

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.718-MA of 2017

Date of Decision: 1.8.2017

State of Haryana

..Applicant

Vs.

Rajdeep and others

..Respondents

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

HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Kapil Aggarwal, Addl.AG Haryana.

Mahabir Singh Sindhu, J.

State of Haryana has filed the present application under Section 378(3) of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of leave to appeal against the judgment of acquittal dated 26.7.2016 passed by learned Additional Sessions Judge, Ambala.

Brief facts are that FIR No.40 dated 28.3.2014 was registered under Sections 148/149/323/324/307/506 IPC and Section 25 of Arms Act at Police Station Barara, District Ambala on the basis of complaint made by Shamsher Singh (Ex.P25) by alleging that on 28.3.2014, the complainant alongwith his friends, namely, Vikram, Rohit Narwal and Neeraj Chauhan was present at Harmilap Juice Corner. In the meantime, Rajdeep, Shakti, Kapil Pandit, Laddi, Pardeep alias Kalu and Bobby alongwith one another person came there on two motor cycles and one Alto Car bearing Registration No.HR-1700. Rajdeep took out a country made pistol and Kapil Pandit gave a knife blow on his waist and the other accused gave iron

rod blows to him and his friends. It is further alleged that when he was running towards police station, Rajdeep fired upon him with his country made pistol; but he escaped and the fire shot hit in the wall of Satnam Kiryana Shop. On account of this, people gathered there and accused persons ran away on their respective vehicles with their weapons. The motive for this occurrence is that about one year ago he had a fight with Anil Kumar and Rajdeep etc. and the case was registered against him and Vikram etc. and talks of compromise were going on between the elder persons of their families. However, due to their common intention, accused persons have attacked upon him and with the intention to kill him, they have committed the offence. The complainant was taken to MM Hospital Mullana by his friends. After registration of the FIR, the investigation was conducted by the police and the accused were arrested. After completion of investigation, report under Section 173 Cr.P.C. was submitted and thereafter, the case was committed to the Court of Sessions for trial.

Learned trial Court prima-facie found that accused have committed the offence under Sections 148/323/324/149/307/506 IPC and 25 of Arms Act against Rajdeep, Shakti, Kapil Pandit, Swami Charan and Ravinder Kumar, Bobby @ Pardeep to which the accused pleaded not guilty and claimed trial. It transpires that on 6.1.2015 an application under Section 319 Cr.P.C. was filed by the prosecution and the same was allowed. Consequently, Laddi and Kalu alias Pardeep were summoned as additional accused and they were also charge sheeted.

The prosecution examined as many as 16 witnesses and placed on record various documents. On the other hand, the accused did not lead any evidence in their defence but their statements were recorded under

Section 313 Cr.P.C.

After hearing both the sides, learned trial Court came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubts and consequently, acquitted all of them by granting them benefit of doubt.

In the present case, the prosecution was initiated on the basis of statement of PW16 Shamsher Singh @ Monu, who has not supported the prosecution case. Even other two eye witnesses, namely, Rohit Narwal PW7 and Neeraj Chauhan @ Gandhi PW13 have also not supported the prosecution case. Consequently, the learned trial Court rightly came to the conclusion that offence under Sections 148/323/324/307/506 IPC read with Section 149 IPC was not proved against the accused. Even offence under Section 25 of Arms Act was also not proved. The prosecution has miserably failed in view of the fact that recovery memos were prepared on the basis of disclosure statements suffered by the accused and to prove the same, the prosecution has examined HC Dhoop Singh (PW2), HC Rajesh Kumar (PW6) and ASI Balbir Singh (PW10). Still further, in order to prove the sanction order under the Arms Act, PW1 HC Kavita has specifically stated that at the time of seeking sanction from the competent authority, neither the alleged arms nor the cartridges were produced before the competent Authority and consequently, the sanction was not valid in the eyes of law.

PW16 Shamsher Singh @ Monu has specifically deposed before the learned trial Court that on 28.3.2014 at about 8-9 p.m. he was waiting for his friends near Harmilap Juice Corner. This witness has further stated that a mob came there with muffled faces and they caused injuries to him but due to darkness as well as the muffled faces of the assailants, he

could not identify the accused. PW16 Shamsheer Singh @ Monu has further stated that he ran towards police station to save his life from the assailants and someone fired which hit in the wall. He has also deposed that he knew all the accused present in the Court but none of them caused injuries to him. Although the witness was cross-examined at length by the prosecution but nothing fruitful was extracted from his cross examination. Similarly, PW7 Rohit Narwal and PW13 Neeraj Chauhan @ Gandhi, who were eye witnesses to the occurrence, did not support the prosecution case. Both these witnesses were cross examined by the defence counsel also and they have stated that earlier the statements were made under pressure of the villagers and the same were not voluntary. In similar terms, PW7 Rohit Narwal has stated in further cross examination that due to darkness, he could not identify the assailants. There was no light near the place of occurrence and thus, he could not see the weapons in the hands of assailants. The witness has further stated that he has seen the accused persons in the Court and they did not cause any injury to him as well as to Shamsheer Singh @ Monu. Even the witness was cross examined by Public Prosecutor but nothing could be elucidated from his cross examination. The deposition of PW13 Neeraj Chauhan also remained the same. He did not support the prosecution case. He has specifically deposed that he could not see the faces of assailants as there was no street light at the time of occurrence. He has also categorically deposed that the persons present in the Court, were not the assailants. He further stated that he could not see the weapons in the hands of the assailants due to darkness. The witness was also subjected to cross-examination at length by the Public Prosecutor but nothing could be culled out from his cross examination to support the case

of the prosecution.

In view of the above, no ground is made out to grant leave to file the appeal against acquittal of the accused. Consequently, the application under Section 378(3) Cr.P.C. for leave to file the appeal against the judgment of acquittal dated 26.7.2016 passed by Additional Sessions Judge, Ambala is hereby dismissed. Leave to appeal is declined.

(T.P.S.Mann)
Judge

(Mahabir Singh Sindhu)
Judge

1.8.2017
Meenu

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No