

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

**CRR No.3739 of 2018 (O&M)
DATE OF DECISION:-14.11.2018**

JATINDER SINGH

...PETITIONER...

V.

STATE OF PUNJAB

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Dilpreet Singh Gandhi, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

The petitioner-accused through instant revision petition has laid challenge to the judgment dated 04.09.2018 of the first appellate court, upholding the judgment of conviction and order of sentence of the trial court dated 07.03.2017, whereby, he was held guilty under Section 382 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.1000/-. In default of payment of fine, to further undergo simple imprisonment for 15 days.

Briefly, in the evening of 28.01.2011, complainant-Surjit Singh, sitting in car was waiting for his driver, who has gone inside his house to take tea. In the meantime, two boys, out of whom one was having revolver and other was with muffled face came, pointed a revolver on the ear of the complainant and snatched away his car, in the name of his wife.

On these broad allegations, FIR No. 32 dated 28.01.2011, under

Sections 379 and 34-B(2) IPC was registered at Police Station Civil Lines Amritsar.

During investigation, the complicity of the petitioner and his co-accused Shamsheer Singh @ Shera was found in commission of the crime. Therefore, the petitioner and his aforesaid accomplice were arrested.

The trial court after holding trial, found the petitioner and his accomplice guilty under Section 382 IPC and sentenced in the manner as narrated above in the opening part of the judgment.

Being aggrieved, the petitioner and his aforesaid companion approached the first appellate court but remained unsuccessful as their appeal too was dismissed vide impugned judgment dated 04.09.2018.

Learned counsel for the petitioner contends that the petitioner was not arrested on the spot. No identification parade was ever got conducted to establish the identity of the petitioner. Therefore, the prosecution has miserably failed to prove the identity of the petitioner beyond any reasonable doubt. Both the courts below have failed to appreciate that offence under Section 382 IPC was not made out against the petitioner, because the prosecution failed to lead any evidence that the petitioner and his alleged accomplice had robbed the complainant, after having made preparation to cause his death, hurt or to restrain him by creating fear of death in his mind. The alleged recovery of car was also not effected from the petitioner. Both the courts below have failed to appreciate that the petitioner was falsely implicated in the instant case. At

the most, the petitioner could be held guilty and sentenced under Section 379 IPC for committing theft of the car and not under Section 382 IPC. The petitioner was not booked and tried for commission of crime under Arms Act. Even, no weapon of offence was recovered from the petitioner.

All the arguments raised by learned counsel for the petitioner had already been dealt with by both the courts below after appreciation of evidence, therefore, their further dealing shall be a repetition.

However, after giving thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds the instant petition being devoid of any merit, for the reasons to follow:-

1. Putting up a revolver or such like object on the ear of the complainant, is itself insufficient to draw inference that the petitioner and his accomplice had every intention to create fear and robbed the complainant, after having made preparation for causing his death, hurt or cause fear in his mind of his death. Therefore, by any stretch of imagination, it cannot be said that the petitioner was not liable to be held guilty or punished under Section 382 IPC.

2. The complainant as PW-1 has categorically identified and deposed about the description/colour of the petitioner and his accomplice. Therefore, non-conducting of any identification parade by the investigating officer had become meaningless, more particularly, when the petitioner and his accomplice did not lead any evidence that the complainant had any axe to grind against them. There was no ill motive of

the complainant to falsely implicate the petitioner by levelling false allegations. Therefore, alleged false implication of the petitioner and his accomplice by the complainant is not believable.

3. Non-recovery of weapon from the petitioner and his accomplice is not fatal, for the reasons that any lapse on the part of the investigating officer can not be made the basis of acquittal of an accused, in case, sufficient evidence about their complicity is proved by the prosecution beyond any shadow of doubt.

4. Non-examination of driver namely Amit by the complainant is also not fatal, inasmuch as, at the time of commission of crime by the petitioner and his accomplice, he was inside the house and had come after the occurrence.

In view of the above discussion, instant petition is dismissed.

14.11.2018

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No