

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

1. Crl. Appeal-S No. 2758-SB of 2015

Date of Decision: July 30 , 2015.

Indira APPELLANT(s)

Versus

State of Haryana and others RESPONDENT (s)

2. Crl. Misc-A No.976-MA of 2015

Indira APPELLANT(s)

Versus

State of Haryana and others RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mrs. Sharmila Sharma, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA Gill, J.

This order shall dispose of CRM-A No.976-MA of 2015 (Indira v. State of Haryana and others) and Crl. Appeal-S No.2758-SB of 2015 (Indira v. State of Haryana and others) as they both arise out of a common judgment dated 15.11.2014 passed by learned Additional Sessions Judge, Gurgaon. Vide

impugned judgment criminal complaint under Sections 323/324/354/376/420/511/506/34 IPC filed by the appellant as well as the State case arising out of FIR No.99 dated 05.06.2014, under Sections 323/506 IPC, Police Station DLF Phase-I, Gurgaon have been decided and respondent No.2 Ravinder son of Khilli Singh and respondent No.3 Chhatar son of Jhutar have been acquitted of the charges against them.

Complainant-prosecutrix and her husband Ranbir Singh submitted a complaint before the police on 22.05.2012 disclosing that Ranbir, husband of the prosecutrix was working as a Peon in the Senior Secondary Girls School, Old Faridabad. When he reached home at 6.30 p.m. on 22.05.2012, his wife informed that she had gone to the plot at about 6.00 p.m. where faeces of some child were lying. When she protested qua the same, younger brother of Ranbir i.e., respondent No.2 – Ravinder and others started beating her with a stick (*Danda*). Respondent No.2 is alleged to have given a stick (*Danda*) blow on her left thigh, another blow on her right hand and on fingers of her hand. When she resisted, respondent No.2 gave her two more blows. Thereafter, she fell down. She was allegedly kicked by respondent No.2 – Ravinder. On hearing hue and cry, the neighbours arrived at the spot and saved the complainant from his clutches. When Ranbir went to lodge a protest, respondent No.2 – Ravinder hit him also with a stick and further threatened to assault him. Thereafter, he alongwith his wife, Chhatar son of Jhutar and Mahesh son of Mam Chand came to submit the complaint. This complaint was signed by both Ranbir and Indira and DDR No.14 dated 22.05.2012 was registered consequent thereto.

Complainant was not willing to get the medical examination of his wife conducted at Gurgaon but wanted to get the same conducted at Faridabad.

Prosecutrix got herself medically examined from Metro Hospital, Faridabad and on receiving the report, ASI Rishipal proceeded against the accused under Sections 107/151 Cr.P.C.

Feeling aggrieved therefrom, appellant Indira preferred a private complaint before the Area Magistrate, Gurgaon on 02.06.2012 disclosing that when she was working at her plot on 22.05.2012, her brother-in-law Ravinder (respondent No.2) entered the plot in an inebriated condition. He gagged her mouth and forcibly took her inside a room. He tore her clothes and attempted to rape her but she raised alarm. He thereafter picked up a stick and assaulted her and caused injuries on her arms and thigh. He is alleged to have kicked on her private parts on which she started to bleed. He threatened to kill her as well as her husband. In the meantime, her husband Ranbir working as a Peon at Senior Secondary Girls School, Old Faridabad arrived at the spot on which accused Ravinder ran away after abusing and threatening to kill her. She apprised her husband about the incident on which he took her to Police Post Baliawas where Chhatar son of Jhutar was already sitting. When she and her husband revealed the commission of the offence, respondent No.2 – Ravinder also arrived there. Chhatar abused her as well as her husband and forced them to compromise the matter. Chhatar took their thumb impressions on blank papers in collusion with Ravinder though appellant and her husband did not want to compromise the matter. Accused also threatened them that they would not allow the prosecutrix to get herself medically examined from Gurgaon. Therefore, she and her husband had gone to Metro Hospital, Faridabad for her medical examination. Complaint was moved to the police on 22.05.2012 but the same was not looked into and no action was taken.

Said complaint was forwarded to the police under Section 156(3) Cr.P.C. and FIR No.99 dated 05.06.2012 was registered against respondents No.2 and 3, Ravinder and Chhatar for the offences punishable under Sections 323/324/354/376/420/511/506 read with Section 34 IPC.

Investigation was carried out by PW8 SI Jai Bhagwan, Incharge Police Post, Gwalpahari. On further investigation and attestation carried out by the Assistant Commissioner of Police, offences punishable under Sections 324/354/376/420/511/34 IPC were deleted on 21.06.2012. Respondent No.3 Chhatar son of Jhutar was found innocence. Prosecutrix was taken for medical examination at Government Hospital, Gurgaon but she refused for the same.

On a case under Sections 323/506 IPC being found to be made out on the basis of injuries detailed out in the medical report submitted by Dr. Lalit Kumar from Metro Hospital, Faridabad accused - Ravinder alone was charged for the commission of offences punishable under Sections 323/506 IPC.

Not satisfied with the police action, a complaint was lodged by appellant – Indira before the Area Magistrate on 09.07.2012 detailing the incident as mentioned in the complaint dated 02.06.2012. She further submitted that the police had not properly investigated the matter and had deleted several offences wrongly and had wrongly declared respondent No.3 – Chhatar to be innocent. Respondent No.2 – Ravinder was summoned in the complaint for the offences punishable under Sections 323/324/354/452/376 read with Sections 511/506/34 IPC whereas, respondent No.3 – Chhatar was summoned for the commission of offences punishable under Section 506 read with Section 34 IPC.

Both the cases were clubbed together vide order dated 28.07.2014.

Evidence was recorded in the complaint case. Eight witnesses were examined

to prove the prosecution version. Accused in their statements under Section 313 Cr.P.C. while pleading innocence and false implication have denied the allegations against them. Respondent No.2 – Ravinder has stated that Smt. Indira (his sister-in-law) is a quarrelsome lady. His brother, Ranbir had earlier filed a partition suit against him and his brothers on 05.09.2009 and the present case is foisted on him only as a pressure tactics so that Ranbir may have land of his choice. However, no evidence was led in defence.

Learned trial court on appreciation of the entire evidence on record concluded that the prosecution has failed to prove its case against the accused beyond reasonable doubt and hence, acquitted them of the charges in the complaint as well as the State case vide impugned judgment. Aggrieved therefrom present appeals have been filed.

Learned counsel for the appellant submits that there is specific and cogent evidence on record which proves the commission of offences as charged against both respondents No.2 and 3. The complainant and her husband were made to run from pillar to post but the police has not taken any action and they were forced to file the complaint. Medical evidence on record corroborates the prosecution version. Learned trial court has grossly erred in acquitting both the accused in this case. She therefore, prays for setting aside the impugned judgment, consequently convicting respondents No.2 and 3 for the offences as charged and to be sentenced accordingly.

We have heard learned counsel for the appellant and gone through the file.

It has been observed by the trial court that the testimony of the complainant when examined reveals material improvements and exaggeration.

Firstly an application, Ex.PE was moved by the complainant and her husband praying for police action. They have disclosed about a dispute when Indira went to her plot and found faeces of some child thereon. She was alleged to have been abused by Ravinder and then hit with a stick. When her husband Ranbir went to lodge a protest, then respondent No.2-Ravinder hit Ranbir as well. Ravinder threatened and abused Ranbir. Thereafter, both the complainant as well as her husband moved to the police. This application was written by PW4 Mahesh, who has clearly disclosed that he had penned down the application as per the facts revealed to him by the complainant and her husband, Ranbir. PW4 Mahesh further admitted in his cross-examination that Panchayat was convened before the Assistant Commissioner of Police in this respect. Each one present there had unanimously stated that the allegations of the couple were false.

It is relevant to note that PW2 Ranbir, husband of Smt. Indira has totally denied the submission of complaint, Ex.PE by saying that the police had obtained his signatures on blank papers. It is borne out from the record that Smt. Indira had refused for medical examination at the General Hospital, Gurgaon. PW5 ASI Rishi Pal has testified that he asked the complainant to get her medically examined at Gurgaon but she refused.

Medical report, Ex.PK given by Dr. Lalit Kumar, Metro Hospital, Faridabad does not reveal sexual assault on the complainant but only superficial injuries i.e., pain on her left little finger, mild swelling on her right forehead and abrasion on right thigh. There is no history of sexual assault which is mentioned in this medico legal report. Both Smt. Indira and her husband have deposed that the doctor was informed but no such fact is mentioned in the

medico-legal report, Ex.PK. There is no earthly reason for the doctor to have omitted such a vital aspect if revealed to him. Appellant Indira and her husband of their own accord had gone to Metro Hospital, Faridabad therefore, it cannot be said that they had no faith on the said doctor or he has given a wrong report. Neither has any such plea been raised much less proved. Clearly medical evidence on record does not corroborate the version put forth by the complainant at a subsequent stage.

It is a matter of record that the appellant at the initial stage had merely revealed allegations of beatings and criminal intimidation due to a dispute arising out a defecation by a child in her plot. However she subsequently changed her version and introduced allegation of attempt to rape by respondent No.2 – Ravinder. It has been rightly held by the trial court that testimony of the appellant and her husband does not inspire confidence. Therefore, in such a situation it is just and expedient to look for assurance in respect of the allegations raised against the accused from other evidence on record. Evidence in the present case does not corroborate the version as set forth by the appellant and her husband.

In the peculiar facts and circumstances of the case, we find no infirmity in the finding returned by the trial court that even with regard to the incident of alleged beating of complainant, testimony of the appellant-complainant and her husband does not inspire any confidence. Defence version has been rightly found to be more probable by the trial court as it is the complainant, who opened the attacked by addressing filthy abuses and assaulted the accused.

Similarly, there is no evidence whatsoever to prove the bald

allegation qua respondent No.3 – Chhatar. In the initial complaint Chhatar son of Jhutar is stated to have accompanied the complainant and her husband for lodging complaint in this respect. However, subsequently respondent No.3 – Chhatar is alleged to be present in the police station when they reached there. He allegedly had the matter compromised and obtained thumb impression on blank papers. There is not an iota of evidence to substantiate such allegations. Prosecution has indeed failed to prove its case beyond reasonable doubt against the said accused.

It is a settled position that suspicion however strong cannot take the place of proof. No conviction can be based on mere suspicion. Learned counsel for the appellant in both the cases is unable to point out any ground to justify interference in the impugned judgment.

We find no infirmity or illegality in the impugned judgment dated 15.11.2014 passed by learned Additional Sessions Judge, Gurgaon qua acquittal of respondents No.2 and 3 of the charges in the criminal complaint as well as FIR No.99 dated 05.06.2014.

Consequently, CrI.A-S No.2758-SB of 2015 is dismissed. Leave to appeal is declined in CRM-A No.976-MA of 2015.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 30 , 2015.
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