

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Criminal Appeal D-904-DB of 2015  
Date of Decision: December 14, 2015**

|                                 |        |                  |
|---------------------------------|--------|------------------|
| Balraj and another              | Versus | .....Appellants  |
| The State of Haryana and others |        | .... Respondents |

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN  
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Ankit Aggarwal, Advocate  
for the appellants.

**T.P.S.MANN, J.**

The appellants, who had received the injuries in the occurrence in question and, thus, victims, as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 have filed the present appeal for challenging the judgment dated 20.11.2014 passed by learned Sessions Judge, Yamuna Nagar, whereby, respondents No. 2 to 5 were acquitted of the charges under Sections 452, 323, 307 read with Section 34 IPC and Section 25 of the Arms Act.

Briefly stated, the prosecution case is that on 15.1.2014, appellant-Balraj was holding a party at his house for celebrating the birthday of his son. At about 8.30 p.m., when guests and hosts were taking meal, accused Gulfam @ Bittu came there and started quarreling with Rajbir, brother of appellant-Balraj over payment of money. In the meantime,

accused Dilvahag, Shokin and Mohseen armed with dandas reached there. All of them started assaulting Rajbir. His friend Manphool tried to save him. Gulfam @ Bittu took out a country made pistol and fired a shot which grazed the neck of Manphool and then struck the wall. Manphool became unconscious. When Balraj tried to intervene, Gulfam @ Bittu gave a blow with butt of pistol on his head. Dilvahag gave danda blows on the legs of Rajbir whereas Shokin and Mohseen gave fists and slaps to Balraj and Rajbir. The accused then ran away from the spot.

Having heard learned counsel for the appellants and on going through the impugned judgment, this Court finds that though PW4 Balraj was hit on his head by accused-Gulfam @ Bittu with the butt of the pistol and injuries so caused had started bleeding and even his clothes got blood stained and blood had also fallen at the place of occurrence, said Balraj did not get himself medico-legally examined. Therefore, causing of injury with the butt of the pistol by accused-Gulfam @ Bittu makes the prosecution case doubtful.

PW1 Manphool, who according to the prosecution was fired at by accused-Gulfam @ Bittu and the shot grazed his neck and then struck the wall, testified before the trial Court that the accused were not the assailants and he had also not named them at the time when police recorded his statement. Even after being

declared hostile and then cross-examined by learned Public Prosecutor, PW1 Manphool stuck to his stand and deposed that police had obtained his signatures on blank papers and he had never stated that accused-Gulfam @ Bittu took out a pistol and fired a shot which grazed his neck and struck against the wall of the room.

It has come in the evidence that the Gram Panchayat had leased out a piece of land in open auction in favour of accused-Dilvahag whereas PW4 Balraj was the unsuccessful bidder. From the testimony of DW2 Rajesh Kumar, Gram Sachiv, it stands established that accused-Dilvahag had deposited lease money on 13.6.2013. Subsequent thereto, FIR No. 62 dated 21.7.2013 was registered against PW11 Rajbir for forcibly entering into the land leased out to accused-Dilvahag and misbehaving with the Sarpanch and members of the Gram Panchayat. In the said FIR accused-Dilvahag was a prosecution witness. Therefore, both PW11 Rajbir and his real brother PW4 Balraj had strong reasons to depose against the accused party. Therefore, the trial Court was justified in not placing implicit reliance on their testimonies.

According to the prosecution, pistol recovered from accused-Gulfam @ Bittu was deposited in the Malkhana and, thereafter, tested by PW8 SI Bhim Singh, Armourer on 28.1.2014.

ASI Satpal, who was Malkhana Incharge, while stepping into the witness box as PW5 deposed that ASI Ram Kumar had deposited the pistol on 16.1.2014. PW5 ASI Sat Pal further testified that he had thereafter kept the pistol in his custody without tampering with the same. He did not depose that ASI Ram Kumar had taken the pistol on 28.1.2014 for getting it tested. Thus, it could not be said with certainty that the pistol got tested by ASI Ram Kumar on 28.1.2014 from Bhim Singh, Armourer was the one which had been recovered from accused-Gulfam @ Bittu.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The appeal is without any merit and, accordingly, dismissed.

**( T.P.S. MANN )  
JUDGE**

**December 14, 2015**  
amit rana

**(GURMIT RAM)  
JUDGE**