

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

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CRM-10193-2020 in/and
CRM-A No.575 of 2020

Date of Decision: July 11th, 2022

State of Haryana

....Applicant

Versus

Rohtash and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Tanisha Peshawaria, Deputy Advocate General, Haryana,
for the applicant.

AUGUSTINE GEORGE MASIH, J.

CRM No.10193 of 2020

Prayer in this application under Section 5 of The Limitation Act, 1963, read with Section 482 Cr.P.C. is for condonation of delay of 57 days in filing the application for grant leave to appeal.

The details with regard to the time consumed for filing the application have been given in the application, which appear to be quite justified. There is no intentional delay in filing the application and, therefore, we accept the prayer made in this application and condone the delay of 57 days in filing the application, especially when the same is supported by the affidavit of Assistant Superintendent of Police, Gohana, Sonipat.

CRM-A No.575 of 2020

Prayer in this application under Section 378 (3) Cr.P.C. is for grant of leave to appeal against the judgment of acquittal dated 20.09.2019 passed by the Additional Sessions Judge, Sonipat, whereby the respondents have been acquitted by the trial Court of the charges framed against them under Sections 307 and 506 IPC and Section 25 of The Arms Act, 1959.

2. It is the contention of learned counsel for the applicant that the learned trial Court has totally ignored the evidence and even the eyewitnesses. In this regard, she points out that the complainant, his wife and son are the eyewitnesses namely Krishan, wife Bala and Kuldeep. Her contention is that in pursuance to the arrest and disclosure statement, .32 bore pistol along with three live cartridges have been recovered from Rohtash son of Shri Parkash-respondent No.1. She contends that despite the said recovery having been effected and empty cartridges also lifted from the spot, which have been found to have been fired from the said pistol as per the FSL report (Exhibit PX), the Court had no reason to acquit the respondents of the charges framed against them. Prayer has thus been made for granting leave to appeal.

3. We have considered the submissions made by the counsel for the applicant and with her assistance, have gone through the impugned judgment and the records of the case.

4. Briefly the prosecution version is that on 05.02.2016, complainant Krishan filed a written complaint in the Police Station to the effect that on 31.12.2015, respondent No.1 Rohtash and respondent No.3 Rajesh had quarreled with his son Kuldeep and they had given head injury to him by a brick apart from fist and leg blows. On 16.01.2016, one day prior to the Panchayat election, Rohtash and Rajesh had fired upon them but they escaped narrowly. Out of fear, they did not complain about the same but the accused, having grudge in their mind, again came on 04.02.2016 while all three of them were standing in the street in front of their house. Rohtash fired upon them with an intention to kill them but they saved themselves by entering their house and did not come out of the house because of fear thereafter. There is danger to the life and property from the accused and thus requested appropriate action against the accused. FIR No.41 dated 05.02.2016 under Sections 323, 307,

506, 34 of IPC and Section 25 of The Arms Act was registered. The accused were arrested. The recovery as has been mentioned above had been effected from them. After investigation, challan was presented and the case was committed by the Sub Divisional Judicial Magistrate, Gohana, on 21.07.2016 to Sessions Court for trial of offence under Section 307 IPC read with Section 25 of The Arms Act. Charges were, however, framed under Sections 307 and 506 IPC and Section 25 of The Arms Act.

5. The prosecution examined 16 witnesses. Complainant-Krishan appeared as PW-10 and supported the prosecution version, so did PW-9 Kuldeep son of the complainant and PW-11 Bala wife of the complainant. Recoveries as effected from Rajesh have been proved on the basis of the statements of PW-13 Head Constable Narinder Kumar and PW-15 S.I. Sanjay Kumar. FSL report has also been proved and placed on record as Exhibit PX.

It is not the case of the prosecution that any injury has been found on the person of Kuldeep, who had allegedly suffered injury on the head on 31.12.2015, when a quarrel had taken place between him, Rohtash and Rajesh. MLR is also silent in this regard. No compliant has been filed as far as the alleged incident which took place on 16.01.2016, where it is said that Rohtash had fired upon all three of them outside their house i.e. a day prior to the Panchayat election. Both these incidents have also not been verified from any independent source except for the self serving version as projected by the complainant and his son. The trial Court has, therefore, rightly discarded the said incident in the absence of any corroboration and has rightly doubted the same.

As regards the third incident that took place on 04.02.2016, various discrepancies and the delays as occurred in the recording of the said

FIR, have been pointed out. The investigation has also been said to be shoddy to some extent. Kuldeep PW-9 had stated that the incident had taken place on 04.02.2016 at 7:30 PM but no immediate call was made to the police for any help. It is only on 05.02.2016 when complainant Krishan visited the Police Station at about 10/11:00 AM and made a complaint. The FIR was registered at 6:00 PM on 05.02.2016 and received by the Illaqa Magistrate on 06.02.2016 at 8:30 PM i.e. after a delay of 26½ hours after the incident, whereas Inspector Neeraj PW-16 stated that he received the written application/complaint (*tahrir*) at about 5:00 PM and immediately registered the FIR. The sending of the report and presenting it before the Illaqa Magistrate should have been without any delay but here there is an inordinate and unexplained delay. There being areas left out which needs explanation, the trial Court has, therefore, rightly come to a conclusion that the circumstances have been exaggerated and have been projected as coloured version, which cannot be ruled out.

The complaint Exhibit DA, which was submitted by Krishan PW-10 complainant is silent about the aspect that Rajesh or Prem also visited his house on 04.02.2016 i.e. the date of the incidence. However, Kuldeep and Krishan PW-9 and PW-10 respectively have stated that only Rohtash had visited and fired the shot. PW-9 and PW-11 Bala in their cross-examination have stated that accused Rohtash came on a motorcycle and fired shots but they were unable to give the colour of the motorcycle or the make thereof. Even the motorcycle has not been seized. It would not be possible for a person to be driving a motorcycle and firing shots while it was moving at the same time and that too when he was alone. That casts doubt with regard to the credibility of the witnesses.

As regards the recovery of the pistol on 07.02.2016 in pursuance

to the disclosure statement of Rohtash from a *Kotha* situated near highway, which is admittedly located in a busy place, although abandoned, no neighbours or any public person have been associated with the search of the weapon, which was stated to have been recovered. It cannot, therefore, be accepted that there was none available at the time when the recovery was effected. Delay has also been pointed out and rightly so with regard to the empty cartridge parcel which was so deposited in *Malkhana* on 07.02.2016 whereas the recovery of the said empty cartridge had taken place on 05.02.2016 at about 8:15 PM i.e. 25 hours after the incident. There is no explanation for the said delay. Similarly the delay in sending the pistol and the empty cartridge to FSL after a period of three months i.e. on 11.05.2016 is also unexplained and, therefore, the tampering with the case property cannot be ruled out is the conclusion of the trial Court.

PW-10 has stated in his cross-examination that the bullet had hit the wall of Pale, the neighbour and the police had taken out the same but that is not so reflected in the seizure memo but during investigation it has not come on the records. All this has been taken into consideration by the trial Court for doubting the prosecution story which in our considered view are good enough for coming to the said conclusion.

6. We, therefore, do not find any ground for accepting the prayer made in this application for granting leave to appeal and, thus, dismiss the same.

(AUGUSTINE GEORGE MASHI)
JUDGE

July 11th, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No