DSP. PW-10 handed over the seal after use to HC Rajinder Parshad. These parcels were taken into possession vide recovery memo Ex. PB, attested by the witnesses. He also prepared rough site plan Ex. PW-10/D of this place of recovery and of the previous place from where the appellant was apprehended Ex. P-10/C. The articles Ex. P203 to Ex. P232 recovered from personal search of the appellant before his disclosure statement was recorded, were also produced during examination of PW-10.

18. The sketch of other pistols are Ex. PG and Ex. PH. Sketch of AK-56 rifle is Ex. PJ. The investigating officer is materially and substantially corroborated by PW-1 HC Rajinder Parshad and PW-6 Sukhwinder Singh, Superintendent of Police, who was then DSP (City), Pathankot.

19. These recovery witnesses have been extensively cross-examined and they have withstood the test of scrutiny. There is absolutely no discrepancy brought on record to shatter confidence in the story. It was not possible for the police party to plant such a huge recovery upon an innocent person. The huge cache of arms and ammunition would clearly suggest that how the local police of Pathankot was able to crack the carriage and storing of the arms which could result into serious consequences as no one knew about the targets of miscreants who seem to be quite dreaded persons.

20. It would be appropriate to refer to some part of the cross-examination of witnesses which would instill full confidence in their statement. According to

PW-10, the police party remained at the place where the appellant was apprehended from 2.30 a.m. to 6.00 a.m. From there they started at 6.30 a.m. to the place from where the subsequent recovery was made. According to PW-10, they reached the said spot at 7.30 a.m.

21. PW-1 in cross-examination stated that they started naka at 1.30 a.m. (night). They remained at T-point till 6.00 a.m. and reached UBDC at 7.00/8.00 a.m. PW-1 also stated that when Tata Sierra struck the barricades a dent occurred on the bumper of the vehicle.

22. PW-6 DSP Sukhwinder Singh stated in cross-examination that he reached the spot at 5.00 a.m. after receiving wireless message. According to the DSP, he was patrolling in the area when he received wireless message that at T-point Pathankot some persons had attacked the police party. In fact there was no material cross-examination from which his sworn testimony can be doubted. PW-6 gave the natural answers to material question put to him in cross-examination. He stated that investigating officer was having weighing scales for measuring the RDX. The minor discrepancy appeared when PW-6 stated that they reached the place of subsequent recovery at 9.30 a.m. which is bound to occur when the witnesses make statement after two years of the occurrence. They cannot be expected to make parrot like statement on such matters as they have to perform similar kind of functions during course of their duties.

23. The appellant set up a defence that he was apprehended on 01.09.2004 alongwith some other persons and this recovery was subsequently planted. The appellant basically relied upon the record of the Sessions Case No. 5 of 25.02.2005 decided on 30.08.2006, produced by DW-2 Rattan Lal, Record Keeper from Sessions Court, Gurdaspur. That record pertains to FIR No. 239 dated 29.11.2003, Police Station Sadar, Pathankot for offences under Sections 302/201 IPC, which cannot have any bearing in FIR dated 05.09.2004. There are photo copy of applications in the record of file brought by DW-2 which were marked as D-1 to D-2. In the cross-examination, DW-2 stated that record of file contains only photostat copies of above documents and thus cannot be held as proved. Mark D-1 and D-2 are the copies of telegrams sent by Tarsem Singh father of Sarup Singh and Nirmal Singh with regard to their arrest since 02.09.2014 but the name of appellant does not figure at all. Mark D-3 is the some resolution of gram panchayat dated 03.09.2004 with regard to aforesaid Sarup Singh and Nirmal Singh but no authenticity can be placed upon this document because such a document can be prepared any time subsequently. No such witness of gram panchayat to produce on record original of the resolution was examined.

24. An attempt was made to raise the contention that the appellant was arrested in FIR No. 161 dated 03.09.2004 for offences under Sections 302/489-B/489-C IPC; Section 4/5 of Explosive Substances Act; Section 25 of Arms Act for which appellant was arrested and ultimately got discharged on 13.03.2007. If the police arrested the appellant on suspicion on some subsequent date in another

FIR how could that be of any help to appellant unless it is shown that the said FIR was registered by name against the appellant? There is nothing on record to suggest that the appellant was arrested in the said FIR any time before 05.09.2004.

25. There is no evidence to link the appellant with Sarup Singh and Nirmal Singh. The document marked D-1 pertains to the Tata Sierra No. HR-01D-4258 whereas the vehicle recovered in this case was without registration number. It rather adds to the seriousness of the crime.

26. It was also the defence plea that water was flowing in the UBDC canal and so the version of recovery from that place becomes doubtful. But the story of prosecution is that the recovery was made from the bank of canal. PW-1 in cross-examination stated that there was water flowing in the UBDC canal but the recovery was made from the place where there was no water. There were only the straws/bushes. The cross-examination of PW-6 was not directed towards this aspect. PW-10 also stated in cross-examination that UBDC canal was full of water but they did not enter the canal water. PW-10 rather denied the suggestion that point "A" mentioned in the site plan shows that there was water at that point flowing in the canal.

27. The other attempt made to challenge the prosecution story was that no injury on either side was caused in the exchange of fire. PW-1 categorically stated that they only fired shots in the air to scare the miscreants.

28. There is one more important aspect to be discussed with regard to the discrepancy in the number of fake currency notes. It was the consistent story of prosecution and testified by the witnesses that on the basis of disclosure statement made by the appellant, 20 currency notes of the denomination of Rs. 1,000/- each were recovered. There was no cross-examination of PW-1 on this aspect. Learned trial Court, however, acquitted the appellant of the charge u/s 489-C IPC because the prosecution story ultimately developed was that 30 fake currency notes of Rs. 1000/- each were tested by S.P. Janjua, Treasurer, Reserve Bank of India, Chandigarh examined as PW-8. This currency was sent to PW-8 by the police on 11.11.2004 vide letter dated 28.10.2004. PW-7 Constable Pritam Dass also stated about entrustment of 30 currency notes for being taken for the test on 27.10.2004 for which he tendered his affidavit Ex. PW-7/A. However, the affidavit of PW-4 MHC Balwinder Kumar is to the effect that 20 currency notes were entrusted to Constable Pritam Dass on 27.10.2004. The affidavit of PW-4 is Ex. PW-4/A.

29. I do not think this could be considered any material discrepancy because five miscreants in all were apprehended by the police on that day. In fact the appellant could not get any advantage of the aforesaid fact in the absence of any cross-examination of PW-10 the investigating officer on the subject or that even PW-1 HC Rajinder Parshad. They were the best persons to explain how the currency notes were increased to 30 when these were sent for examination to

PW-8.

30. A feeble attempt on this aspect was made in the cross-examination of PW-6 but in the absence of putting any direct question asking him to explain the aforesaid discrepancy, no benefit could be availed by the appellant. PW-6 in cross-examination stated that he has no knowledge if any proceeding against the investigating officer with regard to number of currency notes sent to the Reserve Bank of India, was initiated. The aforesaid statement has not in fact brought any discrepancy on record. No witness was put any direct question to explain if there was such real discrepancy on record. Though the trial Court acquitted the appellant of the said charge which was not proper in my view, yet that would not bring any suspicion to the prosecution story.

31. The oral evidence is corroborated by the report of the FSL where the weapons/ammunition were sent for examination. The formal evidence to connect the report of FSL comprises of the affidavit Ex. PW-4/A of PW-4 HC Balwinder Kumar and that of PW-5 Head Constable Gurmail Singh who tendered his affidavit Ex. PW-5/A. Vide report Ex. PY of the FSL it was found as under:-

(i) Ten. 30 inch cartridges marked L/1 to L/10 contained in parcel "A" are live cartridges.

(ii) Seventy four. 30 inch cartridges marked L/11 to L/84 contained in parcel "B" are live cartridges.

(iii) One 7.62 x 39 mm cartridge marked L/85 contained in parcel "B" is a live cartridge.

(iv) Sixty nine 7.62 x 39 mm cartridge marked U86 to L/154 contained in parcel "C" are live cartridges.

(v) The firing mechanism of .30 inch Mauser Norinco pistol marked W/1 is in the working condition.

(vi) The firing mechanism of .30 inch Mauser pistol No. 31072530 is in the working condition.

(vii) The firing mechanism of .30 inch Mauser pistol No. 32020448 is in the working condition.

(viii) The firing mechanism of AK-56 rifle No. 19101387 is in the working condition.

(ix) Two. 30 inch cartridge cases marked C/5 and C/6 contained in parcel "F" (FSL/Ball/316/04) have been fired from. 30 inch pistol No. 32020448.

(x) The chemical examination of barrel wash of .30 inch pistols marked W/1 to W/3 contained in parcels "D" and "E" indicates that these have been used in firing. However, the date of their last firing could not be ascertained.

32. The other report with regard to rest of the articles examined by FSL is Ex.

PZ. Parcel No. 1 contained three initiating devices, one ABCD timer, two time-pencils in parcel No. 3, five electrical detonator in parcel No. 4 which were all found in order. Parcel No. 5 contained 100 gms. of black coloured material. On the basis of examination, the contents of parcels 1 to 4 were found in order and identified as the devices used in timing of initiating the explosions. The contents of parcel No. 5 which contained 100 gms. of black coloured material was found as RDX and a high explosive which could cause loss to the human life and property on explosion.

33. Ex. PW-9/A and Ex. PW-9/B are sanction orders for prosecuting the appellant for offences u/s 4/5 of the Explosion Act and Arms Act, 1954 respectively, issued by the District Magistrate. These are proved by examining PW-9 Sukhdev Singh, Reader to the District Magistrate. Nothing could be brought in the cross-examination of PW-9 to bring any defect in sanctions orders.

34. I find that the trial Court was quite correct in properly analyzing the evidence and to hold the charges against the appellant to be established beyond doubt. The conviction of the appellant for various offences u/s 25 of the Arms Act; Sections 4/5 of the Explosive Substances Act; and Section 3 of the Indian Passport Act is maintained. There is no scope of interference in the quantum of sentence, the appellant having already undergone the sentence awarded to him. No merit is found in the instant appeal and therefore, the same is dismissed.