

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

CRM-A-918-MA-2017

Date of decision:21.12.2017

Kharak Singh

.....Applicant

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Abhimanyu Kalsy, Advocate for
Mr. Manoj Kumar Palwal, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

Present application under Section 378(4) of the Code of Criminal Procedure (“Cr.P.C.”-for short) for grant of special leave to file appeal against impugned judgement dated 4.3.2017 passed by learned Additional Sessions Judge, Palwal vide which respondent Nos.2 (nephew of the applicant) and 3 (wife of the applicant) have been acquitted of the charges punishable under Sections 307/452 read with Section 120- B of the Indian Penal Code (“IPC”-for short) as well as Section 25 of the Arms Act.

Brief facts of the case are that on the basis of statement of the applicant/complainant, FIR No.62 dated 20.2.2012 under Sections

307/452 read with Sections 120-B and 34 IPC, besides Section 25 of the Arms Act was registered at Police Station City Palwal and the allegations were that they are five brothers and one sister and all are married. Applicant/complainant is having one son aged 5 years. On 15.1.2012 at about 7/8 p.m., he had gone to his fields for watering the wheat crop and at about 11 p.m. when he was coming to his house and reached near the *Chowk* (roundabout) of his house, the electricity light was off. Then, suddenly someone fired a gun shot on the right side of his head and consequently he fell down. After a period of 5/6 days he re-gained consciousness and he had taken treatment from Central Hospital, Faridabad. He is residing separately from his brothers and his wife is having illicit relations with his nephew and he is suspicious about them. It is prayed in the statement that assailants may be traced and action be taken against them and if he will come to know about any assailant, he will inform. On the basis of the above statement, *Rapat* No.9 dated 3.2.2012 was entered in the Daily Diary Register by the police and thereafter, after conducting the investigation above-mentioned FIR was registered. Medico Legal Report of the applicant was collected by the police and respondent No.2-Gulab was arrested on 16.10.2013 and he was interrogated by the police and on the basis of his disclosure statement, he got recovered country made pistol used in the commission of offence; and the bullet recovered from the body of the applicant alongwith the said pistol were sent to Forensic Science Laboratory, Madhuban ("FSL"-for short). Thereafter, Sections 120-B & 34 IPC were also added against the accused. Respondent No.3-Neelam could not be arrested; and on receipt

of FSL report, report under Section 173 Cr.P.C. was presented in the Court of Illaqa Magistrate against accused Gulab Singh. Thereafter case was committed to the Court of Sessions as the offence under Section 307 IPC was exclusively triable by the Court of Sessions.

Learned trial Court prima facie found that respondent No.2 had committed the offences punishable under Sections 307, 452 IPC and Section 25 of the Arms Act. Accordingly, he was charged for the same, but he pleaded not guilty and claimed trial.

Thereafter, on 13.2.2014, respondent No.3-Neelam was arrested and supplementary report under Section 173 Cr.P.C. was submitted against her and the case was committed to the Court of Sessions and charges were accordingly framed and amended charge-sheet was filed against both the accused, to which they pleaded not guilty and claimed trial.

Prosecution in order to prove the charges, examined seventeen witnesses and brought on record documentary evidence.

Statements of respondents No.2 and 3 were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them were put to them, but they denied the same and claimed to be innocent.

After hearing both sides and perusal of record, learned trial Court acquitted respondents No.2 and 3 of the charges framed against them. Hence the present application for seeking special leave to appeal.

It is contended that learned trial Court had committed grave error of law while acquitting respondents No.2 and 3 as there was

sufficient material on record to prove charges against the said respondents and thus the present application deserves to be accepted.

We have heard learned counsel for the applicant and perused the paper-book.

Applicant-complainant appeared as PW-2 and stated that he was married with respondent No.3-Neelam on 13.7.2005 and on 15.1.2012 at about 7/8 p.m., he went to his fields for irrigating the crop and at about 11 p.m. when he was coming to his home and reached in the court-yard of his house, he noticed that his wife Neelam and his nephew Gulab were coming out from his house, thereupon, Neelam asked Gulab to eliminate the applicant as he had seen them. Accordingly, Gulab fired a shot upon the applicant, which hit on his right side of head. Resultantly, he fell down and his brother Raja Ram and others shifted him to Central Hospital, Faridabad for treatment. It is further deposed by PW-2 that Gulab had fired upon him with intention to kill him as there was illicit relations between his wife Neelam and Gulab. He further deposed that he suffered statement Ex.P1 before the police.

PW-1 Samay Singh, brother of the applicant deposed that on 15.1.2012 at about 11 P.M. Gulab Singh-respondent No.2 fired a shot at his brother Kharak Singh on the right side of his head and when he received the information, he went to the house of the applicant and they shifted him to Central Hospital, Faridabad for treatment. It is further deposed by him that Gulab fired shot at his brother Kharak Singh because Gulab was having illicit relations with Neelam-respondent No.3. It is further deposed that Gulab met him at Central Hospital, Faridabad and he

confessed his guilt and requested him (PW-1 Samay Singh) to save him. He also admitted that he threw the country made pistol in the well situated at village Old Patli Khurd.

There is another witness, namely, Raja Ram who appeared as PW-3 and deposed that on 15.1.2012 at about 11 p.m. when he was present at his house, he heard noise of firing and then he came outside and went to the house of Kharak Singh-applicant and saw Gulab Singh was running after firing at Kharak Singh. It is further deposed that he alongwith his brother shifted the applicant to Central Hospital, Faridabad. Gulab Singh fired upon the applicant as he was having illicit relations with applicant's wife Neelam.

All the remaining PWs were police officials except PW-16 Dr. Gagan Sharma.

PW-16 Dr. Gagan Sharma deposed that he conducted NCCT of head of patient-Kharak Singh and found a metallic density foreign body in scalp in right frontal region, with multiple air pockets. He proved his report as Ex.P16.

It is the case of the prosecution that alleged occurrence had taken place on 15.1.2012 at about 11 p.m. and the applicant got recorded his statement first time before the police on 3.2.2012 and thereafter the present FIR was registered on 20.2.2012. There is no explanation for the delay of eighteen days in reporting the matter to the police and thirty five days in lodging the FIR. As per the case of the prosecution the applicant/injured was admitted to Central Hospital, Faridabad on 15.1.2012 at 11 p.m. and he reached there at 12.15 a.m. on 16.1.2012 and

the information to that effect was received by ASI Krishan Kumar, thereafter, SI Khem Chand reached Central Hospital, Faridabad on 16.1.2012 but the Doctor declared the applicant unfit to make statement. Again on 20.1.2012 HC Kushal Kumar reached Central Hospital, Faridabad for taking statement, where he was informed that injured has already been discharged. Thereafter HC Kushal Kumar reached at the house of the applicant who showed his inability to make his statement and there is nothing on record to show as to why he did not make any statement before HC Kushal Kumar (PW-4). It is only on 3.2.2012 when HC Kushal Kumar reached village Patli Khurd for recording statement of injured that he got recorded his statement. But again there is no explanation as to why complainant remained silent from 16.1.2012 till 3.2.2012. Thereafter, on 3.2.2012 only DDR No.9 was recorded and on 20.2.2012 FIR was registered.

Even otherwise the initial version of PW-2 is different from his testimony before the learned trial Court and there are lot of improvements when he was examined as a witness in Court and from the statement of PW-1 it is apparently clear that he was not present at the time of occurrence and his testimony is merely on hearsay basis. Similarly, the testimony of PW-3 that he was present at the time of occurrence also does not inspire truthfulness. There is one report Ex.D1 dated 12.2.2012 prepared by DSP Headquarter after inquiring from the respectables of the village that applicant/complainant was having suspicious at his wife-Neelam and nephew-Gulab and even he used to beat Neelam but all the aforesaid persons had stated that there is no truth in the allegations and

Gulab has been falsely implicated and in the inquiry it was found that respondent No.2-Gulab is innocent. Even PW-1 also did not inform the police about the confession of respondent No.2 immediately. PW-2 also did not appear before DSP Headquarter when he conducted inquiry regarding the occurrence. Although it is claimed by applicant that he remained unconscious for six days in the hospital, but MLC belies the same according to which patient remained conscious and oriented. Respondent No.2 was arrested on 16.10.2013 by ASI Ram Chander (PW-15) who produced him in the Court on 17.10.2013 and police remand of two days was obtained. He (Gulab-respondent No.2) suffered a disclosure statement and got recovered a country made pistol from his house but ASI Ram Chander while appearing as PW-15 has not stated that HC Kushal Kumar was also present at the time of recovery. Even HC Kushal Kumar while appearing as PW-4 has not deposed that Gulab was arrested by ASI Ram Chander on 16.10.2013. Therefore, the testimony of PW-4 HC Kushal Kumar and PW-15 ASI Ram Chander is contradictory to each other. The disclosure statement Ex.PW3 and recovery of country made pistol Ex.P4 is doubtful. The FSL report Ex.PX/1 reveals that .315” fired bullet BC/1 has been fired from a country made firearm, but report Ex.PX shows that country made pistol mark W/1 (chambered for .315” cartridge) is a firearm as defined in Arms Act 54 of 1959. It is further mentioned in it that no, definite opinion could be formed regarding the linkage of .315” fired bullet marked as BC/1 with country made pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks. Thus, the learned trial Court has rightly found that

“it cannot be concluded that it was the same bullet which was fired from the country made pistol allegedly recovery from the accused”.

In view of the facts and circumstances discussed hereinabove, it is apparently clear that learned trial Court has rightly acquitted respondents No.2 and 3 of the charges framed against them and this Court is fully in agreement with the view taken by the trial Court being the possible view and there is no material available to differ with the view taken by the trial Court.

In view of the above discussion, this Court does not find any ground to grant special leave to appeal. The application seeking special leave to appeal filed under Section 378(4) Cr.P.C. is dismissed and leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

21.12.2017

Gaurav Sorot

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| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |