

[2022] 2 S.C.R. 961

TARLOCHAN SINGH @ RANA

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v.

STATE OF PUNJAB

(Criminal Appeal No. 293 of 2018)

March 29, 2022

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**[N. V. RAMANA, CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ]**

Arms Act, 1959: ss. 29 and 30 –Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same – Punishment for contravention of licence or rule – Prosecution case that the appellant was the licence holder of the double barrel 12 bore rifle, used in the murder of the deceased and was part in the conspiracy hatched by the other co-accused – Conviction of the appellant u/ss. 29 and 30, and u/s. 120-B IPC and sentenced accordingly –High Court acquitted the appellant u/s. 120-B IPC, however, upheld the conviction u/ss. 29 and 30 – On appeal, held: Appellant could have been charged with s. 29(b) only after it was established by the prosecution that he delivered the fire arm to the co-accused, knowingly and deliberately–Thereis no evidence to establish that the fire arm was handed over to the co-accused by the appellant–On the contrary, it appears that the co-accused illegally took the licensed fire arm of the appellant without his permission and knowledge and used the said weapon to murder the deceased–Thus, the appellant's conviction u/s. 29 not sustainable – Furthermore, no evidence to establish any willful violation by the appellant of any of the conditions of the Act or conditions of a licence or any provision of theAct or any rule, thus, exonerated from the offence of s. 30 as well –Order of the High Court convicting the appellant u/ss. 29 and 30 set aside.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. G
293 of 2018.

From the Judgment and Order dated 27.02.2017 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.CRA-D-1033-DB of 2011.

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A A. Sirajudeen, Sr. Adv., Ms. Kamakshi S. Mehlwal, Advs. for the Appellant.

Ms. Jaspreet Gogia, Karanvir Gogia, Ms. Shivangi Singhal, Advs. for the Respondent.

B The Judgment of the Court was delivered by
KRISHNA MURARI, J.

This appeal is directed against the judgment and final order dt.27.02.2017 passed by the High Court of Punjab & Haryana at Chandigarh (hereinafter referred to as '**High Court**') in Criminal Appeal

C No. CRA-D-1033-DB of 2011, whereby the High Court set-aside the conviction and sentence of the Appellant under Section 120-B IPC, however the High Court upheld the conviction and sentence of the Appellant under Sections 29 & 30 Arms Act whereby the Appellant was sentenced to undergo Rigorous Imprisonment for 3 years under Section 29 of the Arms Act and Rigorous Imprisonment for 3 months under

D Section 30 of the Arms Act.

2. In brief the case of the prosecution is that on 10.08.2007 on receipt of a telephonic message regarding the death of one Gurdeep Singh (hereinafter referred to as 'deceased'), Inspector Pritam Singh, PS Sadar Rupnagar (hereinafter '**Investigating Officer/ IO**') reached

E the spot and recorded the statement of one Smt. Sukhjit Kaur (A3), W/o deceased Gurdeep Singh wherein she stated that she was married to deceased on 13.12.2005, after the marriage the deceased returned to Dubai where he worked as a Truck Driver, leaving her to live in her matrimonial home with her mother-in-law. The deceased returned to

F India on 01.08.2007 and on 03.08.2007 she along with deceased went to her paternal home at Village Kishanpura, the next day both of them went to Gurudwara Solkhian Sahib on her brother's bullet motorcycle bearing No. PB-12-F-3805, thereafter, while returning she asked the deceased to stop near a bush on the outskirts of Village Bahman Majra so she could relieve herself, once she was back the deceased told her

G that two men had come on a motorcycle from Village Singh, one of them was carrying a long barrel rifle, they approached him but on seeing some villagers coming they went back. Subsequently, on 10.08.2007 at around 11.30 AM Sukhjit Kaur and the deceased were returning after meeting her maternal grandmother at Village Hafizabad, on the way Sukhjit Kaur's *dupatta* got entangled in the motorcycle's wheel, to remove it the

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deceased stooped and bike and while Sukhjit Kaur was removing the *dupatta* from the wheel a mosquito entered her eye, in that moment two men approached the deceased and one of them shot the deceased dead. By the time Sukhjit Kaur turned, the assailants had escaped.

3. Based on Sukhjit Kaur's statement the police recorded FIR No. 119/2007 under Section 302 of IPC and Section 24 of Arms Act. The Sr. Superintendent of Police, Rupnagar had reached the spot and the deceased's mother, Smt. Bhupinder Kaur, had identified the body of her son, whereafter, one Jit Singh, Ex. Sarpanch of Village Allaur, told the IO that the murder had been committed by Sukhjit Kaur in connivance with her friend/lover Gurpreet Singh @ Titu and one Sukhjinder Singh, the same was affirmed by the deceased's mother. Thereafter, on 12.08.2007 Jit Singh and one Ranjit Singh produced Sukhjit Kaur, Gurpreet Singh @ Titu and Sukhjinder Singh before the IO, who arrested them, Jit Singh further informed the police that Gurpreet Singh and Sukhjit Singh had admitted to be in love with each other and all three accused had admitted their guilt before him. While in police custody accused Gurpreet Singh @ Titu gave a disclosure statement that he had kept concealed an empty cartridge/shell hidden under some bricks in the farm house in Village Sanana, thereafter the accused led the police to the spot for the recovery of the same. Subsequently, during the course of interrogation the accused Gurpreet Singh @ Titu suffered another disclosure statement while in custody, wherein he stated that he had kept concealed the Double Barrel 12 bore Gun at his farm house in Village Sanana, about which only he knew, the same was recovered and siezed by the police at his behest. Later the Accused Gurpreet Singh @ Titu stated that the gun belonged to the appellant, on further investigation by the IO, it was found that the gun used in the murder of deceased was licensed on the name of the appellant. Subsequently, the appellant was arrested and in his disclosure statement dt.15.08.2007 he told the police that he had kept the gun license for the Double Barrel 12 bore gun in his house which only he knew about, thereafter, the appellant took the police to his house and got recovered the license.

4. Thereafter, post completion of investigation the police filed charge sheet before the Court of Chief Judicial Magistrate, Rupnagar who committed the case to the Court of Sessions, Rupnagar as the offence under Section 302 of IPC is exclusively triable by the Court of Sessions. The Sessions Judge finding a *prima facie* case charged the accused as under:

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A	Name of Accused	Charged Under Section
	Gurpreet Singh @ Titu	Section 120-B & 302 IPC Section 27 Arms Act
	Sukhjinder Singh	Section 120-B IPC Section 302 R/w 34 IPC
B	Sukhjit Kaur	Section 120-B IPC Section 302 R/w 34 IPC
	Tarlochan Singh (Appellant)	Section 120-B IPC Sections 29 & 30 Arms Act

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The accused, including the appellant pleaded not guilty and claimed trial.

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5. In order to substantiate the case, the prosecution examined twenty-eight (28) witnesses and all the incriminating evidence was put to the accused persons, but they denied the allegations, both the accused Gurpreet Singh and appellant denied having made any disclosure statements or any recovery effected from them, however the other two accused persons did not take a specific plea. The Trial Court convicted and sentenced the accused as under:

	Name of Convict	Offence	Sentence Awarded
E	Sukhjit Kaur	U/s 120-B IPC U/s 302 IPC read with Section 34 IPC	Rigorous Imprisonment (RI) for life and fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year. RI for life and fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year.
F	Tarlochan Singh @ Rana	U/s 120-B U/s 29 & 30 Arms Act	Rigorous Imprisonment (RI) for life and fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year. RI for three years and RI for six months respectively.
G	Gurpreet Singh @ Titu	U/s 302 IPC U/s 120-B IPC U/s 27 Arms Act	Imprisonment for life and fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year. Rigorous Imprisonment (RI) for life and fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year. Imprisonment for seven years and fine of Rs. 2000/- and in default of payment of fine to undergo RI for six months.
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Sukhjinder Singh	U/s 120-B IPC U/s 302 IPC read with Section 34 IPC	Rigorous Imprisonment (RI) for life and fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year. RI for life to pay fine of Rs. 5000/- and in default of payment of fine to undergo RI for one year.
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6. Aggrieved, the appellant filed a Criminal Appeal bearing No. D-1-33-DB-2011 before the High Court, challenging the Trial Court's order of conviction and sentencing. The High Court upheld the appellant's conviction under Sections 29 & 30 of the Arms Act as the prosecution successfully established that appellant was the license holder of the Double Barrel 12 Bore Rifle, used in the murder of deceased by accused Gurpreet Singh @ Titu, by verifying the records of the issuing authority. Furthermore, the license had been recovered and seized by the police at the appellant's behest, whereas the Double Barrel 12 Bore Rifle (murder weapon) had been recovered by the police at the behest of Accused Gurpreet Singh @ Titu.

7. However, with regard to the appellant's conviction under Section 120-B IPC, the High Court found that the police had arrested the Appellant under Sections 25,27,29 & 30 of the Arms Act only and offences under Sections 302/34 and 120-B IPC were neither alleged nor proved against the appellant by the prosecution, and thus Trial Court had wrongly convicted and sentenced the appellant in this regard. Accordingly, the High Court allowed the appellant's appeal to the extent of acquitting him from the offence under Section 120-B IPC, however it upheld the conviction of the appellant under Sections 29 & 30 Arms Act, directing the CJM, Rupnagar to take the appellant into custody to make him undergo the remaining part of the sentence.

8. Being aggrieved by the High Court order, the appellant has preferred the present appeal.

9. We have heard learned counsel for the parties and perused the record.

10. Mr. A. Sirajudeen, learned senior counsel for the appellant contends that the crime had been committed without the knowledge of the appellant, as the Accused Gurpreet Singh @ Titu had illegally taken the Double Barrel 12 Bore Rifle from the co-owned farmhouse of the appellant and Accused Gurpreet Singh @ Titu, post which he used the said rifle in committing the murder.

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- A 11. It is further submitted that although the appellant was the license holder for the Double Barrel 12 Bore Rifle, he had not willingly parted with his rifle and he had no part in the conspiracy hatched by the other co-accused . The High Court while acquitting the appellant from the offence under Section 120-B IPC had observed that the appellant couldn't have willingly handed over his licensed rifle to the Accused Gurpreet Singh @ Titu for committing the murder, in contravention of the license rules under Arms Act.
- B 12. On behalf of the Respondent State, The Deputy Superintendent of Police (Rural), Rupnagar, filed written submissions by way of an affidavit stating that the appellant was the license holder of the Double Barrel 12 Bore Rifle used by the co-accused Gurpreet Singh @ Titu in the murder, it was the implied duty of the appellant, being the license holder, to keep said fire arms in safe custody so that no one can use or remove the same illegally.
- C 13. Ms. Jaspreet Gogia, learned counsel for the State further contends that the appellant did not lodge any complaint for the theft of the fire arm, which shows his negligence in the handling of the said fire arm, Furthermore, the appellant has not placed on record any document or evidence confirming the fact that the Farm House in Village Sanawa, was in fact a co-owned property of the appellant and the co-accused Gurpreet Singh @ Titu .
- D 14. Pursuantly, the Counsel for the appellant has placed on record the *Jamabandi* of the farm land/farm house in Village Sanawa, District Ropar which conveys that the farmhouse was jointly owned by the appellant and accused Gurpreet Singh @ Titu. The Appellant's counsel further states that though the Trial Court had asked the defence and prosecution to place proof of the co-ownership of the farm house, the appellant unaware of the importance of the said document failed to file it before the Trial Court, due to which the Trial Court came to the conclusion that the appellant had willingly handed over the gun to co-accused Gurpreet Singh @ Titu and was a co-conspirator.
- E 15. Having gone through the record of the case and having considered the entire facts and circumstances, we are of the view that the prosecution has failed to prove that the appellant had willingly handed over the fire arm to the co-accused Gurpreet Singh @ Titu in connivance
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with him to murder the deceased, so as to convict him under Section 29 of the Arms Act. Even though the High Court has acquitted the appellant from the offence punishable under Section 120-B IPC, upheld the appellant's conviction and sentence under Sections 29 and 30 of the Arms Act.

16. Section 29 of the Arms Act reads as under :-

“Section 29- Punishment for knowingly purchasing arms, etc., from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.” Whoever

(a) purchases any firearms or any other arms of such class or description as may be prescribed or any ammunition from any other person knowing that such other person is not licensed or authorised under section 5; or

(b) delivers any arms or ammunition into the possession of another person without previously ascertaining that such other person is entitled by virtue of this Act or any other law for the time being in force to have, and is not prohibited by this Act or such other law from having, in his possession the same; shall be punishable with imprisonment for a term which may extend to 3 [three years, or with fine, or with both].

17. In the light of the prosecution story, the appellant could have been charged with Section 29(b) but only after it was established by the prosecution that he delivered the fire arm to the co-accused Gurpreet Singh @ Titu, knowingly and deliberately. There is not even an iota of evidence to establish that the fire arm was handed over to the co-accused Gurpreet Singh by the appellant. On the contrary, it appears that the co-accused Gurpreet Singh @ Titu illegally took the licensed fire arm of the appellant without his permission and knowledge and used the said weapon to murder the deceased. Admittedly, the fire arm in question was kept in the farm house which was co-owned by the appellant and co-accused Gurpreet Singh and was taken away from there by co-accused Gurpreet Singh illegally and without permission of the appellant.

18. This being the factual position, the appellant cannot be charged with Section 29 of the Arms Act and his conviction by the High Court under the said Section is not liable to be sustained and the impugned judgment of the High Court to that extent is hereby set aside.

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- A 19. Once the appellant stands exonerated from offence under Section 120-B IPC by the High Court and Section 29 of the Arms Act by us on the ground that the prosecution failed to establish that the fire arm was parted by him knowingly and willingly and that it was taken away without his knowledge by the co-accused and used in the commission of an offence, there appears to be no justification to convict and punish the appellant even under Section 30 of the Arms Act. Section 30 of the Arms Act reads as under :-
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"Section 30- Punishment for contravention of licence or rule.-"

- C *Whoever contravenes any condition of a licence or any provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to [six months], or with fine which may extend to [two thousand] rupees, or with both."*
- D 20. Since there is no evidence to establish any willful violation by the appellant of any of the conditions of the Act or conditions of a licence or any provision of the Act or any rule, he is liable to be exonerated from the offence of Section 30 as well.
- E 21. In view of the facts and discussions, this appeal stands allowed and the impugned judgment of the High Court convicting the appellant under Sections 29 and 30 of the Arms Act is set aside. The appellant is acquitted of the charges against him.

Nidhi Jain

Appeal allowed.