

Anwar @ Bhugra v. State of Haryana, 2023 Scej 0203

SUPREME COURT OF INDIA

Abhay S. Oka J. Rajesh Bindal J.

Anwar @ Bhugra v. State of Haryana

Criminal Appeal Nos. 973-974 of 2011

29.03.2023

Indian Penal Code, 1860 (45 of 1860), S. 394, S. 397 - Arms Act S. 25 - Robbery - Acquittal - Appellant was allegedly carrying a pistol - Recovery of the pistol is doubtful as the memo of his personal search states that nothing was recovered from him, but the memo of possession of the pistol states that from the left side pocket of his pyjama country-made pistol was recovered - Two witnesses, did not support the prosecution's version, and the presence of the appellant at the scene of crime is highly doubtful - There are major discrepancies between the FIR and the evidence of the complainant - Material witness, was not produced by the prosecution - Order set aside - Acquitted.

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For Appellant(s): Mr. Ankur Mittal, AOR Ms. Zinneha Mehta, Adv. Ms. Nidhi Mittal, Adv. For Respondent(s): Mr. Piyush Hans, Adv. Dr. Monika Gusain, AOR

JUDGMENT**RAJESH BINDAL, J. -**

1. The appellant convicted by the trial court and his conviction and sentence having been confirmed by the High Court under Sections 394 and 397 of the Indian Penal Code, 1860 as well as under Section 25 of the Arms Act, 1959, has filed the present appeals before this Court.
2. The facts as available on record are that FIR No. 104 dated 05.04.1994 was registered at P.S. Gharaunda, (Haryana) under Sections 394 and 397 of the Indian Penal Code, 1860 (for short 'the IPC'). On 04.04.1994, Jahid (PW-4), the complainant had come to village Barsat for purchasing grocery items from his village Rana Majra. While he was returning to his village after purchasing the goods, he was apprehended by three persons near the cremation ground at about 8.00 P.M. They asked him to hand over whatsoever he had otherwise he would be eliminated. When Jahid (PW-4), the complainant, disclosed to them that he possessed only grocery items, two of them started giving him fist and leg blows. The accused were armed with drant, knife and pistol. The person who was having knife

forcibly took his wrist watch.

3. In the meanwhile, a tractor came from side of village Barsat. Seeing the same, Jahid (PW-4), the complainant raised hue and cry for help. Harun Ali (PW-6) and Jain Singh (PW-5) were sitting on the tractor. They tried to catch hold of three persons. In the scuffle, the person who was having a drant gave a blow from its reverse side which struck Jahid (PW-4), the complainant, below his right eye. Another blow struck his left shoulder. Jain Singh (PW-5) was also inflicted injuries with the drant. The person who was having knife inflicted injuries to Harun Ali (PW-6). His purse containing ₹20/- and an identity card were taken away. Other person took away purse from the pocket of Jain Singh (PW-5) containing Rs. 15/-. In the meantime, Mahinder Singh a resident of village Balehra came on the spot and on seeing those three persons tried to run away, but one of them who was armed with a knife was apprehended. He disclosed his name as Satpal son of Radhu Ram, resident of village Sadarpur. He also disclosed the names of other accused persons i.e Anwar @ Bhugra, son of Manga Ram resident of Mundi Garhi having pistol and Bablu @ Om Prakash, son of Ram Singh, resident of Baroli having drant.

4. Taking advantage of the darkness even Satpal ran away from the spot. This was the basis of the FIR. Accused were apprehended on 12.04.1994 and recoveries were made. A country made pistol of .12 bore was recovered from the possession of the appellant, following which FIR No. 111 of 1994 was registered at P.S. Gharunda, (Haryana) u/s 25 of the Arms Act, 1959.

5. The prosecution produced eight witnesses in support of the case in FIR No.104 of 1994. After trial, the learned Additional Sessions Judge, Karnal convicted Anwar@ Bhugra, son of Manga Ram, Satpal son of Radhu and Om Parkash @ Bablu, son of Ram Singh u/s 394 and 397 IPC and sentenced them to undergo imprisonment for a period of seven years along with fine of rs. 2,000/-. In default for payment of fine, imprisonment of 1-3/4 years was provided. In FIR No.111 of 1994, the trial court convicted the appellant under Section 25 of the Arms Act, 1959 and ordered to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 500/-. In appeal, by a common judgment, conviction and sentence awarded by the trial court in both the cases was upheld.

6. The argument raised by the learned counsel for the appellant is that the story built by the prosecution on the basis of the complaint is concocted. In fact, no such incident had taken place. It is alleged that the appellant was carrying pistol, however there is nothing either in the complaint or in the evidence brought on record that the same was ever used. Recovery of the pistol itself is in doubt as the memo of the personal search after the arrest of the appellant mentions that nothing was found at the time of his personal search. In the recovery memo of the pistol, it is mentioned that during the course of investigation the appellant was arrested and at the time of arrest his personal search was carried out and from the left pocket of his pyjama, one country made pistol (Cutta) of .12 bore and from his right pocket three live cartridges were recovered. This itself was contrary to the memo of personal search. The recovery of the purse was also seriously doubtful as in the FIR there is no allegation that purse was taken by the appellant.

7. Further, there are serious defects and anomalies in the deposition of the complainant/ Jahid (PW-4). Jain Singh (PW-5), who was stated to be a person sitting on the tractor on which he reached the place of incident, did not support the prosecution version. In his statement recorded for the case under the Arms Act, Jain Singh denied recovery of any weapon of offence in his presence. He was declared hostile. Even in his cross-examination, he denied recovery of any weapon as he stated that his signatures were got on certain blank papers by the police. Similar was the position in the statement of Harun Ali (PW-6) who also did not support the prosecution version. He was declared hostile and cross-examined by the prosecution.

8. On the other hand, learned counsel for the State submitted that the entire prosecution version has been duly supported by the witnesses. Merely because some of them were won over and had to be declared hostile will not demolish the case of the prosecution. There is concurrent finding of facts recorded by the courts below and it does not call for interference by this Court.

9. Heard learned counsel for the parties and perused relevant referred record. As per the version given by the complainant, the case sought to be made out is under Sections 394 and 397 IPC as the complainant was waylaid. The incident is stated to have taken place at 8.00 P.M on 04.04.1994. The appellant, as per the version of the complainant and the official witness, was carrying a pistol with him, however, there is nothing on record either in the form of statements of the witnesses or even the medical report that the pistol was ever used. Further, the recovery of pistol from the appellant is also seriously doubtful. As per the memo prepared at the time of his personal search, it is mentioned that nothing was recovered from him. However, in the memo of possession regarding the pistol, it is stated that during the course of the investigation, the appellant was arrested and his personal search was carried out and from the left side pocket of his pyjama country-made pistol was recovered. It is strange to note that the appellant will continue to carry the pistol in his pocket days after the incident and will be arrested along with that. The two versions of the prosecution namely the memo of his personal search and the memo of possession of country made pistol demolish the case of the prosecution.

10. Two witnesses, namely, Jain Singh (PW-5) and Harun Ali (PW-6) who, according to the complainant and the prosecution, had reached the scene of crime on a tractor, did not support the prosecution version, neither for the scene of crime nor for the recoveries. Jain Singh (PW-5) in his statement states that it was Bablu who snatched his purse which contained Rs. 15. Harun Ali (PW- 6) turned hostile. No allegations were made against the appellant. The presence of the appellant at the crime site becomes highly doubtful.

11. There was improvement in the statement of Jahid (PW-4), the complainant, which makes the case of the prosecution doubtful. In the FIR, he stated that there were two persons on the tractor namely Jain Singh and Harun Ali. However, in his statement before the court, he said that a child was driving the tractor and two persons were sitting on that. All the three came down for his help.

12. Moreover, there are major discrepancies in the FIR and the evidence of Jahid, the

complainant (PW-4). In the FIR, he states that the person holding Drant (Bablu) forcibly took away the purse from the right side pocket of Harun Ali (PW-6) which was containing his identity card and ₹ 20 and the other person (none specified) took away the purse of Jain Singh (PW-5) from his pocket which had ₹15 and tobacco. However, in his evidence he states that Bablu snatched his purse and Anwar, the appellant, snatched the purse from Harun Ali (PW-6).

13. Mahinder Singh who is named in the FIR and on whose arrival at the scene of crime the accused ran away, has not been produced by the prosecution. He was the material witness.

14. From the aforesaid material on record, the presence of the appellant at the scene of crime and recovery of pistol from him becomes highly doubtful and the guilt of the appellant having not been proved beyond reasonable doubt, conviction and sentence cannot be upheld.

15. Accordingly, the appeals are allowed. The judgment and order passed by the High Court and the Trial Court as regards the appellant are set aside. Bail Bonds submitted by him stand cancelled.

Appeals allowed.
