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Devender Kumar @ Babbu Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Sep-25-2013

Appellant : Devender Kumar @ Babbu

Respondent : State of Haryana

Judgement :

Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Crl. Appeal No.S-843-SB of 2009 (O&M) Date of Decision: September 25, 2013. Devender Kumar @ Babbu ..Appellant(s) Versus State of Haryana ...Respondent(s) Crl. Appeal No.S-1572-SB of 2009 (O&M) Date of Decision: September 25, 2013. Manjesh @ Monu ..Appellant(s) Versus State of Haryana ...Respondent(s) CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY1 Whether Reporters of local papers may be allowed to see the judgment?. Yes/No 2. To be referred to the Reporters or not?. Yes/No 3. Whether the judgment should be reported in the digest?. No Present: Mr. D.S. Adhlakha, Advocate for the appellants. Mr. Dhruv Dayal, Deputy Advocate General, Haryana for the respondent-State. ***** ANITA CHAUDHRY, J.

1. These are two appeals preferred by Devender Kumar @ Babbu and Manjesh, laying a challenge to the judgment of conviction and order of sentence dated 14.03.2009, passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri who convicted both the appellants in FIR No.164 dated 08.06.2008, registered at Police Station Farakpur, under Sections 186, 332, Sunil 2013.10.10 15:06 I attest

to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -2- 353, 307 IPC and Section 25 of the Arms Act. Both the appellants were convicted under various sections on the following counts:- Accused Offence u/S To Fine In default of Name undergo payment of Rigorous fine Rigorous imprison Imprisonment ment Manjesh 186 IPC03months N.A. - . 307 IPC07years Rs. 06 months 5000/- . 25 of Arms Act 1 years Rs. 04 months 3000/- Devender @ 186 IPC03months N.A. - Babbu . 25 of Arms Act 1 years Rs. 04 months 3000/- All the sentences awarded to both the convicts were ordered to run concurrently.

2. The facts in brief are that on 08.06.2008 SI/SHO of Police Station Farakpur along with other police officials were present at Kamani Chowk, Yamuna Nagar, on patrol duty when Inspector Yashwant Singh, Incharge, Special Staff, Kurukshetra, along with his staff met him and gave an application containing the allegations that he along with police party had come to Yamuna Nagar in search of accused Manjesh in connection with the investigation of FIR No.8, registered in January, 2008 at Police Station Sadar Yamuna Nagar when two boys were seen going on a motorcycle bearing registration No.HR-02M-3515 on Yamuna Nagar - Jagadhri road. The police got suspicious and the Investigating Officer signaled them to stop but the driver turned the motorcycle towards Sarojini Colony. The police made an attempt to stop the motorcycle and brought their vehicle in front Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -3- of the motorcycle. Both the riders fell down. When one of the police official was getting down from the police vehicle to intercept them, one of the riders fired a shot from his country made pistol and the police official saved himself by lying down on the road. The said assailant started to run and while running, he made another attempt and fired a shot. In retaliation, SI Karambir, H.C. Dharambir and H.C. Rakesh Kumar also fired in the air. The boy did not surrender and kept on running and was over powered after a distance of 250 yards. He revealed his name and parentage. On checking, he was found to be carrying 315 bore country made pistol and two live cartridges and one empty cartridge. The boy who was driving the motorcycle had run to the other side but was apprehended by SI Sita Ram. On his personal search, a 315 bore country

made pistol and one live cartridge was recovered. Intimation was sent to the police station and a formal FIR was registered. Necessary formalities were carried out. Accused Devender @ Babbu suffered a disclosure. Accused Manjesh also suffered a disclosure and pursuant to the disclosure, Devender led the police party and got recovered the registration certificate of the motorcycle from Lucknow from the rented premises. The motorcycle had been stolen. The weapons were sent to the Armourer and on completion of the investigation, a report under Section 173 Cr.P.C. was laid before the Court.

3. Charge against both the accused was framed under Section 186 and 307 IPC read with Section 34 as well as under Section 25 of the Arms Act. Both the accused pleaded not guilty and claimed trial. Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -4- 4. The prosecution in support of its allegations examined Karambir, Inspector/SHO Kurukshetara as PW4, Inspector Yashwaant Singh - PW5 who is the complainant and the witnesses who provided links to the evidence including the Armourer and the draftsman. FSL report Ex.P18 was also tendered in the evidence.

5. The accused in their statements under Section 313 Cr.P.C. denied the evidence and pleaded false implication and stated that the recovery had been planted. No evidence was led in defence. The trial Court accepted the evidence of the prosecution and convicted both the appellants to the sentences mentioned herein above.

6. I have heard the counsel representing the parties and with their able assistance have gone through the record carefully.

7. The learned counsel for the appellants has assailed the judgment on various grounds, primarily that no independent witness had been joined and the incident is said to have been taken place in a thickly populated area and the time was between 4:30 and 5:30 P.M. and the Investigating Officers had admitted that no person was called to join the investigation. It was urged that if the accused were so desperate that they had fired shots then there would have been injury to some of the officials and it makes the story unbelievable coupled with the fact that no

bullets were recovered from the spot. It was urged that the police party did not have any photograph of appellant Manjesh & there is a contradiction with respect to this fact and two witnesses have made different statements. It was urged that the revolvers said to have been recovered were not sealed and it could be tampered. Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -5- It was contended that Manjesh had already been acquitted in the case FIR No.8 dated 13.01.2008 which was registered in January, 2008. It had been urged that the case property had been deposited and there are contradictions which make the whole case doubtful. It was vehemently urged that if the police had fired various rounds and the accused had also fired then some evidence would have been collected from the spot. It was also urged that there is no evidence that test fire was done with the revolvers recovered from the accused. It was urged that Devender had taken a plea that he had given lift to Manjesh and did not know him and he had been falsely implicated. It was urged that the site plan would show that the police had pointed various spots but it does not indicate the spot (in the site plan) from where accused Devender was arrested. It was urged that in case, the Court does not find merit then the sentence be reduced or accused be released on probation. On the other hand, the counsel representing the State submitted that non sealing of the article on the spot would not have caused any prejudice to the appellants as the case property was deposited with the Armourer on the date of recovery. It was urged that the official witnesses have fully supported the prosecution case, therefore, non-joining of a witness from the public would not cause any prejudice. He further urged that the Armourer had not only issued his report with regard to the working condition of the revolvers and had found that the cartridges were live and the prosecution has fully established its case. Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -6- 8. The case of the prosecution is that a police party consisting of Inspector Karamvir, Inspector Yashwant Singh CIA Staff, Kurukshetra, SI Sita Ram, ASI Rajbir Singh, ASI Kuldeep Singh and other police officials came to Yamuna Nagar to apprehend accused Manjesh who was absconding and was wanted in FIR No.8 registered under Section 392, 397 IPC

on 13.01.2008 in Police Station City Yamuna Nagar. The police party was in two vehicles and they were present at Kamani Chowk when motorcycle of accused persons was seen coming. Later it was found that Devender accused was driving the motorcycle and Manjesh was on the pillion. The police party identified accused Manjesh and signalled them to stop the motorcycle but Devender did not stop and turned the motorcycle towards Sarojini Colony and tried to flee. They were chased and stopped and both the accused fell down from the motorcycle and Manjesh started running. Inspector Yashwant Singh ran after him and Manjesh fired a shot at him from his country made pistol. Yashwant Singh laid on the ground to save himself. The police party then fired shots in the air to stop the accused from escaping but Manjesh continued to run and fired another shot towards Yashwant Singh Inspector but he was secured after covering a distance of 250 yards. On his personal search 315 bore pistol, two live cartridges, one empty cartridge and one mobile phone was recovered. Accused Devender had run towards the opposite direction and was apprehended by the police party headed by SI Sita Ram. From him a country made pistol, a live cartridge and a mobile phone were recovered. Both the accused were being brought to Police Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -7- Station Farakpur but on the way they met Virender Singh SHO at Kamani Chowk and an application Ex.P3 was given containing an account of the incident. He requested the police to register the FIR on the basis of the complaint Ex.P3. Ruka Ex.P3/B was sent to the police station at 6:00 P.M. upon which the FIR was registered. To prove its case, the prosecution had examined Inspector Karambir Singh as PW4, Inspector Yashwant Singh, CIA Staff, Kurukshetra as PW5 as well as SI Sita Ram, CIA Staff Kurukshetra as PW12. From the statement of the witnesses it becomes clear that the police party had come in one private vehicle and one government vehicle and they were 12 - 13 officials and 4 - 5 of them were armed. It is the case of the prosecution that some of the members of the police party identified Manjesh who was a pillion rider and the motorcyclist turned the motorcycle and the police party went after them and tried to stop them and they fell from the motorcycle and both the riders fled in different directions. The witnesses have deposed that Manjesh fired from his pistol, Inspector Yashwant Singh laid on the ground to save himself

and Manjesh then fired another shot from the pistol and then the police party started firing. Both the accused were apprehended and since the area fell within Police Station Farakpur, the police party which had come from Kurukshetra headed towards Police Station Farakpur and met SI/SHO P.S. Farakpur at Kamani Chowk and apprised him of the incident and the accused were taken in a jeep to the police station. Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -8- 9. It is the case of the prosecution that the incident occurred between 4:30 - 5:30 PM. The exact time has not come on the record. The area where the incident had taken place is a thickly populated area. The site plan is Ex.P2 which shows that there are houses on both sides of the road. According to the police, firing had taken place and it was natural that there would have been people on the road during the day but no independent witness was joined. The police party stayed on the spot for a number of hours. The appellants had raised a defence that entire story was concocted so as to plant another case upon Manjesh and it was not possible for a person who had fallen from a speeding vehicle to get up and take out the pistol and fire at the police party in the presence of 10 - 12 police men who were armed.

10. It is not the case of the prosecution that any injury was suffered by any of the police officer. The accused have been charge sheeted for commission of offence under Section 307 IPC. The question would arise whether the charge under Section 307 IPC had been proved. Admittedly, no member of the police party had sustained any injury. The witnesses, no doubt had disclosed that Manjesh had fired two shots from his pistol on the police party but it is strange that it did not hit any person. The police could not collect any empty bullet from the spot. The accused had fired in the air it did not amount to an offence under Section 307 IPC. The Hon'ble Supreme Court in the case reported as Hazara Singh Vs. State of Punjab decided on 04.02.1971 observed that the prosecution must prove that when the accused fired from his Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -9- gun, it was intended to fire at someone and it may be that the shots were fired in the air or in some direction only with a view to create confusion and not to kill.

11. The police party had left district Kurukshetra and had come to another district and they were bound to prove that they had made an entry in the DD Roznamcha that they were heading towards district Yamuna Nagar. The rules require that whenever the police party enters an other district, they have to report their arrival in the local police station. In this case, the police party had not reported their arrival in the police station and no DDR in this regard is available on record. This is relevant as the case in which Manjesh was wanted, was registered in District Yamuna Nagar. There was no reason for the police of District Kurukshetra to come looking for Manjesh, the case did not relate to their district.

12. The prosecution evidence with respect to identification of Manjesh is contradictory. One of the witnesses had stated that the Inspector was carrying a photograph of Manjesh whereas the other had stated that they had no photograph with them. How could a pillion rider be identified from a moving vehicle.

13. The prosecution case also becomes doubtful as there is no evidence that the articles which were recovered from Manjesh were sealed. The MHC, however, did say that when the articles were received in the Mohrir Malkhana, those were in sealed condition. The recovery is stated to have taken place on 08.06.2008 but the recovered arms were sent to the FSL on 28.07.2008. There is no explanation as to why the arms were sent after a long delay. There is a contradiction in the evidence Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -10- with respect to the time when the case property was deposited with the MHC. Investigating Officer had stated that the case property was deposited with the MHC at 8:00 P.M. whereas MHC had stated that the case property was received at 11:30 P.M. There is a contradiction with respect to number of police officials. There is also a contradiction with respect to the place where the Ruka was written down. The site plan does not indicate the place from where Devender was arrested. There are inherent contradictions in the prosecution case which makes it highly doubtful.

14. Non-recovery of any empty bullet from the place of occurrence is a ground which causes a dent in the prosecution version. There is discrepancy with respect

to the link evidence regarding the seal impression used to seal the weapons and the cartridges and cannot be brushed aside. The trial Court had rejected the arguments saying that there was a clerical mistake but in the given circumstances of the case, it assumes importance.

15. The prosecution case only consists of official witnesses. The place where the accused were arrested, is a residential area and the police could have easily joined the residents to lend support to their story. The non-joining of independent witness in this case is fatal. Considering the manner in which the incident is said to have occurred with a large police posse, it is difficult to accept that the accused would have fired any shots. They would not have been in a position to even get up. It appears that the case had been registered as Manjesh was Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document Criminal Appeal No.S-843-SB of 2009 (O&M) with Criminal Appeal No.S-1572-SB of 2009 (O&M) -11- required in another case and since he was evading his arrest, therefore, another case was registered. The recovery is doubtful.

16. In view of the above discussion, the appeal preferred by the appellants is accepted. The judgment and sentence passed as against the appellants is set aside. Both the accused-appellants are acquitted from the charges levelled against them. Their Bail bonds and surety bonds stand discharged. Lower Courts record be sent back. (ANITA CHAUDHRY) JUDGE September 25, 2013 sunil Sunil 2013.10.10 15:06 I attest to the accuracy and integrity of this document

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