

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

**CRM-A-1035-MA of 2017
Date of Decision: May 11, 2018**

Sukhbir

...Applicant

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Rajneesh Kaushal, Advocate
for the applicant.

FATEH DEEP SINGH, J.

Through the instant application, the applicant/complainant Sukhbir had sought redressal of his grouse against judgment dated 22.12.2016, whereby, the Court below through the impugned findings had acquitted accused Tinku @ Bharampal, Surat Singh for commission of offence.

Heard learned counsel for the parties and perused the records of the case.

The present case by way of FIR No.11 dated 22.12.2014 under Sections 302,34 IPC and Section 25 of the Arms Act was registered with Police Station Kasola, (Rewari) on

the statement of applicant/complainant Sukhbir, who made a written complaint Ex.PA before the Inspector, SHO Surender Singh. In the complaint, brief allegations were that his uncle Bhim Singh son of Hari Singh is having two sons, elder one Pradeep (now deceased) and younger to him Sandeep. It is stated that on 22.1.2014 at around 6 p.m Pradeep had gone to the shop of one Jasbir for bringing vegetables and when he was returning from the shop accused Bhim Singh son of Polia Ram, Ajay, Tinku @ Bharampal and Surat Singh, all residents of their village came from front side and at that time Bhim Singh son of Polia Ram was armed with country made pistol while the other two were armed with *lathies*. It is alleged that Ajay and Surat Singh caught hold of Pradeep and Bhim Singh fired a shot hitting on the right side of the chest and Tinku @ Bharampal pushed Pradeep, who fell down and, thereafter, the accused ran away. Injured was rushed to hospital, where he was declared brought dead. During the course of investigations, Ajay and Surat Singh were found innocent but were summoned under Section 319 Cr.P.C vide order dated 04.08.2014 while accused Bhim Singh son of Polia Ram and Tinku @ Bharampal were charge-sheeted initially and subsequently were put to trial.

The prosecution at the trial examined PW1 Sukhbir Singh, complainant; PW2 Dr. K. K. Nagar; PW3 Constable Vikram; PW4 Constable Mahesh Kumar; PW5 EASI,

Satpal; PW6 Sandeep, PW7 Ajit, PW8 HC Arun Kumar, PW9 ASI Ram Kumar; PW10, ASI Amar Singh; PW11 Inspector/SHO Surender Singh; PW12 Inspector/SHO Vikas Kaushik; PW13 HC Jitender Kumar; PW14 Dharampal, Draftsman; PW15 HC Kailash Chand and PW16 SI Surajbhan. The accused denied the allegations in their stand under Section 313 Cr.P.C and in their defence examined Madan Lal Chaudhary as DW1 and Suresh Sharma as DW2 and, thereafter, closed their evidence. It was through the impugned findings, accused Bhim Singh son of Polia Ram was found guilty and sentenced as follows:-

Under Section 302 IPC	Rigorous imprisonment for life and to pay fine of Rs.9,90,000/- and in default of payment of fine to undergo simple imprisonment for three months.
Under Section 25 of Arms Act	Rigorous imprisonment for one year and to pay fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for one month.

The other accused were acquitted.

Appreciating the submissions of the learned counsel for the parties, it may be noticed that there is single fire shot that has been fired and that too by convict-Bhim Singh son of Polia Ram resulting in death of deceased and other two accused Surat Singh and Tinku @ Bharampal now sought to be convicted that were armed with *lathies* (whereas another accused Ajay was found to be juvenile) but there is no role attributed to them for causing injuries by these weapons to the deceased or

anyone else. The documentary proof brought on the record by DW1 Madan Lal Chaudhary and DW2 Suresh Sharma by way of consignment Ex.DW2/B shows that on the date of occurrence and time Surat Singh-respondent who was a driver had gone with the goods to Jaipur and this fact is highlighted from the investigations where both these witnesses were joined by the police. Furthermore, most glaring lacuna that has come to the notice of this Court is that the complainant neither in his initial stand and nor before the doctor named these persons to be the accomplices of Bhim Singh-convict. Besides the fact that Investigating Officer PW16, HC Surajbhan in his cross-examination, nowhere details that co-accused Bhim Singh son of Polia Ram has ever given an inkling during his interrogation as to the presence or role to any of the so detailed to be his co-accused. The material witnesses PW6 Sandeep and Jasbir in their statement Ex.DA and Ex.DB had categorically stated that they had not witnessed the incident and they have never levelled any allegations against the accused Surat Singh, Tinku @ Bharampal and Ajay. The most material drawback in the prosecution's story comes from the very examination of PW11 Inspector/SHO, Surender Singh that the complainant telephonically informed him regarding the occurrence but never disclosed the names of the accused at that time is creating a doubt over the initial veracity and subsequent improvement of the

stand of this witness. Especially, when there has been delay of more than three hours between alleged occurrence which has taken place around 6 p.m. and the FIR has been registered at 9 p.m. are matters of much significance.

More so, the very probability and plausibility of the manner of occurrence whereby, the co-accused of convict Bhim Singh son of Polia Ram, Ajay, Surat Singh, and Tinku @ Bharampal have been attributed insignificant roles, whereby, they have caught hold the deceased from the arms and others had given a push does not inspire any confidence in the same and rather to the mind of this Court this delay has been utilized by the complainant to bring about embellished account whereby, the four persons have been roped in this case for motivated cause. The arguments put forth by learned counsel for the applicant do not impress this Court and no ground is made out to grant leave to file appeal to the applicant. The same stands dismissed.

(T.P.S MANN)
JUDGE

(FATEH DEEP SINGH)
JUDGE

May 11, 2018
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Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No