

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2162-MA of 2016 (O&M)

DATE OF DECISION: MARCH 2, 2017

STATE OF HARYANA

...APPLICANT

VERSUS

PARDEEP & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.

PRESENT: MR. ASHOK MUTHREJA, AAG, HARYANA FOR APPLICANT.

M. JEYAPPAUL, J.

CM-38845-2016

1. There is a delay of 248 days in filing the appeal. We are convinced with the reasons assigned for the delay. Therefore, the application stands allowed.

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2. Aggrieved by the acquittal of the accused-respondents who were charged under Sections 307/186/353/34 IPC and Section 25 and 27 of Arms Act, the State has filed the present application seeking leave to prefer an appeal.

3. It is the case of the prosecution that on 28.8.2012 Inspector/SHO Vijay Dahiya along with police officials were on patrolling duty at Jakhoda bus stand. An informer met the police party and furnished information that accused persons were hatching a plan to murder Sanjay and his associates. Accused persons had a plan to kill Sanjay when he was to proceed to Delhi from his house. It was further informed by the informer that the accused persons were sitting inside the kothra at Kulasi Mor along with the weapons.

Inspector Vijay Dahiya alongwith the police party proceeded to the above kothra and found a Santro car and two motorcycles parked outside the same. The raiding parties surrounded the kothra from all the sides. Inspector Vijay Dahiya give a warning to the accused persons to surrender. Suddenly, 6-7 persons came out of the kothra and started firing upon Inspector Vijay Dahiya. But the police official escaped from the bullet shot. The missed bullet hit the front portion of the Santro car outside the kothra. Four assailants, namely, Pardeep, Yogesh, Sachin @ Bhala and Sumit, the respondents herein, were apprehended by the police party during the course of raid. The Santro car and two motorcycles were recovered. Country made pistols and live cartridges also were recovered.

4. On the side of the prosecution, 18 witnesses were examined. In the proceedings under Section 313 Cr.P.C., the respondents herein denied the incriminating circumstances put forth to them. They pleaded that they were innocent, but were falsely implicated. On the side of defence, DW1 Vikas, Sarpanch of the village was examined.

5. We heard the elaborate submissions made by learned counsel for the State.

6. The prosecution has come out with a case that the police informer passed on an information that some persons had taken shelter in an abandoned kothra in the fields. There was no electricity connection in the said kothra. The police party had not opened fire in spite of the fact that the police party had prior information that the accused party had taken shelter in a kothra armed to their teeth.

7. The artificial version of the prosecution is that the accused party

opened fire, but none of the police officials was hit by the bullet. It was the strange case of the prosecution that no police officials sustained any injury in spite of very many fire shots opened by the accused. The trial Court has detailed the material contradictions as regards the different versions emanated from the police officials as regards the number of bullet shots opened by the accused. PW3 deposed that he heard two bullet shots. PW8 stated that he heard a single fire shot opened by the accused. PW10 on his part deposed that three fire shots were fired by the accused party. To top it all, PW11 came out with a version that about 5-6 gun shots were fired by the accused party. Surprisingly, no lead was recovered from the spot. It is totally unbelievable that the accused chose to open fire and hit their own vehicle without injuring the police officials who surrounded the kothra to apprehend them. PW9 Neetu, Sr. Scientific Assistant, who inspected the crime scene categorically deposed that no lead of the bullet was found at the place of occurrence. A graver suspicion has arisen in the above circumstances as regards the fire shots delivered by the accused in the pitch dark against the police party with an attempt to murder them.

8. The very fact that PW10 had formed three raiding parties and descended on the kothra and encircled it to apprehend the accused, would go to demonstrate that PW10 was prima facie convinced that the information furnished by the informer was true. In that case, it is a normal practice of the police official to record the sum and substance of the information furnished by the informer before proceeding to the place of occurrence. But unfortunately, PW10 had not reduced into writing the information he gathered. Only the next day morning, after the operation was conducted, he chose to

register a case. The first information report was registered at 7.20 a.m., but the same reached the portals of the Judicial Magistrate at 1.00 p.m. The case property also was deposited only at 4.00 p.m. on the said day. The delay in despatching the first information report and the case property was not at all explained by the prosecution.

9. It is totally unbelievable that the accused persons took shelter in a kothra which did not have any electricity during night, with a plan to murder one Sanjay. The said Sanjay was not at all examined before the Court to establish the motive behind the act of the accused. No document was produced to demonstrate that Sanjay was actually on bail in connection with any other case. Therefore, in our considered view, the foundation laid by the prosecution is really shaking.

10. In the above context, the trial Court has rightly believed the version of DW1 that accused persons were taken away by the police officials in the guise of conducting some enquiry by PW10 Inspector Vijay Dahiya.

11. In our considered view, the trial Court has rightly evaluated the evidence on record and arrived at a conclusion that the prosecution has miserably failed to establish the charges framed against the accused.

12. Therefore, the leave sought for is declined and the application stands dismissed.

(M. JEYAPPAUL)
JUDGE

March 2, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Speaking/Reasoned : Yes
Whether Reportable : No