

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1464-MA of 2016

DATE OF DECISION: DECEMBER 13, 2016

STATE OF HARYANA

...APPLICANT

VERSUS

DEEPAK

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

PRESENT: MR. ASHOK MUTHREJA, DAG, HARYANA
FOR THE APPLICANT.

M. JEYAPPAUL, J.

CRM-25838-2016

1. There is a delay of 60 days in filing the appeal. We are convinced with the reasons assigned for the delay. Therefore, the delay is condoned and the application is allowed.

CRM-A-1464-MA-2016

2. Aggrieved by the acquittal of the accused who was charged under Sections 186, 307, 353 IPC and Section 25 of Arms Act, the State of Haryana has sought special leave to prefer an appeal.

3. It is the case of the prosecution that on 19.9.2014, SI Vinay Kumar having received a secret information that wanted accused Deepak @ Dabas who was staying at Karnal was proceeding to meet his friend, formed a police party and proceeded to Namaste Chowk, Karnal where the police party spotted a car coming from Delhi side at about 6.30 p.m. The police party chased the car. The driver of the car turned his car towards Ram Nagar, Karnal. SI Vinay Kumar stopped his car in front of the car of the

accused. Accused fired a shot at SI Vinay Kumar to avoid his arrest and tried to run away from the spot. Head Constable Sanjay Pal tried to stop the Innova car driven by accused and fired a shot at the tyre of the Innova car. But the accused fled away in the Innova car. He was arrested later on during the course of investigation and a disclosure statement was recorded from him.

4. The trial Court having adverted to the evidence on record disbelieved the evidence adduced by the prosecution and as a consequence thereof, recorded acquittal of the accused.

5. We heard the submissions made by learned counsel appearing for the State of Haryana. Normally, the secret information received is reduced into writing as DDR. But in this case, the prosecution has not produced any document to show that the secret information was reduced into writing as DDR. It is the admitted case of the prosecution that none of the police officials ever acquainted with the accused, though he was a wanted accused. But for the reasons best known to the police officials, no test identification parade was conducted to make sure the identity of the accused who was allegedly spotted in the Innova car. It was really surprising that the police officials could straight-away identify the accused in the Court.

6. It is the case of the prosecution that accused opened fire arm aiming at SI Vinay Kumar to avoid his arrest. But he did not sustain any injury. It is the further version of the prosecution that PW3 HC Sanjay Pal fired a shot from his AK-47 at the tyre of the Innova car allegedly driven by

the accused. If normal force is used to trigger AK-47 weapon, at least 10 bullets would be consecutively released. But only one empty cartridge and one bullet were recovered from the scene of crime. It creates a doubt as to whether HC Sanjay Pal opened fire from AK-47. To top it all, no mark or any damage was found on the tyre which was aimed at by PW3 HC Sanjay Pal. If an occurrence had unfolded, as projected by the prosecution, the accused in an attempt to escape from the clutches of the police, would have fired more shots and the police party also would have returned matching number of shots to immobilize the vehicle driven by the accused. The case of the prosecution that the police party as well as the accused did not fire more than one shot appears to be quite artificial. The trial Court has rightly disbelieved the version of the prosecution.

7. In the above facts and circumstances, we find that the application filed by the State seeking special leave to prefer an appeal merits no consideration and therefore, the leave sought for is declined and the application is dismissed.

(M. JEYAPPAUL)
JUDGE

December 13, 2016
Gulati

(G.S. SANDHAWALIA)
JUDGE

Whether Reportable

No

Whether Speaking/Reasoned

Yes