

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

**RSA No.2696 of 2016 (O&M)
Date of Decision:21.09.2018**

Nirmala

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Dinesh Kumar Jangra, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-7227-C-2016

For the reasons stated in the application, which is supported by an affidavit, delay of 149 days in refiling the appeal is condoned.

CM stands disposed of.

Main appeal

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiff, who is mother of deceased Sunil, seeks damages on the ground that her son was killed in a fake encounter.

The defendants contested the suit, pleading that number of cases were registered against deceased Sunil and he was arrested in FIR No.26 dated 2.3.2006. However, he managed to escape from the custody of Karnal Police. Another FIR i.e. No.69 dated 15.2.2007 was registered. It is further case of the defendants that one Sushil Kumar was having Indica Car, which was being used as a Taxi (car meant to take it on rental) and the same was hired by two young boys including deceased Sunil for going to Jind on 5.4.2007. They got the car stopped after covering a distance of about half kilometer and purchased some medicines and adhesive tape. Thereafter they snatched the car on pistol point and pushed the driver out of the car.

After some distance, car skidded to the fields of wheat and Sushil Kumar raised an alarm which attracted the police.

Apprehending the arrest, boys started firing. A message was flashed to all the police officials in this regard. One of the boy, i.e. Sohail was apprehended at the spot, however, the police party noticed that a boy was trying to escape. He was chased but he again started firing. Bullets fired by Sunil hit the police vehicle. He was repeatedly warned but he did not surrender. In self defence, police fired shoots which resulted into injury. Sunil was immediately rushed to the hospital but he succumbed to injuries.

Both the courts after appreciating the evidence, have noticed that as many as five FIRs had been registered against late Sunil and against another boy, who was apprehended at the time of incident, there were three FIRs pending.

In the present case, the plaintiff wants this Court to hold that encounter was fake. However, except bald oral statements of the plaintiff and her husband, no evidence has been brought on file. In such circumstances, the courts cannot record a finding of encounter being fake unless there is cogent evidence to prove that fact.

In view of the above, there is no ground to interfere in the concurrent findings of fact arrived at by the courts below. Regular Second Appeal is hereby dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

21.09.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No