

SUPREME COURT OF INDIA

Amrish Rana

Vs.

State of Himachal Pradesh

CrI.A.No.1232 of 2018

(Ranjan Gogoi and Navin Sinha, JJ.,)

28.09.2018

JUDGMENT

Navin Sinha, J.,

SLP(CrI.) No.308 of 2018

1. Leave granted.
2. The appellant stands convicted under Section 307 and other provisions of the Indian Penal Code (IPC) read with Section 25 of the Arms Act and sentenced for ten years along with fine and default stipulation.
3. Learned counsel for the appellant Shri Gaurav Agrawal submits that the testimony of PW-11 Naresh Kumar, implicating the appellant is unreliable. The witness, in his court statement the Kanda Jail. There was no animosity between them. Yet, the used that he knew the appellant from before as an inmate of witness did not name the appellant in the FIR, and named accused Gurjant Singh alone, accompanied by four unknown persons. Despite claiming to know the appellant from before, the witness has made omnibus allegations of scuffle against the unknown accused. The first firing is attributed to Gurjant Singh and the second to an unknown assailant. Reliance was also placed on the cross-examination of the witness, inviting his attention to the contradictions between his statements under Section 161, Cr.P.C. and the deposition in the court. The presence of the appellant at the time of occurrence was therefore highly doubtful. The appellant is entitled to acquittal on the benefit of doubt.
4. Learned counsel for the State submitted that the presence of the appellant stands confirmed by PW-11 who is an injured witness. The conviction being with the aid of Sections 147 & 148, IPC, the absence of any overt act is irrelevant in so long as the presence of the appellant stands established.

5. We have considered the submissions on behalf of the parties. PW-11, was the Warder in Model Central Jail, Kanda, at an earlier point of time when the appellant and Gurjant Singh were in custody there. The appellant and Gurjant Singh are stated to have absconded from custody when the occurrence took place on 19.03.2003. In the FIR, the witness named Gurjant Singh only, accompanied by four unknown persons. There is no allegation that any of the unknown accused had their face covered. The witness is stated to have been assaulted by Gurjant Singh in the Kanda Jail. Subsequently while deposing in court, the witness in his examination-in-chief stated that the appellant was also present and that he knew him from before. The first shot fired at him is attributed to Gurjant Singh and the second to an unnamed accused, even while the witness states that he did not recognize the remaining three persons. If the appellant was known to the witness since earlier, we see no reason why the witness could not have named him as present at the time of occurrence, or any specific overt act committed by the appellant. The naming of the appellant subsequently in the court statement for the first time is certainly an improvement over the earlier statement and a material omission.

6. In the cross-examination, the witness stated that the appellant was sitting on the back seat of the vehicle. His attention was specifically invited to his police statement under 161 Cr.P.C. that the second shot was fired by an unknown accused, and which he now sought to deny. The omission in the police statement with regard to the presence of the appellant at the time of occurrence cannot be considered as trivial. The witness was specifically confronted with the omission also.

7. In the facts and circumstances of the case, we are satisfied that the prosecution cannot be stated to have established the presence of the appellant at the time of occurrence beyond all reasonable doubt. The appellant is therefore held entitled to acquittal on benefit of doubt, with regard to his presence at the time of occurrence. It is ordered accordingly. The appellant is directed to be released from custody forthwith unless wanted in any other case.

8. The appeal is allowed.