

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

CRR-4856-2016

Date of decision:-7.2.2018

Nitender @ Pradeep

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.Tribhuvan Dahiya, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Accused Dalbir Singh, Jogender Singh, Sandeep, Jitender Singh and Nitender booked in FIR No.351 dated 9.11.2017 for the offences under Sections 147, 149, 323, 324 IPC registered with Police Station Civil Lines, District Rohtak faced trial by Judicial Magistrate Ist Class, Rohtak, who vide judgment dated 24.1.2014 convicted accused Jogender, Sandeep, Jitender and Nitender for the offences punishable under Sections 148, 149, 323, 324 IPC and vide order dated 28.1.2014, she sentenced them as under:

Under Section	Sentence
148 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo another imprisonment for a period of one month each.
323 read with Section 149 IPC	Simple imprisonment for a period of six months and to pay a fine of Rs.500/- each and in default thereof, to further undergo another imprisonment for a period of fifteen days each.
324 read with Section 149 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo another imprisonment for a period of one month each.

All the sentences were ordered to run concurrently.

Briefly stated, the facts of the case have been that the complainant Satbir Singh son of Dalip Singh had submitted a written complaint to the police mentioning therein that he is an agriculturist; that a week prior to 9.11.2007, an altercation had taken place between him and Dalbir son of Shri Bhagwan in which both the parties had suffered injuries; that Dalbir and his brother under the influence of liquor had abused him; both of them along with Mahender son of Dalip and other 4-5 persons other person were challaned; that the complainant along with Anand son of Dalip and Narender son of Barhma had appeared before the Duty Magistrate; that at about 11:15 a.m. when he along with Anand and Narender had reached near the building of SBI, then a Tata Safari vehicle bearing No.HR-26AK-9079 stopped in front of them; that Dalbir, Sandeep, Joginder sons of Shri Bhagwan, Jitender and Pardeep sons of Jai Devi alighted from the vehicle and started abusing the complainant; that Dalbir took out a knife from his pocket and gave a knife blow to the complainant Satbir causing him injury on the elbow of his left hand; that

Sandeep gave a lathi blow on head of complainant, Joginder armed with a lathi with iron end attacked the complainant on head; Jitender having a stick hit the complainant on thigh of right leg, Pardeep having a bat hit the complainant on thigh of his right leg; that Anand and Narender tried to save him; that on alarm being raised and some persons rushing nearby, the assailants ran away from the spot along with their respective weapons; that the injured was taken to hospital and got admitted there. Formal FIR was registered. The case was investigated. Accused were arrested. After completion of investigation and necessary formalities, challan against the accused was filed in the Court.

Copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned trial Magistrate finding that charge for offences under Sections 148, 149, 323, 324 IPC was disclosed against the accused, charge-sheeted them for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

It is pertinent to mention here that during the trial accused Dalbir Singh had died and proceedings against him stood abated vide order dated 23.10.2012.

To bring home guilt to the accused, the prosecution examined complainant – injured Satbir as PW1 and Anand as PW2, both of them provided the eye-witness account of the incident deposing in consonance with the prosecution story. ASI Ram Niwas, since promoted as SI, who had carried out the investigation in this case had appeared as

PW3 and deposed in that regard proving various documents. Medical evidence was provided by PW4 Dr.Sandeep from PGIMS, Rohtak, who proved the MLR of the injured as PW4/B.

Since the prosecution failed to conclude the evidence despite availing ample opportunities, the same was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case.

In defence evidence, accused had examined SI Baljit Singh DW1, who had brought the summoned record regarding FIR No.417 dated 25.12.2009, under Sections 279, 337, 338 IPC, P.S. Sampla besides some other FIRs, proving copies thereof as Ex.D1 to Ex.D4. Accused further examined Manoj Kumar, Election Nanungo, District Election Office, Rohtak as DW2, Narender Kumar, Medical Store Officer, MCD Dispensary, Siraspur as DW3, Shri Bhagwan as DW4, Sardha Singh as DW5, Raj Singh as DW6 and Satish as DW7.

After hearing arguments, learned Judicial Magistrate Ist Rohtak had convicted the accused as mentioned supra.

Feeling aggrieved, the accused/convicts had filed an appeal before the Court of Sessions, which was assigned to learned Additional Sessions Judge, Rohtak, who vide judgment dated 13.9.2016, accepted the appeal qua accused Jitender finding that he was in Drug De-Addiction and Rehabilitation Centre at the relevant time and therefore, could not possibly be present at the spot. He was acquitted of the charges. Whereas

qua the remaining convicts, the appeal was dismissed upholding their conviction but then as regards the sentence, the Appellate Court considering the nature of offence and number of years taken in conclusion of trial ordered that accused Joginder, Sandeep and Nitender be released on probation of good conduct on furnishing personal probation bonds in the sum of Rs.10,000/- each for a period of six months, whereas fine imposed upon them was ordered to be converted into cost of litigation. The appellants/accused furnished the probation bonds but petitioner Nitender @ Pradeep still feel aggrieved and has filed a revision petition before this Court.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the revision petition.

The judgments passed by the Courts below are well reasoned ones, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Merely because of the reason that lower Appellate Court had acquitted one of the accused/convict - Jitender holding that he was in Drug De-Addiction and Rehabilitation Centre at the relevant time does not mean that the entire prosecution case is to be discarded.

The maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood. Merely because a witness has deposed wrongly regarding

certain aspects of the case does not mean that his statement is to be discarded outrightly, if his deposition comes out to be convincing and inspiring confidence regarding other aspects.

The prosecution has successfully proved its charge beyond a shadow of reasonable doubt and no fault can be found with conviction of the revision petitioner. The lower Appellate Court showed leniency with the accused granting them benefit of probation and petitioner Nitender is still feeling aggrieved without any reason.

The revision petition is dismissed accordingly.

7.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No