

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

CRM A-1775-MA of 2015

Date of Decision: November 29, 2017

State of Haryana	Versus	Applicant
Mohmin and others		 Respondents

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

Present : Mr. Kapil Aggarwal, Addl. A.G., Haryana.

T.P.S.MANN, J.

The State has filed the present application under Section 378(3) of the Code of Criminal Procedure seeking leave to appeal against the judgment dated 27.3.2015 passed by learned Additional Sessions Judge, Ambala, whereby, accused-respondents stood acquitted of the charges under Sections 148 and 186, 332, 353, 307, 427, 411, 485 read with Section 149 IPC, Section 25 of the Arms Act and Section 8 of the Cow Slaughter Act.

According to the prosecution, on 22.12.2011, SI Satpal Singh on receipt of information reached village Miyanpur where Head Constable Bichha Ram, Constable Dharambir, ASI Baljeet Singh, Constable Lahri Singh and driver Pawan Kumar were present in a PCR. Head Constable Bichha Ram got recorded statement with him that on 21.12.2011 at about 10.30

p.m., he alongwith Head Constable Pardeep and Constable Dharambir went to Naraingarh in a government vehicle in connection with patrolling. At about 2.00 a.m., when they reached the front gate of vegetable market, they saw three vehicles and 15 persons standing near those vehicles. Those three vehicles consisted of two Mahindra Pickups and one Canter. The police party asked those persons the reasons for being present there. They replied that they were to purchase vegetable from the market. At around 3/3.45 a.m., when the police party again reached near the gate of vegetable market, they saw movements of the vehicles and some persons were loading cows in the Canter. On this, the police party rushed towards the vehicles and found cows, which had been loaded and the drivers of the vehicles fled away. The police party chased the vehicles. In the meantime, the three vehicles proceeded towards Kathemajra Road from Deha Mandi but the chase went on. The vehicles then turned towards village Miyanpur side. The driver of Mahindra Pickup hit his vehicle against the PCR. When the police party got down from the PCR and rushed towards them, then a person from Mahindra Pickup fired upon the police party and the persons sitting in the Canter hurled stones and bricks and inflicted injuries upon them. The accused had loaded cows in the Canter and Mahindra Pickups after stealing them and taking them towards Himachal side for the purposes of slaughtering. Those persons

also caused damage to the PCR and attacked the police officials by hitting their vehicles with the government vehicle and by firing at them. Accordingly, on the statement of Head Constable Bichha Ram, FIR No.468 dated 22.12.2011 under Sections 186, 332, 353, 307, 427, 411, 485 read with Section 149 IPC, Section 25 of the Arms Act and Section 8 of the Cow Slaughter Act was registered at Police Station Naraingarh.

After hearing learned State counsel and on going through the record of the case, this Court finds that no attempt was made by Investigating Officer to join any independent witness while recording the disclosure statements suffered by the accused. Pursuant to the statements of the accused nothing was recovered and, therefore, those disclosure statements became inadmissible in law. The Investigating Officer also made no attempt to disclose the names of those independent witnesses, who refused to join the investigation. As regards the recovery of a pistol, the same has not been recovered or connected with the accused in connection with commission of the crime. The statements of official witnesses examined by the prosecution in support of its case suffered from material discrepancies, contradictions and improvements. Further, the police party was travelling in the PCR whereas accused were in three vehicles and at different places. Head Constable Bichha Ram, who chased the vehicles of the accused on suspicion was neither authorized nor

competent to do so, and if any vehicle of the accused had hit the police vehicle on a public way, adverse inference need not be drawn with regard to the intention of the accused to commit the crime. According to the prosecution, the firing was resorted to by the accused, however, no firearm injury was caused to any police official.

It is the case of the prosecution that neither the accused were apprehended at the time of the commission of the crime nor known to any police official. Despite the same, no attempt was made by the prosecution to hold test identification parade of the accused so as to connect them with the commission of the crime.

In view of the above, no fault can be found with the findings arrived at by the learned trial Court holding that the prosecution had miserably failed to prove the allegations against the accused. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

**(T.P.S. MANN)
JUDGE**

November 29, 2017
amit rana

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No