

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

CRR-1366-2012

Date of decision:-11.12.2017

Nathu Ram

...Petitioner

Versus

Sube Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Naresh Kumar, Advocate
for the petitioner.

Mr.A.S. Cheema, Advocate
for the respondents.

H.S. MADAAN, J.

Complainant Nathu Ram had filed a criminal complaint against Sube Singh, Mohinder, Ajit, Nafe Singh, Leela @ Daya Nand and Rajesh for the offences under Sections 323/302/120-B/34 IPC and 25 of Arms Act on the allegations that on 13.12.2008 at about 4/4:30 p.m., Rohtash brother of the complainant had gone to the tubewell, while complainant was at home; that at about 6:00 p.m. Dharamvir son of Somdutt, resident of Kishanpur came to the house of complainant and informed that Rohtash was lying in injured condition in the drain near the house of Lala Harizan; that the complainant went to the spot and found that Rohtash was lying there in an injured condition; that complainant along with Attar Singh and Mohinder took Rohtash to Civil Hospital,

Bawal, where doctors declared him brought dead; that the matter was reported to the police; that the police lodged FIR No.137 under Section 302 IPC with Police Station Bawal. According to the complainant on 14.12.2005 in the evening, he came to know from Partap Singh that accused persons namely Sube, Mohinder, Ajit, Leelu and Nafe Singh were quarrelling with Rohtash on 13.12.2005 at about 5:00 p.m. and when Partap Singh asked them as to why they were quarrelling with Rohtash, to which they replied that it was their village dispute and Partap Singh should not intervene in the same, as such Partap Singh left the spot and went to his village, however, on the next day, when he came to know that Rohtash had been killed, he informed the complainant in that regard. Further, as per allegations in the complaint, the complainant came to know from Karan Singh son of Mangal Ram, resident of Ranoli that accused Rajesh son of Shish Ram had come to the tubewell of Rohtash on 13.12.2005 and he had called Rohtash from the tubewell by saying that accused Sube wanted to have a talk with him. The motive behind the incident was that accused Sube Singh suspected that Rohtash was having illicit relations with his wife. Rohtash used to visit the house of Sube Singh as they were relatives and being married in the same village. According to the complainant on 15.12.2005, all these things had been informed to SHO, Police Station Bawal but he did not pay any heed. He did not record statement of the concerned persons. On 16.12.2005 the complainant came to know that accused Sube Singh had been arrested by the police, then he along with Partap Singh and Karan went to Police Station Bawal and found that ASI Karan Singh from Police Station Bawal

was interrogating Sube Singh and Sube Singh told that Rohtash was having illicit relations with his wife and he saw Rohtash in his house several times. He had dissuaded Rohtash from doing so but to no effect, as such he along with his brother Mohinder, Ajit, Nafe, Leelu and Rajesh made a plan to murder Rohtash. On 13.12.2005, Rajesh called Rohtash to his tubewell and they were standing near the house of Lala Harizan talking with Rohtash. When Rohtash did not pay any heed then he gunned him down putting the dead body near the south west side of their old house. In pursuance of disclosure statement of Sube Singh, he got recovered a country-made pistol and a live cartridge. The police had assured the complainant that other culprits involved in the incident would be arrested soon but to no effect. The police officials of Police Station Bawal had been trying to protect the other culprits. The police party had prepared a challan against one accused only, whereas not challaning the other culprits.

The complainant lead preliminary evidence. After hearing arguments, the trial Court passed the order, the operative part of which is as under:

After perusing the oral as well as documentary evidence produced by the complainant, it reveals that the FIR No.137 dated 13.12.2005 was registered under Section 302 IPC and 25/54/59 of Arms Act in Police Station, Bawal and accused No.1 Sube Singh was challaned by the then SHO. Thereafter, Sube Singh was convicted under Section 302 of IPC and 25/54/59 of Arms Act by the then Additional Sessions Judge,

Rewari vide judgment dated 16.5.2009. The complainant made statement in FIR No.137 dated 13.12.2005 about the involvement of the remaining accused as mentioned in the present complaint but after appreciation of evidence produced in the above said FIR, only the accused Sube Singh s/o Shish Ram was convicted. Once, the conviction held by the competent Appellate Court, then the present complaint against the accused Sube Singh is not maintainable.

As far as the involvement of remaining accused No.2 to 6 namely Mohinder, Ajit, Nafe Singh, Leela @ Daya Nand and Rajesh are concerned, the complainant Nathu Ram specifically deposed in his statement as PW1 in the FIR No.137 dated 13.12.2005 that the accused no.2 to 6 were seen by Partap Singh, while quarrelling with his brother Rohtash on 13.12.2005. The accused Sube Singh was convicted under Section 302 of IPC and 25/54/59 of Arms Act as weapon of offence was recovered from the house of Sube Singh along with alive cartridge, then the involvement of remaining accused are not proved by the complainant in present case. The complainant is believing on the statement of Partap as the complainant was not present at the time of occurrence. The same documents placed on the file by the complaint were also placed in FIR No.137 dated 13.12.2005 in which only the accused Sube Singh was convicted. Therefore, the oral as well as documentary evidence were

appreciated by the Appellate Court, Rewari by convicting the accused Sube Singh only as per judgment dated 16.5.2009. The oral only statement of PW2 Partap Singh is not sufficient to summon the remaining accused with commission of offence without any corroborating evidence. Hence, there is no sufficient evidence on the file to summon the accused no.1 to 6 as alleged by the complainant in the present case.

This order left the complainant aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents, who put in appearance through the counsel.

I have heard learned counsel for the parties besides going through the record.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

There is no illegality or infirmity in the order passed by the Court below. The same is upheld whereas the criminal revision is found to be without any merit and the same is dismissed accordingly.

11.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No