

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. A-460-MA of 2018
Date of decision: September 20, 2018

Manoj Kumar

....Applicant

Versus

Naveen and others

....Respondent

Coram: Hon'ble Mr. Justice T.P.S.Mann
Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. Ashok K. Sharma Bhana, Advocate for the applicant

Fateh Deep Singh, J.

This application has been preferred by complainant Manoj Kumar seeking prayer for leave to file appeal against respondents Naveen, Kavita and Sushil alias Sheelu, the private respondents, against judgment dated 27.9.2017 passed by the Court of learned Additional Sessions Judge, Jind whereby in FIR No. 327 dated 5.8.2015, under Sections 307, 324/34, 120-B IPC and Section 25 of the Arms Act, registered at Police Station Safidon, the Court has disbelieved the prosecution story and has given benefit of doubt and acquitted them of the charges.

Heard Mr. Ashok K. Sharma Bhana, counsel for the

applicant.

The brief allegations of the prosecution levelled by complainant Manoj Kumar in his complaint are that on 5.8.2015, he had a matrimonial dispute with his wife Kavita who called her brother Naveen by making a telephonic call and thereafter Naveen along with Sushil alias Sheelu had come in a Car to his house and all of them started quarrelling with him. It is alleged that on hearing raula, neighbour of the complainant namely Raju was attracted and it is alleged that accused Naveen who happens to be the brother of his wife fired from his weapon with the intention to kill the complainant. However, the same missed the complainant and hearing the sound, people were attracted. Respondent-accused Sushil alias Sheelu was apprehended while others managed to escape and on personal search of Sushil alias Sheelu, four live cartridges were recovered from his pocket.

Upon investigations, challan against the accused was presented. In the prosecution story, 16 witnesses were examined comprising of Rajbir Singh PW1, Dr. Atam Singh PW2, Manoj PW3, Rajesh Kumar PW4, HC Dilbag Singh PW5, HC Ram Kumar PW6, ASI Ramesh PW7, ASI Ram Karan PW8, Yashpal Deshwal PW9, Constable Dharam Jeet PW10, EASI Ishwar Singh PW11, ASI Parveen PW12, Kailash Chander PW13, Manish PW14, Inspector

Dharambir Singh PW15 and HC Mahender Singh PW16. Thereafter, the prosecution closed the evidence.

All the incriminating evidence, oral as well as documentary, were put to each of the accused in their separately recorded statements under Section 313 Cr.P.C. who denied the same and took up the plea of false implication. The accused in their defence examined DW1 Ram Niwas and DW2 Mahender and closed their defence leading to the passing of the impugned judgment.

Going through the submissions of the learned counsel for the applicant, it is a non injury case and as per the own version put forth by the complainant though one of the accused Naveen had fired at him but the shot escaped from hitting him and thus the very question of applicability of allegations of attempt to murder needs to be critically evaluated. It is the own stand of the complainant that only four live cartridges have been recovered and that too from the pocket of Sushil alias Sheelu. Neither the weapon from which the accused Naveen has fired has been recovered during the investigations much less any remnant of the fired bullet are matters of much bearing on the case of the prosecution. The complainant has made a complaint to the police Ex. PD about these allegations and he has claimed that all the accused entered his house and gave him beatings are totally missing in his complaint Ex. PD. The claim

of the complainant stands partially disbelieved when his application under Section 319 Cr.P.C. for summoning additional accused stood declined and which order has since attained finality are matters of much relevance that all is not well with the allegations of the complainant. Believing that the occurrence has taken place at the house of the complainant as per his allegations, the accused entered his house and fired. Certainly, the bullet marks could have been there on the premises but none is established on the records of the case. Even the Investigating Officer as PW12, admitted the fact that he could not come across or recover any remnant of the fired bullet from the place of occurrence nor it come across any marks of fire shot on the premises. It is there in the allegations and counter allegations that the couple were at loggerheads and the wife had initially filed a complaint against the husband and thus, it needs to be ensured to rule out that there may be an attempt by the husband to subvert the efforts of the wife to launch against the husband any matrimonial allegations. Even the allegations of the complainant regarding the injuries to Manish could not be established to the hilt. The MLR of this injured Ex. PC/1 shows that X-ray examination was advised but it could not be brought on the record and when these injuries are shown to be by sharp means certainly pose a big question mark on the prosecution story besides the fact that the

initial allegations of the husband that the wife had given a telephonic call to her brother and the accused had come to his house could not be corroborated by any call details to this effect. The most glaring discrepancy in the prosecution story shows that PW6 HC Ram Kumar has given his opinion as to the working of the pistol which is shown to be country made whereas the alleged recovery from Naveen brother of the wife is shown to be a licenced revolver and which is evident from the Forensic Science Laboratory report Ex. PB. In the initial stand of the complainant, there are allegations that the accused had given fist blows to him. However, MLR Ex. PC/1 nowhere shows any such injuries and rather injuries attributed to Naveen are shown to be by sharp means when there is no any such allegation against him in the oral testimony of the prosecution witnesses. It is the case of the witnesses of the prosecution that at the time of the occurrence it was dark and therefore, quite improbable and unpalusible for the witnesses to have identified the assailants. Above all, the complainant as PW3 when confronted admits that in his complaint Ex. PD made to the police, neither he had any role assigned to his wife Kavita or as to her presence at the time of the occurrence much less of having exhorted her brother Naveen as a consequence of which Naveen had fired from his weapon. Further more the witness also admits that he has not

mentioned the fact that Kavita had given telephonic call to her brother and thereafter accused had assembled at his house.

From this all what has come on the record, oral as well as documentary evidence, the story of the prosecution certainly is highly discrepant, improbable and does not inspire confidence in the Court. The Court below in the impugned findings has rightly held that the prosecution has failed to prove its case against any of the accused and correctly given benefit of doubt to them.

In the light of these discussions, we are not inclined to show indulgence on the prayer made by the applicant in his application for leave to file appeal and therefore, the application stands dismissed and leave to appeal declined.

	(T.P.S. MANN)	(FATEH DEEP SINGH)
	JUDGE	JUDGE
September 20, 2018		
'dst'		

Whether speaking/reasoned ?	Yes / No
Whether Reportable ?	Yes / No