

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-364-MA-2016 (O&M)

DATE OF DECISION: MAY 3, 2016

BHARAT BHUSHAN

...PETITIONER

VERSUS

DILBAG SINGH & ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes/No

PRESENT: MR. SANJAY VASHISTH, ADVOCATE FOR THE PETITIONER.

M. JEYAPPAUL, J.

CRM-14190-2016

1. Annexures A-1 to A-9 are nothing but the depositions of PW1 to PW9 examined before the trial Court and Annexures A-10 to A-12 are the recovery memo, crime scene report and FSL report respectively, exhibited before the trial Court.

2. Therefore, permission as sought for is granted and the application is allowed.

CRM-A-364-MA-2016

3. The trial Court recorded acquittal of accused Dilbag Singh in terms of the judgement passed by it on 5.12.2015. The present application has been filed invoking the provision under Section 378(4) of Code of Criminal Procedure seeking special leave to appeal against the above verdict.

4. It is the case of the prosecution that accused Dilbag Singh who was in the process of chatting with the complainant Bharat Bhushan on 12.8.2008 at about 7.30 p.m. at the tubewell of the complainant opened fire twice from the country-made pistol and made an attempt to murder the complainant.

5. The trial Court having thoroughly analyzed the evidence on record completely disbelieved the case projected by the complainant.

6. Learned counsel appearing for appellant Bharat Bhushan submitted that PW3 Dr.Basant Kumar, Senior Scientific Officer had noted down a hole on the wall of the tubewell of the appellant. The empty was recovered under recovery memo Ex.P10 in the presence of the complainant and a police constable. Referring to the evidence of PW5 and PW6, he submitted that they had given the natural sequence of events. Further, the evidence of complainant also inspires confidence, it was submitted.

7. Firstly, we find that the weapon allegedly used by the accused was not at all recovered. The empty was recovered under Ex.PW4/A only in the presence of interested witnesses, namely, the complainant and a police Constable. In other words, no independent witness was examined to substantiate the recovery of empty from the scene of crime. Further, the occurrence had taken place in a village setting on 12.8.2008 at about 7.30 p.m. But the recovery had been allegedly made on 14.8.2008. The villagers would have thronged to the scene of crime having come to know of the occurrence that allegedly took place at the tubewell and collected the empty if at all it was found at the scene of crime. Further, the empty was not at all

connected with the weapon allegedly used as the weapon itself was not recovered. Therefore, even if the recovery of empty is believed, it does not indicate the culpability of the accused as the connection with the weapon used by the accused was not established.

8. PW5 and PW6 were not the eye witnesses to the occurrence. Therefore, their testimony does not, in any way, improve the case of the prosecution. To top it all, no motive has been attributed against the accused for opening fire all of a sudden even when he was engaged in interaction with the complainant.

9. If at all the accused who was armed with a fire arm had intended to kill the complainant, he would not have stopped firing when the complainant was fleeing in the field from the tubewell. In our considered view, the trial Court has rightly come to a conclusion that the complainant has not established with credible and trustworthy evidence the charges framed as against the accused.

10. We do not find any ground for granting leave to prefer an appeal. Therefore the application stands dismissed.

(M. JEYAPPAUL)
JUDGE

May 3, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE