

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-762-MA of 2017 (O&M)

DATE OF DECISION: JULY 10, 2017

STATE OF HARYANA

...APPLICANT

VERSUS

BALINDER @ JONNY ETC.

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. ASHOK MUTHREJA, DAG, HARYANA

M. JEYAPPAUL, J.

CRM-13205-2017

1. There is delay of 127 days in filing the application seeking leave to prefer an appeal. We are convinced with the reasons assigned seeking leave to appeal. Therefore, the delay is condoned and the application is allowed.

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2. The State has preferred the present application seeking leave to appeal against acquittal of accused Balinder @ Jonny and accused Satpal.

3. The trial Court convicted accused Satinder @ Mani @ Bhallu under Sections 452 IPC and sentenced him to undergo R.I. for 2 years and to pay a fine of ₹1000/- and in default to undergo a further period of 2 weeks. He was also convicted under Section 307 IPC and sentenced to undergo R.I. for 7 years and to pay a fine of ₹10,000/- and in default to undergo a further period of 6 months. He was also convicted under Section 25 of the Arms Act and sentenced to undergo R.I. for 2 years and to pay a fine of ₹2000/-

and in default to undergo a further period of 1 month. All the sentences were ordered to run concurrently.

4. Heard the submissions made by learned counsel for the State.

5. It is the case of the prosecution that five people, namely, Satpal, Mani, Jonny, Piku @ Ishwar Singh and Vikky arrived at the scene of crime. Amongst them, Satpal, Mani and Jonny possessed pistol in their hands whereas Piku and Vikky were empty handed. Having levelled allegation of selling illegal liquor in the village against injured Billu, accused Satpal, Mani and Jonny started firing continuously on Bilu. Their gun shots hit neck, chest and stomach of Billu. All the accused fled away from the spot when the complainant tried to save injured Billu.

6. As per MLR Ex.P37, the following injuries were found on the person of Billu:-

“1. Multiple lacerated wound, two in number, irregular, 3x2 cm over neck.

2. 2.5 x 2.5 over mid sternum circular, smooth margin, no blackening advice CT chest.

3. 1x1 cm wound, round margin, inverted margin and surrounded blackening. No burning. Fresh bleeding present over left side of chest. Suggestive of wound of entry. Advised CT Scan.

4. Lacerated wound 2.5x2 cm over right arm. Advice X-ray.”

7. Bullets which were recovered from the body of injured Billu

Singh and three other cartridges which were recovered from the spot along with the pistol from accused Satinder @ Mani were sent to the FSL, Madhuban for examination. According to the report Ex.P46, two bullets, one recovered from the body of PW8 Billu Singh and yet another recovered from the spot had been fired from the pistol seized from accused Satinder @ Mani. The other two bullets recovered from the spot had been fired from yet another pistol. In other words, yet another pistol had also been used in the incident.

8. The medical evidence established through MLR Ex.P37 proves that only one injury on the abdomen was found on the injured Billu Singh. Only one pistol was recovered from accused Satinder @ Mani. No other pistol was recovered from the other two accused Balinder @ Jonny and Satpal. There is no material to establish which accused amongst Balinder @ Jonny and Satpal fired from the pistol. The trial Court has rightly made an observation that the complainant had an inclination to implicate as many as 5 persons. It is very strange that the prosecution has come out with the present application seeking leave to prefer an appeal against Satpal as well who was found innocent during the course of investigation. In fact, Satpal was summoned only under Section 319 Cr.P.C. There is a material doubt as to which of the accused, namely, Balinder @ Jonny and Satpal, opened fire which led to the recovery of two other bullets from the spot. In our considered view, the trial Court has rightly doubted the version of the prosecution as regards the charges framed against accused Balinder @ Jonny and Satpal who had been arrayed as respondents in the present application.

Therefore, we are pleased to decline the leave sought for by the State.

9. The application is dismissed.

(M. JEYAPPAUL)
JUDGE

July 10, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Reportable : No

Whether Speaking/Reasoned : Yes