

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-700-DB of 2015

Date of Decision : January 11, 2016

Krishan Deswal

.....Appellant

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. Ravinder Hooda, Advocate
for the appellant.

T.P.S. MANN, J.

Appellant-Krishan Deswal has filed the present appeal for challenging the judgment dated 5.3.2015 passed by learned Additional Sessions Judge, Rohtak whereby respondents No.2 and 3, namely, Hardeep and Rajpal, respectively, stood acquitted of the charges under Sections 120-B, 307 and 203 IPC.

According to the prosecution, respondent No.3-Rajpal lodged FIR No.188 dated 2.5.2011 at Police Station Sampla, District Rohtak on the allegations that on 2.5.2011 at about 12.30 a.m., he had started on a scooter from his village for his duty with the Railway Department and when he reached near village Kheri Sadh, a white Alto car bearing Delhi number came from behind and stopped in front of his scooter. His brother

Krishan and two unknown persons were sitting in the car. One of the unknown persons came out of the car and fired at him with an intention to kill him. He was hit in his thigh. He fell down from his scooter. Later on, he was taken to PGIMS, Rohtak. On his statement, FIR No.188 dated 2.5.2011 under Sections 307/34 IPC and Section 25 of the Arms Act was registered against appellant Krishan and two unknown persons.

During the investigation of the case, it came to light that Rajpal had been impressing upon his brother Krishan to vacate his house but he did not do so. Criminal case was lodged by Rajpal against his family members. Even proceedings under Sections 107/151 Cr.P.C. were initiated between them. On the intervening night of 1/2.5.2011 Rajpal had got a shot fired at his leg from his co-accused Hardeep and, thereafter, falsely implicated appellant Krishan and two unknown persons in the aforementioned FIR. On completion of investigation, challan was presented against respondent No.3 Rajpal and respondent No.2 Hardeep for committing offences under Sections 307/34/182/120-B IPC and Section 25 of the Arms Act. The case was committed to the Court of Sessions where respondents No.2 and 3 were charged for the offences under Sections 120-B, 307 and 203 IPC.

Having heard learned counsel for the appellant and on going through the record which stood requisitioned, this Court finds that in his affidavit Ex.PW13/A tendered by PW13, Dr. Mahipal Arya, CMO, PGIMS,

Rohtak had mentioned that he had medico-legally examined Rajpal on 2.5.2011 at 12.40 a.m. and found two fire arm injuries on his person, one was an entry wound while another an exit wound. Around the entry wound, he had noticed blackening, meaning thereby that the shot was fired from a close range. Further, though the bullet went through and through yet no bony part was effected. Rather, only the flesh part of right thigh had borne the brunt of the firing. However, he did not clarify as to whether injuries were self inflicted, self suffered or suffered from a friendly hand.

In his testimony, PW1 Krishan stated that on the intervening night of 1.5.2011 Rajpal himself got fired a shot at his leg at the hands of Hardeep so as to falsely implicate him. In his cross-examination he admitted that the house which was in dispute between the parties was occupied by respondent No.3 Rajpal, who was also having electricity bill and house tax in his name. On the other hand, PW1 Krishan had been residing at Delhi for the last six years and his family residing with him for the last 2/3 years. His two sons were also studying at Delhi. Further, he testified that he had come to know about Rajpal getting a shot fired upon himself from Hardeep. He did not disclose as to from whom he had learnt about the same. Therefore, his testimony cannot be relied upon, being based on hear-say evidence. To the same effect was the testimony of PW8 Satbir, another brother of the appellant and respondent No.3-

Rajpal when he testified that after sometime, it had come to his notice that Rajpal himself got the shot fired at him from Hardeep. He also admitted in his cross-examination that his brother Krishan was residing at Delhi for the last six years whereas the electricity connection of the house in dispute was in the name of Rajpal.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

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

**(RAMENDRA JAIN)
JUDGE**

January 11, 2016
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