
(2015) 07 P&H CK 0257

In the Punjab And Haryana At Chandigarh

Case No : CRA-S Nos. 2196-SB and 2197-SB of 2003

Samarjit Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Arms Act, 1959 — Section 25, 27, 5

Criminal Procedure Code, 1973 (CrPC) — Section 173, 293, 313

Penal Code, 1860 (IPC) — Section 307, 34, 411, 489-B, 489-C

Citation : (2015) 4 RCR(Criminal) 459

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Tanu Bedi, Advocate, for the Appellant; Jashandeep Singh, Assistant A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

Darshan Singh, J.—This judgment shall dispose of both the afore-captioned appeals as both of them have arisen out of the same FIR pertaining to the same occurrence, even though challan was presented separately and trial too was conducted separately. Cri. Appeal No. 2196-SB of 2003 pertains to Sessions Case No. 48 of 6.9.2000 whereby vide judgment dated 27.9.2003 both the appellants, viz., Samarjit Singh and Vinod Kumar have been held guilty, convicted and sentenced as under:--

Samarjit Singh

Vinod Kumar

2. Cri. Appeal No. 2197-SB of 2003 relates to Sessions case No. 49 of 6.9.2000 in which the trial court, vide its judgment of 29.9.2003, held appellant Samarjit Singh guilty of offence punishable under Section 27 of the Arms Act and convicted and sentenced him thereunder to undergo RI for three years and to pay a fine of Rs. 1,000/- and in default of payment of fine, to undergo further RI

for two months.

3. The catalogue of the facts and sequence of the events giving rise to this prosecution can be summed up as under:-

4. That on 2.5.2000, DSP Surinderjit Singh Mand laid a naka at Tajpur turning point along with other police officials. He received a secret information that two international smugglers along with fake currency were coming from Begowal side towards Subanpur. At about 4 p.m., the police party noticed a blue colour Tata Sumo bearing registration No. UP-14-J-4534 coming from Begowal side, which was signalled to stop. The driver of the vehicle stopped it about 50 yards short of nakabandi point and starting firing on the police party with his revolver with intention to kill the police officials. He fired three shots. At this Surinderjit Singh Mand DSP took AK 47 rifle of his gunman and returned two fires towards the Tata sumo. The driver of the Tata sumo immediately took U-turn and started speeding the vehicle towards Nadala. The police party chased the said vehicle and they were overtaken near village Lakhan Ke Padde. Due to high speed, driver of the Tata sumo could not control the vehicle and it slipped away from the road. The police party overpowered the occupants of the vehicle, i.e., the appellants. Appellant Samarjit Singh was driving the vehicle while appellant Vinod Kumar was sitting by his side. From the personal search of Samarjit Singh, .30 bore revolver make Webley Scott was recovered from left dab of his pants. On unloading, three empty cartridges were recovered. These articles were kept in sealed parcels. On the search of the vehicle, a plastic bag containing fake currency notes of Rs. 500/- denomination worth Rs. 20.00 lacs were recovered. Further from the jute bag lying on the thighs of appellant Vinod Kumar, the fake currency notes of Rs. 5,48,000/- of the denomination of Rs. 500/- and the fake currency notes of Rs. 6,22,000/- of the denomination of Rs. 100/- were recovered and were taken into police possession. The accused also could not produce any document of ownership of the vehicle. The same was also taken into possession. The Investigating Officer sent ruqa to the police station on the basis of which case has been registered. Both the accused, appellants, were arrested. The formalities of the investigation at the spot were completed. The arms and ammunition and fake currency notes were sent to the Forensic Science Laboratory for examination. On completion of the investigation, the report under Section 173 Cr.P.C. was presented in the court.

5. The case was committed to the court of Sessions for trial by the learned Additional Chief Judicial Magistrate, Kapurthala vide order dated 25th August, 2000.

6. Both the appellants were charge sheeted for offences punishable under Sections 307 , 489-B , 489-C and 411 IPC, whereas appellant Samarjit Singh was separately charge sheeted for offence punishable under Section 27 of the Arms Act, to which the accused pleaded not guilty and claimed trial.

7. In order to substantiate its case, the prosecution examined as many as 10

witnesses. The reports of the Forensic Science Laboratory Ex. PQ, PX, PY and PZ were also tendered.

8. In the connected Sessions case No. 49 of 6.9.2000 under Section 25 of the Arms Act against accused-appellant Samarjit Singh, in order to substantiate its case, the prosecution examined as many as six witnesses and closed its evidence.

9. When examined under Section 313 Cr.P.C., the appellants pleaded false implication. They claimed that they were picked up by the police from Bus Stand Nadala. When they objected for the same and threatened to file the case against the police party for their illegal detention, the police planted the false case. Appellant Samarjit Singh took independent plea in the second trial that he had an altercation with ASI Paramjit Singh and to take revenge, a false case was planed on him by the police. In defence evidence, he tendered the copy of the arms licence Ex. D1 and closed the defence evidence.

10. In the defence evidence, the appellants examined Satnam Singh DW 1 and closed their evidence.

11. On appreciating the evidence on record and contentions raised by learned Counsel for the parties, both the appellants were held guilty, convicted and sentenced as mentioned in the upper part of the judgment.

12. Aggrieved with the aforesaid judgments of conviction and orders of sentence, the present appeals have been preferred.

13. I have heard Ms. Tanu Bedi, Advocate, Counsel for the appellants and Shri Jashanpreet Singh, learned Assistant Advocate General, Punjab for the respondent-State of Punjab.

14. Initiating the arguments, Ms. Tanu Bedi, learned Counsel for the appellants contended that the case of the prosecution is based only on the statements of the official witnesses. Harjinder Singh was alleged to have been joined as an independent witness but he has not supported the prosecution case. She further contended that SHO of the Police Station who has conducted the subsequent investigation has also not been examined. Thus, the material witness has been withheld.

15. She further contended that it is a clear case of false implication on the basis of concocted version. She contended that there is delay in sending the special report to the Magistrate. Navjot, the owner of the vehicle, has not been examined. In the absence of his evidence, there is no material on record to connect the appellants with the vehicle from which the recovery is alleged to have been effected. The appellants have been acquitted by the trial court for the offence punishable under Section 411 IPC. So, it is not proved that the said vehicle was stolen.

16. She further contended that the story regarding encounter is not proved at all. No injury to anybody has been caused. There is not even a scratch on the

vehicle. There are only the oral statements of the official witnesses; PW 1 Harjinder Singh has not said anything about the encounter. She contended that as per the prosecution story, three shots were fired by appellant Samarjit Singh and two shots were fired by the DSP; it is not probable that the bullet will not even hit the vehicle. So a false story has been introduced. To support her contention, she relied upon cases Shiv Kant @ Pappan Vs. State of U.P., and Jagdish Rai v. the State (Cri. Appeal No. 98 of 1986), decided on 19.2.1987 by the Hon"ble Delhi High Court.

17. She further contended that even the story of the prosecution with respect to the secret information does not inspire any confidence as the said secret information has not been recorded into writing though there was sufficient time with the Investigating Officer.

18. She further contended that the counterfeit currency notes has not been exhibited during trial. There is also no material on record to show as to how the Investigating Officer came to know that the currency notes were fake. It shows that they were already having the knowledge and the vehicle was found abandoned. The appellants have only been falsely implicated due to their dispute with the police officials on the bus stand as narrated by DW 1 Satnam Singh.

19. She further contended that much delay has been caused in sending the articles of the case property to the Forensic Science Laboratory. The occurrence has taken place on 2.5.2000. The pistol has been sent to the Forensic Science Laboratory on 26.5.2000. The cartridges have been sent even later. Similar is the position with respect to the currency notes. She further contended that no reason has been given by the expert in the reports to arrive at the conclusion. The ballistic expert has not given any reason to form his opinion that the cartridges have been fired from the pistol recovered from appellant Samarjit Singh. Similarly the expert has also not mentioned on what ground he found the currency notes to be fake. She contended that such reports of experts which are not supported from any reason, cannot be taken into consideration. To support her contentions, she relied upon cases Bhupinder Singh v. State of Punjab 1988 (1) RCR (Cri.) 362, Mahmad Hanif Shaikh Ibrahim v. State of Gujarat (1994) 2 GLR 191, Life Insurance Corporation of India and others v. District Judge and others, 2008 (73) ALR 227 and Suleman Usman Memon Vs. The State of Gujarat, . She contended that if these reports are excluded from consideration, there is no material on record that the currency notes were fake. She further contended that even as per the report of the expert 12 currency notes have been found genuine.

20. She further contended that Investigating Officer even did not try to ascertain about the arms licence of the appellant Samarjit Singh which has been produced in the defence evidence. She further contended that Section 27 of the Arms Act is not attracted as appellant Samarjit Singh was having valid arms licence. She contended that Section 27 of the Act is only attracted if any arms or ammunition is used in contravention of Section 5 of the Act and Section 5 only prohibits the

use or having in possession any weapon/fire arm unless a person holds a licence issued in accordance with the provisions of the Act and the Rules made thereunder. Thus, she contended that the conviction of appellant Samarjit Singh recorded by the learned trial court for Section 27 of the Act is wholly illegal.

21. She further contended that from the statement of DW 1 Satnam Singh, it is established that the appellants had a dispute with ASI Paramjit Singh at bus stand Nadala due to which they have been falsely implicated. Thus, she pleaded that the conviction of the appellants is not sustainable in the eyes of law.

22. On the other hand, learned Counsel for the State pleaded that the prosecution has put forward the natural story and the true version. PW 7 ASI Paramjit Singh, PW 8 DSP Surinderjit Singh Mand and PW 10 Constable Baljinder Singh have consistently deposed about the occurrence. The accused have attacked the police party when they were signalled to stop. Appellant Samarjit Singh fired at the police party with intention to kill. He contended that it is not necessary that in order to attract Section 307 IPC, there must be some injury on the person of the victim.

23. He further contended that the fake currency notes to the tune of Rs. 31,70,000/- have been recovered from the possession of the accused. Such a huge quantity of fake currency notes cannot be planted by the police from their own sources. Possession of such huge quantity of currency notes shows that the appellants had knowledge about the fake currency notes and they also intended to use the same.

24. He further contended that some delay in sending the articles of the case property to the Forensic Science Laboratory will not create any dent in the prosecution case as there is no material on record to show that the articles were tampered with. He further contended that the reports of the experts per se are admissible in evidence. The expert has not raised any objection with respect to these reports. No request was made by the accused-appellants to summon the expert for the purpose of cross examination. So, now no objection can be raised with respect to the evidentiary value of these reports.

25. He further contended that the appellant Samarjit Singh has used his weapon for unlawful purpose, i.e., to attack the police officials, which will clearly attract Section 27 of the Arms Act.

26. Thus, he contended that the conviction of the appellants has been rightly recorded.

27. I have given my thoughtful consideration to the aforesaid contentions. It cannot be said that the case of the prosecution is based only on the testimonies of the police officials. PW 1 Harjinder Singh was associated in the investigation of the case but when he appeared in the witness box, he resiled and only supported the prosecution version qua the part of the allegations. He has supported the prosecution version with respect to his joining the investigation, holding of the

nakabandi, arrival of the Tata sumo vehicle from the side of village Nadala, the chasing of the said vehicle, apprehension thereof and recovery of currency notes from the said Tata sumo vehicle but he did not support the prosecution version with respect to the apprehension of the accused-appellants and about the encounter. In this way, this witness has corroborated the prosecution version on certain material aspects. It is settled principle of law that the testimony of a hostile witness cannot be rejected in toto. The evidence of such a witness cannot be treated as having been effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof and also in aid to the other evidence on record. To support this view, reference can be made to the case *Radha Mohan Singh @ Lal Saheb and others v. State of U.P.*, 2006 (1) RCR (Cri.) 692. The Hon"ble Supreme Court in case *Attar Singh v. State of Maharashtra*. 2013 (2) RCR (Cri.) 294 has also laid down that when a witness is declared hostile, there is no ground to reject his testimony in toto. The court is not precluded from taking into account the statement of a hostile witness and the same can be partly relied upon. The same ratio of law has been reiterated by the Hon"ble Supreme Court in *Vinod Kumar v. State of Punjab*. 2015 (1) RCR (Cri.) 647.

28. Learned Counsel for the appellants has not been able to point out as to what prejudice has been caused to the appellants due to non-examination of the SHO Police Station who had subsequently conducted the investigation. In the absence of prejudice to the appellants due to his non-examination, will not affect the merits of the case.

29. The occurrence in this case has taken place at about 4 p.m. on 2.5.2000. After completing the formalities at the spot, the Investigating Officer dispatched the rural to the Police Station at about 7.45 p.m. The FIR has been registered at about 8.15 p.m. on the same day and the special report has been received by the learned Additional Chief Judicial Magistrate at 11 p.m. on 2.5.2000 itself. Thus the special report has reached the learned Additional Chief Judicial Magistrate within three hours of its registration. So, it cannot be said that inordinate delay has been caused in sending the special report to the Magistrate. In case *Brahm Swaroop and another v. State of U.P.*, 2010 (4) RCR (Cri.) 267, there was delay of 5 days in sending the special report the Magistrate. The Hon"ble Supreme Court held that the delay was not fatal as no question was put to the Investigating Officer with regard to this delay and he was not required to furnish any explanation.

30. In *Sukhwinder Singh v. State of Punjab*, 2014 (1) RCR (Cri.) 21, special report had reached the Magistrate after lapse of 17 hours. The Hon"ble Supreme Court laid down that the requirement of sending the special report to the Magistrate is an external check on the working of the police agency but not in all cases that delay will make the prosecution case doubtful. Thus, this plea raised by learned Counsel for the appellants is without any substance.

31. The non-examination of Navjot, the owner of the vehicle, will also not create

any dent in the prosecution story as both the appellants were nabbed at the spot traveling in the vehicle, carrying huge quantity of the fake currency. When the appellants were apprehended at the spot with the fake currency, the lapse on the part of the Investigating Officer not to associate Navjot, owner of the vehicle is immaterial. If the appellants would have escaped from the spot and vehicle would have been found abandoned, then the examination of the registered owner of the vehicle may have been necessary to connect the appellants with the vehicle. Here in this case, the appellants have been caught at the spot along with the fake currency traveling in the Tata sumo vehicle. In these circumstances, the non-examination of Navjot also cannot render any help to the appellants.

32. Learned Counsel for the appellants has not been able to point out any statutory provision whereby in such type of cases, the Investigating Officer was required to reduce into writing the secret information. So mere this fact that the Investigating Officer has not reduced into writing the secret information will also not adversely affect the merits of the case.

33. The plea raised by learned Counsel for the appellants that the counterfeit currency notes have not been exhibited during trial is also against the record as the counterfeit currency notes have been produced in the court and were exhibited during the recording of the statement of PW 8 DSP Surinderjit Singh Mand.

34. The police officials in the course of their duty generally come across with fake currency notes. So the plea raised by learned Counsel for the appellants that how the Investigating Officer came to know that the currency notes were fake, is also without any substance.

35. I find substance in the contentions raised by learned Counsel for the appellants that the story regarding encounter projected by the prosecution is not free from doubt. As per the statements of PW 7 ASI Paramjit Singh, PW 8 DSP Surinderjit Singh Mand and PW 10 Constable Baljinder Singh, on seeing the naka party, appellant Samarjit Singh stopped his vehicle at a short distance of only 50 yards from the naka. There were 26 police officials in the naka party and they were standing at the naka point. They were also having the vehicles. It is alleged that appellant Samarjit Singh fired three shots from his revolver after he stopped the vehicle but surprisingly, none of the police officials has suffered any injury due to the alleged firing by appellant Samarjit Singh. Even no bullet hit the police vehicle. It is not believable that if a person fires three shots from a close distance of only 50 yards and there are number of persons standing in front of him but none of them will be injured and even the vehicle standing thereby will also not be hit by the bullet.

36. It is also alleged that W8 Surinderjit Singh Mand DSP also returned two shots from AK 47 rifle after taking the same from his gunman. That story is also doubtful as DSP Surinderjit Singh is a trained police officer and even two shots fired by him did not hit the appellants or their vehicle.

37. PW 1 Harjinder Singh, the independent witness, associated in the investigation, is totally silent about any such encounter. Rather in the cross examination by the learned defence counsel, he has categorically stated that there was no exchange of fire between the police party and the occupants of Tata sumo nor any empty was recovered from near the Tata sumo.

38. It is alleged that PW 8 DSP Surinderjit Singh has fired the shot from AK 47 rifle but the said rifle has not been taken into possession nor the same was sent to the ballistic expert in order to establish that the two empties marked C4 and C5 sent to the Laboratory were fired from the said AK 47 rifle.

39. Moreover, AK 47 rifle was with the gunman of PW 8 DSP Surinderjit Singh Mand. The duty of his gunman was to protect his officer but he has not fired shot and it is alleged that the rifle was taken over by the DSP himself and then he fired the shots. Thus, in view of the aforesaid/circumstances, the story of the prosecution with regard to the encounter and that appellant Samarjit Singh fired the shots at police party with an intention to kill them is not established beyond shadow of reasonable doubt.

40. But mere this fact that the prosecution story and the statements of the prosecution witnesses with respect to the encounter is not free from doubt is no ground to discard their testimonies as it is the duty of the court to separate the grain from the chaff. In case *Sheesh Ram and others v. State of Rajasthan*, 2014 (6) RCR (Cri.) 18 it has been laid down that the maxim, *falsus in uno, falsus in omnibus* has no application in India. The same ratio of law has been reiterated by the Hon'ble Apex Court in *Raia @ Raiinder v. State of Haryana*, 2015 (2) RCR (Cri.) 1006. In this case, the Hon'ble Supreme Court has laid down that the court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehood from the truth. Thus even if the prosecution version with respect to the encounter is not free from doubt but still the statements of the prosecution witnesses with respect to the recovery of the counterfeit currency notes from the possession of the appellants, which fully inspires confidence, can still be relied upon.

41. The evidence of the prosecution with respect to the apprehension of the accused after chasing their vehicle and recovery of the counterfeit currency notes from their possession is cogent, consistent and reliable. PW 7 ASI Paramjit Singh and PW 8 DSP Surinderjit Singh Mand, the Investigating Officer of the case have consistently deposed that a plastic bag containing the fake currency notes of Rs. 20.00 lacs of the denomination of Rs. 500/- were recovered from the front seat of the Tata sumo and one jute bag containing fake currency notes of Rs. 5,48,000/- in the denomination of Rs. 500/- were recovered from the search of appellant Vinod Kumar and further the fake currency notes of Rs. 6,22,000/- of the denomination of Rs. 100/- each were also recovered from the Tata sumo vehicle. In this manner, the fake currency notes of Rs. 31,70,000/- have been recovered from the possession of the appellants. Learned Counsel for the appellants has not been able to point out any material contradiction in the

statements of PW 7 ASI Paramjit Singh and PW 8 DSP Surinderjit Singh Mand with respect to the recovery of these fake currency notes.

42. The testimonies of PW 7 ASI Paramjit Singh and PW 8 DSP Surinderjit Singh Mand are corroborated on material aspects from the testimony of PW 1 Harjinder Singh, the independent witness. He has corroborated their testimonies on the aspects that the nakabandi was held and the nakabandi party was consisting of ASI Paramjit Singh, DSP Surinderjit Singh Mand and other police officials. The Tata sumo vehicle had come from Nadala side and had turned back towards Nadala side, which was chased by the police party. He also categorically stated that the currency notes were lying in the said Tata sumo. So the recovery of the currency notes from the Tata sumo has been even certified by PW 1 Harjinder Singh, the independent witness. So there is no escape from the conclusion that the appellants were found in possession of the counterfeit currency notes of Rs. 31,70,000/-.

43. The conduct of the appellants shows that they were fully aware of the fact that they were having the fake currency notes and they had intended to use the same. The possession of such huge quantity of the currency notes itself depicts that the appellants were having knowledge about the counterfeit currency in their possession. If they had no knowledge that the currency was counterfeit, there was no reason for them to flee away when they were signalled to stop by the naka party.

44. I also do not find any substance in the contentions of learned Counsel for the appellants that the report of the expert with respect to the fake counterfeit currency notes cannot be taken into consideration because the perusal of the reports Ex. PX, PY and PZ shows that the expert has examined the currency notes and came to the conclusion that the said currency notes are fake. The genuine currency notes were also sent to the Forensic Science Laboratory for comparison with the currency notes recovered from the possession of the accused. In all the reports, it has been categorically mentioned that the questioned currency notes have been compared with the relevant genuine currency notes with the help of scientific aid and it was concluded that all the currency notes except 12 currency notes were found counterfeit currency notes. As per the report Ex. PY, three currency notes have been found genuine. Similarly, as per report Ex. PZ, 9 currency notes have been found genuine. It shows that all the currency notes have been thoroughly examined by the expert and then the reports have been given. If that would not have been so, then there was no possibility of finding 12 genuine currency notes out of numerous fake currency notes sent to the Laboratory.

45. This fact is not disputed that the reports of the Ex. PX, PY and PZ are per se admissible under Section 293 Cr.P.C. During the trial, the accused have not challenged these reports nor they have made any request to the trial court to summon the expert for cross examination.

46. The cases relied upon by learned Counsel for the appellants on this aspect of the case are quite distinguishable on facts. In case Bhupinder Singh (supra), there was no material to show that the expert fired a test cartridge from the revolver and in the absence thereof, there was no data for comparison. In case Mahmad Hanif Shaikh Ibrahim (supra), the sample was of charas. The real substance can only be ascertained by way of chemical examination. In case Life Insurance Corporation of India and others (supra), there was the report of the valuer to determine the value of the property. In Suleman Usman Memon (supra), the sample was of blood and the presence of alcohol was to be detected. So in that case, the percentage of alcohol in the blood could only have been mentioned on the chemical examination but here in this case, the incriminating documents are the counterfeit currency notes and there was no need of any chemical examination. The expert can even conclude just by seeing the currency notes as to whether the same are fake or genuine. In this case, the currency notes have been compared with the genuine currency notes. So the report Ex. PX, PY and PZ are of considerable evidentiary value and it is established that except 12 currency notes, all other currency notes recovered from the possession of the appellants were counterfeit currency notes.

47. The defence plea raised by the appellants that they were arrested from bus stand Nadala and were detained in CIA Staff, Kapurthala when they were kept there upto noon they had an altercation with ASI Paramjit Singh and had also threatened to file the case against him for illegal detention and they have been falsely implicated, does not appeal to the reasons. If the intention of ASI Paramjit Singh would only have been to falsely implicate the appellants, there was no need to plant so much fake currency notes. This object could have been achieved even by planting the less quantity of fake currency notes. Moreover ASI Paramjit Singh is only a witness in this case. The investigation has been carried out by a gazetted police officer.

48. Thus, keeping in view my aforesaid discussion, the story of the prosecution that appellant Samarjit Singh had fired upon the police party with intention to kill the police officials and had used his licenced revolver for an unlawful purpose, is not established beyond shadow of reasonable doubt. However, from the cogent, consistent and reliable evidence adduced by the prosecution, the prosecution has been able to bring home the guilt against both the appellants for having been found in possession of the counterfeit currency notes. Thus Cri. Appeal No. S-2196-SB of 2003 is hereby allowed to the extent that the conviction and sentence of appellant Samarjit Singh for the offence punishable under Section 307 IPC and that of appellant Vinod Kumar under Section 307 /34 IPC is hereby set aside.

49. Cri. Appeal No. S-2197-SB of 2003 also stands allowed and the conviction and sentence of appellant Samarjit Singh for the offence punishable under Section 27 of the Arms Act is also hereby set aside.

50. However, conviction and sentence of the appellants Samarjit Singh and Vinod

Kumar recorded by the trial court for the offence punishable under Section 489-C IPC is hereby maintained and upheld and Cri. Appeal No. S-2196-SB of 2003 stands partly dismissed. The appellants are directed to surrender before the Chief Judicial Magistrate, Kapurthala within 15 days from the date of this judgment to undergo remaining part of their sentence failing which the learned Chief Judicial Magistrate will take coercive steps to procure their presence.