

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

**IOIN-CRA-D-871-DBA-2002
DECIDED ON: 07.02.2019**

STATE OF HARYANA

...APPELLANT..

VERSUS

JAIBIR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Munish Sharma, AAG, Haryana
for the appellant.

Mr. JS Mehndiratta, Advocate,
for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Challenge in this appeal is to the order dated 17.05.2002 of the trial court, whereby, respondents have been acquitted of the charges under Section 392 read with Section 397 IPC framed against them.

Briefly, respondents were booked, tried and acquitted in case FIR No.9 dated 24.01.2000, under Sections 392, 397 IPC and 25 of the Arms Act, Police Station Kalanaur, on the allegations that complainant-Rajbir was intercepted on motorcycle in between village Basana and Kalanaur town by two persons aged around 25 years. One of assailants gave knife blow on the left flank of his abdomen and another fired shot from his pistol on the complainant, which hit him on the left side of his chest. Thereafter, assailants robbed his motorcycle and went towards

Kalanaur.

Learned State counsel contends that PW-1 Rajbir in his examination-in-chief has categorically testified and identified Jaibir-respondent No.1, who had fired upon him. Even his testimony could not be shaken despite lengthy cross-examination. His testimony is fully corroborated by medical evidence in the shape of statement of Dr. Lajja Ram PW-6, who was not cross-examined and Dr. Ashok Rathi, PW-7, who treated the complainant-injured. Therefore, the trial court wrongly and illegally acquitted the respondents on cryptic grounds that complainant could not identify the respondents as assailants.

On the other hand, learned counsel for respondent No.2 contends that none of the respondents was named in the FIR. Respondent No.2 was not identified by the complainant (PW-1) in Court. Even no recovery was effected. Respondent No.1 in his disclosure statement named one Vinod. Therefore, respondent No.2 has rightly been acquitted by the trial court.

Learned State counsel has fairly conceded that impugned judgment qua acquitting respondent No.2 is legal. Therefore, appeal qua respondent No.2 is rejected.

As far as acquittal of respondent No.1-Jaibir is concerned, a report was called from Id. Chief Judicial Magistrate, Rohtak, who submitted that despite declaring respondent No.1-Jaibir a proclaimed offender on 25.09.2018, his presence could not be secured. According

to the Sarpanch and other inhabitants of his village, whereabouts of

Jaibir are not known, inasmuch as, he has no moveable or immovable property in the village. His brother and parents have already expired. He had no issue. Since, last 7/8 years, he was not coming to the village. This appeal pertains to the year 2002. Since then, more than 16 years have elapsed. Therefore, no useful purpose would be served, in case, State appeal is accepted and Jaibir-respondent No.1 is ordered to be punished, convicted and sentenced for imprisonment. That apart, ld. trial court has disbelieved the statement of PW-1 Rajbir to the extent of identification of respondent No.1 for the first time in court. In view of the fact that in cross-examination, complainant-Rajbir admitted that he had earlier seen respondent No.1 in police station in a case of snatching his motorcycle, therefore, identification of respondent No.1 by him in court creates suspicion and has lost its significance.

Considering the above peculiar facts and circumstances of the case, this Court, at this stage, is not inclined to differ with the findings of the trial court.

Resultantly, the appeal is dismissed.

07.02.2019

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**(RAMENDRA JAIN)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**