
(1979) 11 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 1076 of 1977

Sher Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 15-11-1979

Acts Referred:

Arms Act, 1959 — Section 25

Citation : (1979) 11 P&H CK 0012

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Advocate : P.S. Kang, for the Appellant; D.S. Brar, A.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bains, J.—The Appellant was convicted under Sections 4 and 5 of the Explosive Substances Act and sentenced to undergo one year's rigorous imprisonment under each court by the learned Sessions Judge, Kapurthala vide his judgment dated October 3, 1977. He was also separately convicted u/s 25 of the Arms Act and sentenced to six months' rigorous imprisonment by the learned trial Court. All the sentences were ordered to run concurrently. He has filed Criminal Appeal No 1076 of 1977 against his conviction and sentence under the Explosive Substances Act and Criminal Appaal No. 1077 of 1977 under the Arms Act. Both the appeals will be decided by this common judgment as the prosecution was launched against the Appellant on his disclosure statement, which led to the recovery of the hand-granade and one country made 12 bore pistol and live cartridge without a valid licence.

2. The prosecution story as unfolded by S. I. Jagtar Singh (P. W. 3), is that on September 13, 1975, the Appellant was in police custody in case F. I. R. No. 233/74 dated 31st January, 1974 u/s 395 and 397, Indian Penal Code, of Police Station, Kotwali Kapurthala. On that day, he was interrogated by S. I. Jagtar Singh and in pursuance of his disclosure statement, the Appellant got recovered

pistoi, Exhibit P. I., a live carttidge. Exhibit P. 2, and a hand granade, Exhibit P 3, along with a tin, Exhibit P. 4, from underneath the ground from the side of southern wall of his house. The Appellant was then arrested and a ruqa was sent to the police station on the basis of which formal First Information Report. Exhibit PC/1, was recorded by M. H. C. Swaran Singh. He was prosecuted, convicted and sentenced as aforesaid.

3. When examined u/s 313, Criminal Procedure Code, the Appellant was connected with the prosecution allegations after the close of the prosecution case. He denied his complicity in the crime and pleaded false implication at the instance of one Bagicha Singh, who had inimical relations with him. He gave his own version, which is as under:

I was kept in illegal detention by the police for many days before the present occurrence. My sister's son Gurmukh Singh filed a habeas corpus writ petition in the High Court and a Warrant Officer from the High Court was deputed for my search. To make a false defence, the police had arrested me in case F.I.R. No. 233/ 74 and falsely implicated in the present case." In support of his defence, he produced Gurmukh Singh (D W. 1) who fully supported his versions. He also tendered into evidence certified copy of judgment, Ex. DA copy of writ petition, marked "A" and a copy of the report of the Warrant Officer, marked "B".

4. The learned trial Court convicted the Appellant on the testimony of P. W. 3 S. I. Jagtar Singh, P.W 4 Kishan Singh conseable and P.W. 2 Anokh Singh S.I. Jagtar Singh (P. W. 3) has supported the prosecution version as given in the earlier part of the judgment. His oral testimony is corroborated by Kishan Singh, Constable (P. W. 4) Anokh Singh P. W. 2 is the witness of recovery, Prem Singh (P W 1) is a formal witness, who has proved the sanction order. Exhibit PA, for the prosecution of the Appellant.

5. I have perused the evidence. The evidence of (P.W.3)S.I. Jagtar Singh P.W. 4 Kishan Singh and P.W. 2 Anekh Singh does not inspire confidence Admittedly, Appellant was in the custody of the police before September 13, 1975(sic). He was arrested on September 6, 1975. Against bis illegal detention, one Gurmukh Singh, who was examined as D.W. 1 by the Appellant, filed a habeos corpus writ petition No. 334 of 1975 which is Exhibit D. A., dated September to, 1975. He was produced before the High, Court in pursuance of a search warrant and the plea taken by the detaining officer was that he was arrested in connection with the case F I R. No. 233 of 1974. dated 31st January 1974, under Sections 395 and 397(sic) of the Indian Penal Code, registered in Police Station, Kotwali, Kapurthala. However, his habeas corpus petition was dismissed as the Respondents had shown that he was arrested in connection with the aforesaid F.I.R. His name did not figure in that F. I. R. It is not uacommmon in this part of the country that the police officers in order to show the legality of the detenation come out with the plea to sonnect the detenue with the first information reports registered earlier either u/s 411, Indian Penal Code, or or the offence relating to robberies etc., mostly in blind offences. As observed earlier, Appellant was in

police custody from September 8, 1975 According to the prosecution, he was interrogated by S.I. Jagtar Singh (P. W. 8)(sic) on September 13, 1975, and he made a disclosure statement in the presence of Banta Singh, Lambardar and one more person, none of these two persons has been produced in this case to corroborate the statement of S.I. Jagir Singh (P.W 3) Only Kishan Singh Constable (P.W. 4) is produced, who is the subordinate of the Sub Inspector. in this situation, no reliance can be placed on his testimony. It is also not uncommon that such like fabrication of cases by police officers against the citizens is on the increase. Many cases have come to my notice where I have also recommended to the State Government to take action against such polic officers. This is one such case where Jagtar Singh, Sub Inspector (P.W. 3) has clearly fabricated a false case against the Appellant in order to make his detention legal If such evil practice as allowed to recur, then no citizen can be safe and such like charges of possessing explosive substances, where the sentence is fourteen years ran he planted on any citizen according to whim of the police officers.

6. Accordingly I am of the view that this case is clear case of false replication of the Appellant and ho is entitled to acquittal. His convietion and sentence as recorded by the learned trial Court are set aside and his appeal is allowed. He is on bail. His bail bonds shall stand discharged.

7. Before parting with this judgment, I am constrained to remark that S.I. Jagtar Singh (P. W. 3) has fabricated the false case and planted the hand-grenade and the pistol on the Appellant although the disclosure statement is stated to be made in Police Station, Kotwali, Kapurthala S.I. Jagtar Singh stated that he associated two persons at the time(sic) when the Appellant made his disclosure statement, but none of them is produced, as observed earlier. There was no dearth of respectable in the Police Station, Kotwali, Kapurthala and the Sub-Inspector could(sic) associate any number of persons at the time of the disclosers statement and the recovery, but he did not do so. His statement seems to be false when he says that he associated Banta Singh, Lambered and one other person. At the time of the recovery he associated Anokh Singh, whose statement also does not inspire confidence. He is the cousin of Baglcha Singh, at whose instance the appellant was arrested. Copy of this judgment may be sent to the State Government for taking appropriate departmental action against S.I. Jagtar Singh in accordance with law.