

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

CRR-818-2019

Date of decision : 17.10.2022

Kulwinder Singh and another

..... Petitioners

versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Bhupinder Ghai, Advocate
for the petitioners.

PANKAJ JAIN, J. (Oral)

Petitioners are aggrieved of the judgment dated 28.09.2018 passed by Additional Sessions Judge, Fatehgarh Sahib whereby the appeal preferred by the petitioners against the judgment of conviction dated 15.12.2017 passed by JMIC, Fatehgarh Sahib convicting them for offences punishable under Sections 323/336/34 of IPC has been dismissed.

2. The petitioners were booked in FIR No.108 dated 02.09.2015 and were charged for offences punishable under Sections 323/336/34 of IPC and Section 27 of the Arms Act. Trial Court after analyzing the evidence on record held petitioners guilty for offences punishable under Sections 323/336/34 of IPC and acquitted them for offence punishable under Section 27 of the Arms Act. Holding them guilty, the trial Court released them on probation on furnishing probation bonds and undertaking of good behavior and not to commit any such offence for a period of six months.

3. In appeal, the Appellate Court found no reason to interfere in the judgment of conviction and the order of releasing the petitioners on probation and consequently affirmed the same vide impugned judgment dated 28.09.2018.

4. Counsel for the petitioners while attacking the findings recorded by the Courts below, submits that the Courts while holding the petitioners guilty have relied merely on the testimony of complainant Tejinder Singh, who appeared as PW-2. He further submits that the Courts below have totally ignored the fact that PW-1 Randhir Singh, who was the only independent witness did not support the prosecution and was declared hostile.

5. I have heard counsel for the petitioners and have gone through the records of the case.

6. FIR was lodged on the statement made by Tejinder Singh. As per him, on 01.09.2015, accused Kulwinder Singh started abusing him alleging that the complainant had dug out some soil from the path in the fields belonging to Kulwinder Singh. Thereafter, accused Kulwinder Singh alongwith his brother Ranbir Singh caught hold of him and slapped him. Kulwinder Singh fired 03 shots from his .12 bore riffle in the air. In order to save himself, the complainant had to run into the fields. During trial, without doubt Randhir Singh PW-1 was declared hostile and his brother namely Sukhwinder Singh co-villager who was earlier cited as eye witness was also given up. Trial Court however found that the testimony of injured witness namely Tejinder Singh was sufficient to hold the petitioners guilty. From the record, it is evident that the accused had taken plea of self defence which has been disbelieved in the absence of any cogent evidence to substantiate the same.

7. The plea raised by counsel for the petitioners w.r.t. PW-1 turning hostile is not of much significance. PW-2 Tejinder Singh is an injured witness. He has withstood cross-examination and his credit could not be shaken. As per the settled proposition of law, testimony of the injured witness has its own relevance and efficacy as his presence at the time of occurrence is not under cloud. There has to be cogent piece of evidence on record to discredit an injured witness.

8. Trite it is that it is the quality of the evidence that has to be seen and not the quantity. Apex Court in the case of '**Bhajan Singh @ Harbhajan Singh vs. State of Haryana**', **reported as** held that:-

“21. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: **Abdul Sayeed v. State of Madhya Pradesh, 2011(1) RCR (Criminal) 550: 2011(1) R.A.J. 266: (2010) 10 SCC 259; Kailas and**

Ors. v. State of Maharashtra, 2011(1) RCR (Criminal) 431: 2011(1) R.A.J. 146: (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh, 2011 (2) RCR (Criminal) 124: 2011(2) R.A.J. 56: (2011) 2 SCC 676; and State of U.P. v. Naresh and Ors., 2011(2) RCR (Criminal) 364: 2011(2) R.A.J. 221: (2011) 4 SCC 324).

9. Counsel for the petitioners has not been able to point out any evidence on record which discredits the testimony of PW-2 Tejinder Singh. From the record, it is also discernible that the accused raised plea of self-defence. In the considered opinion of this Court, the said plea raised by the accused does not aid their case and rather leads to tacit admission of the incident in question. However, no evidence has been led to prove the plea of self defence which is plea of fact. Thus, counsel for the petitioners having failed to point out any evidence on record which can lead this Court to infer that the view other than the one taken by the Courts below is possible, the argument raised by him sans merit.

11. Consequently, the present revision petition is dismissed being without merits.

(PANKAJ JAIN)
JUDGE

17.10.2022

Dinesh

Whether speaking/reasoned Yes

Whether Reportable : No