

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM A-1209-MA of 2017

Date of Decision: July 19, 2017

State of Haryana	Versus	Applicant
Balwan @ Mogra and others		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Kapil Aggarwal, Addl. Advocate General, Haryana.

T.P.S.MANN, J.

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 21.12.2016 passed by Additional Sessions Judge, Bhiwani.

Vide impugned judgment, learned trial Court acquitted all the accused/respondents of the charges under Sections 148/452/307/506 read with Section 149 IPC besides Balwan @ Mogra accused of the charge under Section 25(1B) of the Arms Act.

According to the prosecution, complainant Baldev son of Bhagwana made a statement before ASI Om Parkash on 14.2.2014 in front of Court Complex, Siwani to the effect that on 13.2.2014 at about 8.30 p.m., 15/20 persons came on two vehicles, one of which was a motor-cycle and reached his house. They were armed with deadly weapons. After entering the house, they called him by name. Hearing their voice, his son Arun came in the courtyard. Accused Balwan @ Mogra fired a gunshot towards his son Arun but he sat on the ground and was saved. The gunshot hit the window. On hearing the noise of firing, the complainant reached the spot and identified Balwan @ Mogra, Sandeep, Ram Niwas, Anil @ Pava and nephew of Roop Ram. All of them were armed with deadly weapons. He could identify the remaining accused if brought before him. The motive for the occurrence was that the complainant had stopped the accused from taking forcible possession of the old Haveli. The complainant and other family members wanted to set up a school or gym there. Gulshan son of Mehar Chand resident of village Siwani was also involved in the incident.

This Court has heard learned State counsel and perused the impugned judgment of acquittal.

The occurrence in question had taken place on 13.2.2014 at about 8.30 p.m. Complainant Baldev submitted

complaint Ex.P6 to ASI Om Parkash on 14.2.2014 at about 11.00 a.m. However, in his cross-examination, the complainant admitted that he had not written the complaint, rather it was written by his brother. The said brother of the complainant did not step into the witness box. The complainant is a Municipal Councilor and the Police Station was hardly half a kilometer away from the place of occurrence. None on the side of the complainant party had received any injury and, thus, there was no plausible explanation as to why the complaint was not submitted to the police immediately after the occurrence.

As per the prosecution, the accused persons had come in two vehicles. One was a black vehicle while another a motor-cycle. However, none of those vehicles was recovered during the investigation of the accused.

The motive for the occurrence was that accused Balwan @ Mogra alongwith his accomplices wanted to grab the old Haveli situated at Siwani. The complainant testified that no one was occupying the Haveli in question and it was lying under lock and key. The complainant party intended to construct a school or some public utility building there. However, no evidence was collected in respect of the Haveli. It is true that the prosecutrix placed on record one house tax register of Municipal Council Siwani (Mark A), one report (Mark B) and one deed

(Mark C). On the basis of those documents, it cannot be said that Sunehari was owner of the Haveli in question. PW12 Baldev stated that Sunehri was resident of Divsana. At no point of time, any municipal authority or Municipal Council submitted any complaint to the police against the accused persons that they wanted to grab the Haveli, which had already been gifted in favour of the Municipal Council, Siwani.

It is the case of the prosecution that the accused were 15/20 in number and all of them were armed with deadly weapons. Balwan @ Mogra accused was attributed firing of shot at the son of the complainant, who sat down and escaped being hit. In his cross-examination he stated that Balwan @ Mogra accused was his nephew in relation but they were not on good terms. He also admitted that Anil @ Pava had enticed away his niece and after Anil @ Pava was apprehended, the girl was recovered from his possession. He also admitted that Balwan @ Mogra accused had quarreled with him and others about 2/3 years ago. The complainant's son, namely, Arun appeared in the witness box as PW14 and stated that only two persons had entered their house and after Balwan @ Mogra accused had fired upon him, all the accused ran away. The accused were armed with iron rods and barchhies. Thus, there was previous enmity between the complainant party and the accused persons. It does

not appeal to reason 10/15 persons attacked the house while armed with iron rods and barchhies apart from firearm but they could not cause any injury to the complainant or his son.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

July 19, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No