

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

**CRM A-2042-MA of 2017
Date of Decision : May 9, 2018**

Kamal Jyoti

.....Applicant

Versus

State of Punjab and others

.... Respondents

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

Present : Mr. Ramdeep Partap Singh, Advocate
for the applicant.

T.P.S.MANN, J.

The applicant, who had received injuries in the incident and, thus, a victim has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against judgment dated 9.2.2017 passed by learned Additional Sessions Judge, Gurdaspur, whereby, the accused, i.e. respondents No. 2 to 10 herein, were acquitted of the charges under Sections 148, 307, 341, 382, 427, 325, 324, 323 read with Section 149 IPC and also under Section 27(1) of the Arms Act.

According to the prosecution, on 24.5.2013 complainant Kamal Jyoti, who was resident of Chhota Bazar, Qadian and President of local unit of Bhartiya Janta Party, alongwith his friend Paramjit Singh Sohal was going to Gurdawara Ghallughara Shaib to pay obeisance in a car. At about 10.30 a.m., when they reached near hospital of Dr. Garibu on Buttar Road, one Bolero car being registration No. UK-02-D-5279, one car make Figo and another car make Swift came from the opposite side and waylaid them. Jarnail Singh Mahal empty handed, Sabha armed with revolver, Billa armed with machete (datar), Nitta armed with a dang, Ginda armed with machete (datar), Satnam Singh with handle of spade, Laddi with baseball bat and Subegh Singh armed with machete (datar), all residents of Civil Lines Qadian, Montu resident of Balmiki Mohalla, Qadian armed with iron pipe and Bhagat Singh, Sarpanch of Kathana armed with sota alongwith 10/12 unknown persons came out of the said three cars. Jarnail Singh raised a lalkara to catch hold of the complainant and teach him a lesson for getting a case registered against them. Sabha and Bhattu fired shots towards them from their respective revolvers with an intention to kill them. Remaining accused pulled them out from their car and started beating them with their respective weapons. The complainant received injuries on his right leg, chest and nose. His leg got

fractured. His friend Paramjit Singh Sohal also received injuries in the occurrence on his head, chest, nose and under his eyes. The complainant and his companions raised an alarm. All the accused fled away from the spot with their respective weapons after boarding their vehicles. While leaving the spot, they also took the revolver of the complainant and also of his friend Paramjit Singh Sohal with them. The accused had also damaged their car in the occurrence.

Respondents No. 2 to 10 alongwith Subegh Singh, Harpreet Singh and Gurbinder Singh @ Laddi were charged for the aforementioned offences. However, proceedings against Harpreet Singh and Subegh Singh were quashed by the High Court whereas Gurbinder Singh @ Ginda died during the trial and, accordingly, proceedings against him were dropped.

This Court has heard learned counsel for the applicant and also perused the impugned judgment of acquittal.

It is the case of the prosecution that the accused had caused injuries to Paramjit Singh Sohal in the occurrence. Though PW2 Doctor Anil Kumar Marwaha deposed that he had conducted medico-legal examination of Paramjit Singh Sohal on 24.5.2013 and noticed as many as five injuries on his person yet said Paramjit Singh Sohal while stepping into the witness box as PW1 did not support the case of prosecution and turned hostile.

He deposed that both of them were going to a Gururdawara to pay obeisance but when they reached near a chowk located in Qadian on Buttar Road, a Bolero type jeep came at a high speed from behind and struck against their car. On account of the same, his car struck another car coming from the opposite side. As a result, his face hit against steering wheel of his car and he suffered injuries on his nose. Pieces of window panes also struck below his right eye. He further stated that the accused persons did not cause any injury to him nor he knew them.

As mentioned above, Subegh Singh and Harpreet Singh, two co-accused of respondents No. 2 to 10 were challaned by the police and, subsequently, charges framed against them but filed a petition under Section 482 Cr.P.C. before this Court for quashing of FIR on the ground that both of them were not present in India on the day of occurrence but had gone to Thailand. Said petition filed by them was allowed by this Court on 28.10.2014, holding that it stood established from their respective passports that they were not present in India on the day of occurrence. Even, the complainant could not specifically deny their stand whereas the State took the stand that it was a matter of record. Even respondent No.10-Guriqbal Singh @ Billa had placed on record visitor slip issued in his name carrying his photograph as Ex.DA whereby he had visited this Court on 24.5.2013 at

10.59 a.m. The occurrence in question had taken place at 10.30 a.m. on the same day. The visit of Guriqbal Singh @ Billa to this Court was on account of writ petition filed by him, wherein, he apprehended his involvement in some case by the police at the instance of local MLA. Those documents have been placed on record as Ex.DC to Ex.DH. Thus, it was not possible for him to be present at Qadian at the time of occurrence.

According to the prosecution, two of the accused had fired at the time of occurrence towards the complainant and his friend with an intention to kill them. Further, while leaving the spot, the accused also took revolvers of the complainant and Paramjit Singh Sohal with them. However, there is no evidence to prove that firearms were used by the accused persons. Even no firearm was recovered from them. The accused had fired shots towards the car of the complainant but no shot had hit the car. Even the empty cartridges were not recovered from the spot. During the investigation, the police recorded the disclosure statements of Sarabjit Singh @ Bhattu and Gurdilbagh Singh @ Nitta on 27.5.2013 to the effect that they had handed over the revolvers to accused Amariqbal Singh @ Sabha, who had taken the same to a farmhouse of accused Jarnail Singh Mahal in Uttar Pradesh and they were aware of the said farmhouse. The aforementioned two accused again suffered disclosure statements on 29.5.2013,

wherein, they stated that they were not aware of the farmhouse in question. Subsequently, no attempt was made by the police to recover the weapons from the accused.

In para 19 of the impugned judgment of acquittal, learned trial Court noticed the various discrepancies in the present case. The discrepancies in question were material going to the root of the case as a result of which the very foundation of the prosecution case stood shattered. As a result thereof, it will not be safe to place reliance upon the testimonies of PW1 Makhan Singh, PW5 Kamal Jyoti and PW6 Satinder Mohan Sharma, brother of Kamal Jyoti.

In view of the above, no fault can be found with the impugned judgment of acquittal passed by the learned trial Court. The application is without any merit and, therefore dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

May 9, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No