

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

Crl. Misc. No.A-458 of 2019 (O&M)

Date of Decision:- 29.04.2019

State of Haryana

....Appellant

vs.

Bhuttu and another

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Rajesh K. Sheoran, Addl. A.G., Haryana with
Mr. Arun Beniwal, DAG, Haryana,
for the appellant.

SUDHIR MITTAL, J.

On a complaint made by Deena, FIR No. 442 dated 4.10.2013 was registered at Police Station Punhana under Sections 148, 149, 323, 307, 506, 302 IPC read with Section 25 of the Arms Act, 1959. The case set up by him was that on 4.10.2013 at about 8.00 p.m., he was going to the house of his brother Sher Khan when accused Jaikam, Mausam, Aslam, Hanif, Jahid, Bhuttu, Bashir and Ishak met him. Jaikam and Aslam were having a previous grudge against him and his brother as an FIR had been registered against them for theft of buffalo of Sher Khan about 2/2 ½ months back. Sher Khan and his daughter Nazra also reached the spot. Jaikam and Aslam were armed with country made pistols and the others were armed with lathis and dandas. Jaikam fired at Sher Khan, who received injuries on his chest while Aslam fired at Nazra, who received injuries on his elbow. On raising hue and cry, Fajjar and Ibrahim came there and rescued them. Sher Khan

succumbed to his injuries a few days later.

(2) For some reason which is not forthcoming in the impugned judgment, accused Bhuttu and Bashir were tried separately and acquitted by the trial Court. Hence, the State is in appeal. Along with the appeal, an application for condonation of delay of 383 days in filing the appeal has also been filed.

(3) A perusal of the impugned judgment shows that the trial Court has given the following reasons for acquitting the accused persons:

(a) Initially the accused persons were declared innocent by the police as it was found that they were not present in the village on the date of the incident. The report in this regard is Exhibit D-1 on record.

(b) As per the case of the prosecution, the accused were armed with dandas and were not having any firearm in their possession whereas deceased Sher Singh and injured Nazra had received fire arm injuries.

(c) The statements of the complainant and the injured persons do not attribute any fire shot injury to the accused persons.

(d) Recovery of dandas Exhibit P-1 and Exhibit P-2 is not of much consequence as they did not bear any signs of blood or hair as was evident from the FSL Report.

(e) No independent person was associated while recording the disclosure statement of the accused persons.

(4) Learned State counsel has not been able to point out any error or infirmity in the aforementioned findings. He has also not been able to explain the delay of 383 days in filing the appeal. The only reason mentioned in the application for condonation of delay is procedural delay in processing the papers but the same cannot be believed as the application also states that the District Attorney proposed the filing of an appeal vide his memo. dated 7.3.2018 whereas the judgment impugned is dated 10.10.2017. There is no explanation forthcoming for the delay of 5 months in sending the proposal by the District Attorney. Thus, no reasonable justification has been given for the inordinate delay in filing the appeal.

(5) Accordingly, the appeal is dismissed on account of delay, as well as on merits.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

April 29, 2019
poonam

Whether speaking/reasoned	Yes
Whether reportable	No