

CRR-2974 of 2017

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

CRR-2974 of 2017
Date of Decision: 07.05.2019

Desh Raj

....Petitioner

Versus

Vinod and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Rohit Rana, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through instant revision petitioner-complainant has laid challenge to judgment of the appellate Court dated 23.05.2017 affirming the judgment of trial Court dated 07.05.2016, acquitting respondents No.2 and 3 (for short 'private respondents') in case FIR No.163 dated 07.06.2011 registered under Sections 285, 452, 506, 34 IPC and Section 25 of the Arms Act at Police Station Surajkund, Faridabad.

Briefly, private respondents were booked and tried in aforesaid FIR on the allegations that in the night of 06.06.2011 two young boys, who are none else, but respondent No.2 is nephew of petitioner and respondent No.3 is brother-in-law of his nephew, jumped into the house of the petitioner-complainant by scaling wall of his house and reaching the courtyard, they fired six gun shots and fled away on motorcycle. While going, they intimidated the petitioner-complainant. However, no injury was suffered by the petitioner.

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Court vide judgment dated 07.05.2016.

Being aggrieved, petitioner approached the appellate Court, but remained unsuccessful as his appeal too was dismissed vide impugned judgment dated 23.05.2017.

Learned counsel for the petitioner *inter alia* contends that both the Courts below have failed to appreciate that private respondents were not liable to be acquitted by giving them benefit of doubt on account of negligence of the prosecution or the investigating officer for not sending the case property i.e. gun empties to the forensic science laboratory for comparison.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this revision.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the judgments of both the Courts below.

Non-sending of the case property to the FSL authorities by the investigating officer is quite fatal to the prosecution case inasmuch as link evidence is missing. Prosecution has miserably failed to connect the private respondents with the commission of crime by leading any evidence that the

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private respondents, what to talk of cogent and convincing.

Petitioner in his statement has admitted that there was some dispute qua partition of the property amongst him and his nephew respondent No.2 – Naresh. Motive is a double-edged weapon. There is a possibility that to put undue pressure upon his nephew, petitioner might have falsely implicated him inasmuch as according to the petitioner six gun shots were fired upon by respondents No.2 and 3, but strangely, he did not even receive a single pellet injury. According to the prosecution, Village Sapranh Chand Ram was, allegedly, present at the time of incident, but he was not cited as a witness. Therefore, both the Courts below drew adverse inference against the prosecution.

Even otherwise, initial version of the petitioner was contrary to his subsequent version inasmuch as in his initial statement, which culminated into FIR, he never disclosed the presence of PW3 Manoj Kumar and PW4 Harinder, rather he showed presence of his wife Jaiwati, who too was not examined. Testimony of PW3 and PW4 has rightly been discarded by both the Courts below inasmuch as PW4 in his cross-examination admitted that he did not notice any cartridge in the courtyard of the house of complainant and PW3 specifically testified that no empty cartridges were recovered by the police from the spot. Above contradiction, which goes to the root of the case, has weakened the prosecution story.

Dismissed.

May 07, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No