
Gagan Sagar Vs Sate of Haryana

CRA No. S-950-SB of 2011 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 5, 2013

Acts Referred:

Arms Act, 1959 â€” Section 25, 25(1B)#Criminal Procedure Code, 1973 (CrPC) â€” Section 173, 207, 313#Penal Code, 1860 (IPC) â€” Section 34, 379, 382, 398, 399

Hon'ble Judges: S.P. Bangarh, J

Bench: Single Bench

Advocate: Malkeet Singh, for the Appellant; H.S. Deol, Additional Advocate General, Haryana, for the Respondent

Judgement

S.P. Bangarh, J.

CRM No. 19054 of 2013 and CRM No. 18025 of 2013

1. Criminal misc. application was moved through jail for concurrent running of sentences of this case and of case FIR No. 19 of 2012 dated

06.05.2010, police station Sirhand under Sections 399, 402, 382, 473, 379 and 411 IPC and Section 25 of the Arms act, wherein, appellant was

convicted by the learned Sessions Judge, Fatehgarh Sahib on 13.09.2012 and sentenced to undergo rigorous imprisonment for a period of three

years, besides, pay of fine of Rs. 5,000/-. It has been conceded by both the counsel that the appellant has already filed an appeal against the

judgment of conviction and order of sentence dated 13.09.2012 in this Court vide CRA No. S-245-SB of 2013, which stands admitted.

2. Learned counsel for the appellant submits that he does not press both misc. applications in this case that may be dismissed as withdrawn.

3. It is ordered accordingly.

4. CRM No. 19054 of 2013 and CRM No. 18025 of 2013 stand dismissed as withdrawn.

CRA No. S-950-SB of 2013

5. Case of the prosecution is that on 08.08.2008, ASI Naresh Kumar alongwith other police officials was present at motor market, Geeta Nagri

road in connection with patrolling and crime checking. There, he met HC Balwant Rai and other police officials near Gopi Mixi. When he was

talking with them, a secret informer met him and gave information that Gagan Sagar (appellant) alongwith his companion Raj Kumar son of Jeet

Singh, resident of Ludhiana, who used to indulge in committing theft and looting and to possess dangerous weapons, had reached Ambala city on

two stolen motor cycles and had gone towards Manmohan Nagar to Sadopur link road through Manji Sahib Gurudwara and that they could

commit robbery with the passers-by. If raid is conducted, they could be apprehended with the stolen motorcycles alongwith dangerous weapons.

Finding the secret information to be reliable, ASI Naresh Kumar summoned Government vehicle no. HR-37B-7666 through telephone. He also

stopped people passing through to join investigation after disclosing them about the secret information. However, they showed their inability and

left. ASI Naresh Kumar also got removed blue light from the Govt. vehicle and also concealed the word "police" by putting mud, thereon, and,

thereafter, reached minor drain after crossing Manmohan Nagar and saw that both the accused were standing in the middle of the road with two

motor cycles.

6. When the vehicle reached near them, they all of a sudden came in front of the vehicle armed with pistol and knife with intention to commit

robbery and asked them to hand over, whatever, they possessed. However, on seeing the police personnel's in vehicle, they got perplexed and

tried to flee from the spot. However, both of them were nabbed and country made pistol and knife were recovered from them and those were

seized vide recovery memos. Rough sketches of pistol Ex. P8 and of knife Ex. P9 were also prepared. Pistol alongwith live bullet and knife were

converted into separate parcels that were sealed with the seal bearing impression "BR", which after use was handed over to HC Balwant Rai.

Both the motorcycles on which appellant and his accomplice were travelling were found to be stolen one, as admitted by them. Those were seized

vide recovery memo Ex. P10, that was attested by the witnesses and signed by the appellant and his accomplice. It may be mentioned here that

the parcels of pistol and knife were also seized vide memo Ex. P10.

7. Investigating Officer sent ruqa Ex. P2 to police station through PHC Om Parkash for registration of the case. On the basis of this ruqa Ex. P2,

FIR Ex. P3 was recorded. Investigating Officer also prepared rough site plan Ex. P14 of the place of incident.

8. After completion of investigation, Station House Officer Baldev Nagar, District Ambala, instituted police report u/s 173 Cr.P.C. before the

Illaqa Magistrate to the effect that it appears that the appellant and his accomplice have committed offences punishable under Sections 398, 401,

379, 411 IPC and 25 of the Arms Act.

9. On presentation of police report, copies of documents, as required u/s 207 of the Code of Criminal Procedure ("Cr.P.C." for short) were

furnished to the appellant and the case was committed to the Court of Session, where charge under Sections 398 IPC read with Section 34, 401,

411 IPC and sub section 1-B of Section 25 of the Arms Act was framed against the appellant, where to, he pleaded not guilty and claimed trial.

10. Consequently, prosecution evidence was summoned.

11. At the trial, prosecution examined PW1 Mangat Ram, Reader to District Magistrate, Ambala, PW2 Ajmer Singh, SI, PW3 Suraj Bhan,

Retired Inspector, PW4 Suresh Pal, Constable, PW5 Jagseer Singh, Constable, PW6 Dharam Singh, Head Armourer, PW7 Kapil Sharma, HC,

PW8 Balwant Rai, ASI, PW9 Paramjit Singh, PW10 Naresh Kumar, Investigating Officer and Suresh Kumar PW11 and closed the evidence

later.

12. After the closure of prosecution evidence, appellant was examined u/s 313 Cr.P.C., wherein, he denied the allegations of prosecution, pleaded

innocence and false implication in this case.

13. Appellant was called upon to enter in defence, but he closed the same without examining any evidence in defence on 26.02.2011.

14. After hearing both the sides, learned trial Court vide impugned judgment held the appellant guilty for commission of offences punishable u/s 25

sub Section 1-B of the Arms Act, under Sections 411 IPC and 398 IPC read with Section 34 IPC and acquitted him of offence punishable u/s

401 IPC and vide impugned order of sentence, sentenced him to undergo rigorous imprisonment for a period of four years for commission of

offence punishable u/s 398 IPC, to undergo rigorous imprisonment for a period of one year for commission of offence punishable u/s 411 IPC and

to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 1,000/- and in default of payment of fine to further undergo

simple imprisonment for a period of one month for commission of offence punishable u/s 25(1-B) of the Arms Act. All the substantive sentence

were ordered to run concurrently. Period already spent by the appellant in custody was ordered to be set off from the substantive sentence.

15. Aggrieved against the impugned judgment and order of sentence, the appellant, who was accused before the learned trial Court has come up in

this appeal with prayer for acceptance, thereof, and for his acquittal of the offences, wherefor, he was convicted and sentenced by the learned trial

Court.

16. Learned counsel for the appellant, at the very outset, did not assail the impugned judgment holding the latter guilty for commission of offences

punishable under Sections 398, 411 IPC and 25(1-B) of the Arms Act. Court is also of the considered view that the impugned judgment holding

the appellant guilty for the offences supra is based on cogent, corroborating and reliable evidence of unimpeachable character. Therefore, no case

is made out to interfere, therein. Accordingly, the impugned judgment is upheld and affirmed.

17. Confronted with this situation, learned counsel for the appellant then contended that lenient view in the imposition of sentence upon the latter

may be taken.

18. However, the learned State counsel opposed this prayer.

19. Keeping in view the facts and circumstances of the case that the appellant has been in jail after the passing of the impugned judgment and order

of sentence, some leniency may be shown in the quantum of sentence that is, hereby, reduced to three years for commission of offence punishable

u/s 398 IPC. Other sentences mentioned in the impugned order of sentence are maintained, as these are. Resultantly, except for this modification in

the order of sentence, the appeal fails and is, hereby, dismissed. The appellant shall now undergo rigorous imprisonment for a period of three years

for commission of offence punishable u/s 398 IPC. However, as ordered by the learned trial Court, all the sentences shall run concurrently. The

period already undergone by the appellant in jail during investigation, trial and pendency of this appeal shall be set off from the substantive sentence

and the impugned order of sentence to this extent is also upheld and affirmed.