

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1134-MA of 2016

DATE OF DECISION: MARCH 10, 2017

MANJEET SINGH

...APPLICANT

VERSUS

JAGWINDER SINGH @ RAJU AND ORS.

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DEEPAK SIBAL.**

PRESENT: MR. VIVEK SHARMA, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

1. Aggrieved by the acquittal of accused-respondents No.1 to 7 under Sections 148, 323, 307, 427 and 506 IPC, accused-respondent No.1 Jagwinder Singh @ Raju under Section 25 of the Arms Act, respondent No.1 accused Jagwinder Singh @ Raju and 7th respondent-accused Amritpal Singh under Section 336 read with Section 149 IPC, the complainant has filed the present application under Section 378(4) Cr.P.C. seeking leave to file an appeal.

2. It is the case of the prosecution that on 8.11.2010 at about 9.30 a.m., when PW1 Manjeet Singh, who was the complainant, was standing along with his aunt Surinder Kaur and Surinder Singh outside his house near his gate, accused Kamaljit Singh and Jagveer Singh armed with gandasis, accused Raju and Amritpal Singh armed with rifle, accused Harnek Singh and Sikander Singh armed with baseball bats and accused Hari Singh armed with kirpan, came along with 10 unidentified persons in front of the gate of

his house. Accused Harnek Singh and Hari Singh raised a lalkara that Manjeet should not be allowed to go scot-free. PW1 Manjeet Singh tried to lock the door. Accused Sikander Singh gave a baseball bat blow with an intention to kill PW1 which landed on his left shoulder. Accused Amritpal Singh fired a shot from his rifle on the gate of his house. Raju fired a shot from his rifle which hit on the wall of the house. The other assailants gave kirpan, dang and gandasi blows on the gate of the house. Thereafter, all the accused fled away from the spot with their respective weapons as the complainant party raised raula.

3. Apart from the above, PW1 Manjeet, the prosecution examined PW2 Surinder Kaur who was also an eye witness to the occurrence, PW4 ASI Hakam Singh who registered the case and conducted part of the investigation and PW3 ASI Balwinder Singh who conducted the remaining part of the investigation.

4. PW5 Dr. Jasbir Kaur, Medical Officer, Primary Health Centre, Talwandi Kalan deposed that on 9.10.2010, she medico-legally examined injured Manjeet Singh and found a scab measuring 1 cm x 1/4 cm over the posterior aspect of left shoulder joint. She certified that the above injury was simple in nature. In her opinion, the injury had been sustained by PW1 Manjeet Singh about 48 hours prior to his examination.

5. On the side of the accused, DW1 Surinder Singh was examined to speak to the defence that no such occurrence took place.

6. The trial Court having analyzed the evidence on record, came to the conclusion that the prosecution had failed to establish the charges framed

against the accused beyond reasonable doubt.

7. Learned counsel appearing for the applicant vehemently submitted that the trial Court completely ignored the injury sustained by PW1 Manjeet Singh, the medical evidence adduced by PW5 Dr. Jasbir Kaur, the photographs which would demonstrate the bullet marks at the gate and the recovery effected by the investigating official. Therefore, it is his submission that it is a fit case for admission, as the trial Court has erred in evaluating the evidence in a proper perspective.

8. The occurrence had taken place on 8.11.2010 at about 9.30 a.m. as per the case of the prosecution. The statement of PW1 Manjeet Singh who allegedly sustained injury was recorded only at 1.10 p.m. PW1 was subjected to medical examination the next day on 9.11.2010 at about 10.55 a.m. About 4 hours of delay in registering the case and 26 hours in subjecting PW1 to medical examination have not been satisfactorily explained by the prosecution. The delay sometimes paves way for embellishment of the criminal case and also for implicating the innocent persons. The long gap between the time of occurrence and the lodging of first information report and the delay in medical examination of PW1 create a doubt as to whether such a simple injury would have been, in fact, caused by accused Jagwinder Singh @ Raju. Such an injury could have been caused even by self-infliction, taking advantage of the time gap.

9. Of course, the prosecution has projected photographs to demonstrate that bullet marks were found on the gate. Firstly, no empties were recovered from the scene of crime. A cock and bull story is introduced

that accused themselves collected all the empties and thereafter fled away from the scene. Such an explanation is not at all convincing. The photographs should have been exhibited alongwith the negatives through the photographer, but the prosecution miserably failed to exhibit the negatives of the photograph. Nor was the photographer subjected to examination before the Court. The photographs without any negative cannot be safely relied upon by the Court of Law. Therefore, it could be fairly concluded that the prosecution miserably failed to establish that the accused party were armed with rifles and opened fire at the gate and walls of the house of PW1.

10. In the facts and circumstances, in our considered view, the trial Court has rightly assessed the testimony on record in the background of the principles laid down in Criminal Jurisprudence and recorded acquittal of respondents No.1 to 7. We do not find any merit in the application. Therefore, leave to file an appeal sought for is declined and the application stands dismissed.

(M. JEYAPPAUL)
JUDGE

March 10, 2017
Gulati

(DEEPAK SIBAL)
JUDGE

Whether Speaking/Reasoned : Yes

Whether Reportable : No