
Malkiat Singh Vs State of Punjab

CRA-S-1351-SB of 2001

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 25, 2015

Acts Referred:

Arms Act, 1959 - Section 25#Criminal Procedure Code, 1973 (CrPC) - Section 313#Penal Code, 1860 (IPC) - Section 307, 34

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: P.S. Ahluwalia, for the Appellant; K.S. Sidhu, D.A.G., Advocates for the Respondent

Final Decision: Allowed

Judgement

Paramjeet Singh, J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.11.2001 passed by learned

Additional Sessions Judge, Ludhiana, whereby appellant has been convicted and sentenced to undergo rigorous imprisonment for one year and

finer Rs. 500/- under Section 25 of the Arms Act, in default of payment of fine to further undergo rigorous imprisonment for three months in a case

arising from FIR No. 38 dated 03.03.1996 registered under Section 25/54/59 of the Arms Act at Police Station Sahnewal.

2. The factual matrix of the prosecution version is to the effect that on 03.03.1996 ASI/SHO Naginder Singh along with other police officials was

present in connection with investigation of case FIR No. 35 dated 01.03.1996 under Sections 307/34 IPC and 25/57/59 of the Arms Act titled

"State v. Malkiat Singh alias Meeta etc. at Police Station Sahnewal, where he interrogated appellant-convict Malkiat Singh who made disclosure

statement that he had kept concealed a pistol country made 12 bore which he used on 29.02.1996 on Harjit Singh, Dalbir Singh, Nachhattar Singh

and Charanjit Singh along with one empty cartridge and five live cartridges of 12 bore which he had kept concealed near a safeda tree situated

near his motor after digging a pit near the roots of safeda tree and he knows about it and could get the same recovered. ASI Naginder Singh,

prepared disclosure statement Ex. PC of the appellant-convict, which was thumb marked by the appellant and attested by the witnesses and

thereafter appellant led the police party to the disclosed place as per his statement and got recovered one pistol 12 bore country made and one

empty cartridge 12 bore and five live cartridges 12 bore from the disclosed place which were wrapped in a polythene envelope. Investigating

Officer prepared rough sketch of the pistol Ex. PD and then prepared the parcel of the pistol and empty cartridge 12 bore and sealed the same

with his seal bearing initial "NSR" and took the same alongwith five live cartridges vide recovery memo Ex. PE which was also attested by the

witnesses. As accused was found in possession of country made pistol and cartridges 12 bore, therefore, investigating officer sent ruqa Ex. PG to

the police station on the basis of which formal FIR Ex. PG/1 was registered. Investigating Officer prepared rough site plan of recovery Ex. PF and

arrested the appellant in this case also. Investigating Officer recorded the statement of witnesses during the investigation of the case and after the

completion of investigation, challan against the appellant was presented in the Court of learned Illaqa Magistrate who vide order dated 19.07.1996

sent the case to the Court of learned Sessions Judge, Ludhiana, along with main case under Section 307/34 IPC after delivering the copies of

challan papers to the appellant-convict and thereafter the case was sent to learned Additional Sessions Judge, Ludhiana. Charge under Section 25

of the Arms Act was framed against the appellant-convict to which he pleaded not guilty and claimed trial.

3. To prove its case, prosecution examined PW-1 ASI Dev Raj, PW-2 Joginder Malik, PW-3 ASI Ranjit Singh and PW-4 DSP Naginder Singh

Rana and thereafter prosecution closed its evidence.

4. Statement of the appellant-convict was recorded under Section 313 of the Code of Criminal Procedure. The accused denied all the

incriminating circumstances appearing against him in prosecution evidence and claimed to be innocent. However, he closed his defence evidence

without producing any witness.

5. The trial Court after conclusion of trial convicted and sentenced the appellant as aforesaid. Hence, this appeal.

6. It is expedient to have a bird's eye view of the relevant prosecution witnesses hereunder:-

(i) ASI Dev Raj PW-1 deposed that ASI Ranjit Singh brought 315 bore pistol for test. He tested the pistol with E.M.E.R. gauge and the same

was found in working order. In his cross-examination, ASI Dev Raj has stated that he had not test fired the pistol. There was no chit or any other

mark on the pistol.

(ii) ASI Ranjit Singh PW-3 deposed that he along with SI Naginder Singh were present in the area of village Mehlon in connection with

investigation of the main case u/s. 307 IPC. Malkiat Singh disclosed about the concealment of 12 bore country made pistol, one empty cartridge

and five live cartridges near his tubewell motor under the safeda tree. Thereafter Malkiat Singh led the police party to the disclosed place and got

recovered the pistol, one empty cartridge and five live cartridges of the same bore. The appellant could not produce any permit or licence for

possession of the same. Rough sketch of the pistol was prepared and same was taken into possession vide recovery memo attested by him and

PW Kamikkar Singh after sealing the same at the spot with the seal bearing impression NSR and the seal after use was handed over to him. In his

cross-examination, ASI Ranjit Singh has stated that entire writing work was done by SI Naginder Singh. Pistol was not tested to fire and same

was not sealed at the spot.

(iii) DSP Naginder Singh PW-4 deposed that he along with other police officials was present in area of village Mehlon in connection with

investigation of the main case. He arrested Malkiat Singh. In pursuance of disclosure statement of Malkiat Singh, he recovered 12 bore country

made pistol, five live cartridges and one spent cartridge of the same bore from the roots of the tree near the electric motor of Malkiat Singh. He

further stated that he sealed the pistol and cartridges with his seal bearing impression NSR and seal after use was handed over to ASI Ranjit Singh.

In his cross-examination, DSP Naginder Singh has stated that chits were pasted on the pistol and the cartridges but now there is no chit on the

pistol and the cartridges. All the writing work was done by ASI Ranjit Singh at his dictation. The pistol was not test fired.

7. I have heard learned counsel for the parties and perused the record.

8. Learned counsel for the appellants vehemently contended that prosecution has miserably failed to prove the case against the appellant. As per

prosecution version, recovery has been effected on the basis of disclosure statement of the appellant. However, the recovery is from an open and

accessible place and requires no disclosure. Learned counsel for the appellant further contended that pistol was not test fired by the investigating

officer at the spot or by the Armourer at the time of its testing, thus, it could not be said that pistol was in working condition. Learned counsel

further contended that no independent witness has been examined by the prosecution. Learned counsel for the appellant relied upon the judgments

of this Court in Randhir Singh @ Chini v. State of Haryana, 2012 (4) R.C.R. (Criminal) 770 , Bhuptej Pal Singh Vs. State of Punjab, (2014) 1

RCR(Criminal) 24 , Naresh Vs. State of Haryana, (2013) 4 RCR(Criminal) 895 and Division Bench judgment of this Court in Darshan Singh v.

State of Punjab, 1989 (1) Cr.L.J. 74.

9. On the other hand, learned counsel for the State has vehemently contended that case stands fully proved, learned counsel for the appellant has

failed to point out any discrepancy in the impugned judgment. Learned counsel for the State has supported the judgment of trial Court and

submitted that present appeal deserves to be dismissed.

10. I have considered the contentions raised by learned counsel for the parties.

11. Admittedly, recovery was effected in pursuance of the disclosure statement of the appellant during the investigation of main case under Section

307 IPC. There are material contradictions in the statements of the witnesses. In his examination-in-chief ASI Ranjit Singh has stated that pistol

and cartridges were sealed at the spot whereas in his cross-examination he has stated that pistol was not sealed at the spot. He has further stated

that entire writing work was done by SI Naginder Singh whereas Naginder Singh has stated that all the writing work was done by ASI Ranjit

Singh at his dictation. Kumikar Singh independent witness to the disclosure statement Ex. PC and recovery memo Ex. PE, has not been examined

by the prosecution. The weapon was not test fired, therefore, prosecution failed to prove that pistol and cartridges were in working condition. It is

not safe to convict the appellant merely on the statement of police official. Moreover, appellant stands acquitted in the main case under Section

307 IPC. A Division Bench of this Court in the case of Darshan Singh v. State of Punjab, 1989 (1) Cr.L.J. 74 has acquitted the appellant in that

case in similar circumstances. In that case the only independent witness to the disclosure statement and recovery memo was not produced. It was

held that it is not safe to convict the appellant on the sole statement of investigating officer. The judgment in Darshan Singh's case (supra) is fully

applicable to the facts of the case in hand. Therefore, appellant is entitled to be acquitted in the present case also.

12. In view of above, present appeal is allowed, the impugned judgment of conviction and order of sentence are set aside. Appellant is acquitted

of the charge as framed against him. He is stated to be on bail. His bail bonds/surety bonds stand discharged.