

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1283-MA of 2016
Date of Decision: 22.02.2017

Prem Chand

....Applicant

Versus

Vinod @ Bali and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. G.C. Shahpuri, Advocate, for the applicant.

T.P.S. Mann, J.

The applicant, who is father of injured Kapil, has filed the present application under Section 378(3) read with Section 372 Cr.P.C. for grant of leave to appeal against the judgment dated 7.6.2016 passed by Additional Sessions Judge, Gurgaon.

Vide impugned judgment, the trial Court acquitted accused Vinod @ Bali, respondent No.1 herein, of the charge under Section 307 IPC and Section 25 of the Arms Act.

According to the prosecution, on 2.10.2015, Kapil went to the flour mill of Satish in connection with some personal work and when he was sitting in the office of the flour mill, Manjit son of Jai Bhagwan dropped the accused from his motorcycle in front of the flour mill. Manjit whispered in the ear of the accused and then pointed towards Kapil. The accused came inside the office of flour

mill and after taking out a pistol from the right pocket of his pant, fired at Kapil, but the shot did not hit him. Kapil pounced upon the accused and also raised an alarm, which attracted the mill owner, who came there. Kapil along with the mill owner tried to catch hold of the accused, who started running away, but was apprehended along with pistol in the field. While running away, the accused suffered injuries on his hands and legs. According to Kapil, about 4-5 months ago Smt. Krishna, mother of the accused, had complained to him against her son for indulging in illegal activities. In order to make Kapil understand, he had given him 2-4 slaps. Due to the same, the accused had fired upon him with an intent to kill him. It was his luck that the shot fired by the accused missed.

Having heard learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that complainant Kapil had died during the trial of the case and accordingly, was not examined by the prosecution as its witness. The flour mill owner Satish was examined by the prosecution as PW5, but he did not support the case of the prosecution. The applicant had also stepped into the witness box as PW9 and deposed about what he had been told by his son Kapil regarding the incident. His testimony is nothing but a hearsay and thus, cannot be relied upon. Further, the prosecution claims that the accused had used a pistol for firing at the complainant. When pistol in question was taken into possession, it was found to contain one live cartridge and one missed cartridge in its chamber. The missed cartridge bore the pin mark, but no attempt was made

to tally it with the pistol in question. At the same time, as per the report Ex.PA of the Forensic Science Laboratory, both the live cartridges were used during test firing in the laboratory, whereas PW6-SI Devi Charan had recovered one live cartridge and one empty cartridge from the chamber of the pistol.

It may also be noticed here that admittedly it was a case of no injury. There was previous enmity between the injured on one side and the accused on the other. Possibility of false implication of the accused and, that too, in a case where no injury had resulted on account of alleged firing by the accused, cannot be ruled out.

Learned trial Court has considered the entire evidence led by the prosecution in its proper perspective while acquitting the accused of the charge against him. No case is made out for any interference in the impugned judgment of acquittal.

Finding no merit in the application, the same is hereby dismissed.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

22.02.2017
ds

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No