

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Misc. No.A-1330-MA of 2014 (O & M)
Date of Decision: 20.08.2015

State of Punjab

..... Applicant

Versus

Davinder Singh Joshi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE REKHA MITTAL

Present: Mr. P.P.S.Thethi, Addl. AG, Punjab
for the applicant.

S.S. SARON, J.

This application for leave to appeal has been filed by the State against the acquittal of respondents by the learned Sessions Judge, Sri Muktsar Sahib vide his judgment and order dated 20.12.2013.

The complainant Sukhpal Sharma submitted an application to Deputy Superintendent of Police, Gidderbaha for taking action against the in-laws of his daughter namely Manisha. According to the complainant, Sukhpal Sharma, the marriage of his daughter Manisha was solemnized with Davinder Singh Joshi (respondent No.1) on 23.11.2009. It was represented by Balbir Singh (respondent No.5), father of Davinder Singh Joshi (respondent No.1) that he owns 42 acres of land at village Bhaika Pishaur in District Sangrur, a house at Mohali; besides, he earns a handsome income from salary and pension. Substantial dowry

articles were given at the time of marriage and also at the time of ring ceremony. A Swift car was given to Davinder Singh (respondent No.1) at the time of marriage. It is alleged that the accused (respondents) took all the gold ornaments of the daughter of the complainant on the pretext that thefts were being committed frequently. The gold ornaments were retained by the mother-in-law (Paramjit Kaur – respondent No.3) of Manisha. Later, the accused (respondents) taunted and insulted Manisha. Rupinder Kaur (respondent No.4) (wife of husband's brother of Manisha) wanted to marry her younger sister with Davinder Singh Joshi (respondent No.1) so that she could take the entire property. Manisha tried her best to settle down in the family but Rupinder Kaur (respondent No.4) and Harsimrat Kaur (respondent No.2) (husband's sister of Manisha) did not like it. They instigated Davinder Singh (respondent No.1) against Manisha. They raised grievances of inadequate dowry that had been given and that a Skoda car should have been given according to the status of the husband of Manisha. Davinder Singh (respondent No.1) had been beating Manisha. She was forcibly sent to Gidderbaha on 20.01.2010. It was also alleged that there was undesirable intimacy between Davinder Singh (respondent No.1) and Rupinder Kaur (respondent No.4). Manisha was beaten by the accused (respondents) on 21.02.2010 at about 6.00 pm and a demand for purchase of a flat at Chandigarh was raised. Harsimrat Kaur (respondent No.2) dragged Manisha. Rupinder Kaur (respondent No.4) caught hold

of her legs and slapped her. Paramjit Kaur (respondent No.3) gave blows with a 'chhapal' (slipper) to her and Balbir Singh (respondent No.5) brought out a gun and aimed at the chest of Manisha and threatened her. The accused had been beating her; besides, starving her. Manisha complained about the misbehaviour of the accused to the complainant. The complainant visited Sunam on 04.04.2010 and gave a sum of Rs.1 lac to Paramjit Kaur (respondent No.3). The accused remained adamant on the demand for a flat in dowry, otherwise Manisha would be sent back to Gidderbaha and Davinder Singh (respondent No.1) would be remarried. It is alleged that the accused (respondents) in connivance with each other shifted Manisha to Bathinda on 17.07.2010. Manisha got pregnant and came to Gidderbaha on 09.09.2010. She was got examined. Thereafter Harsimrat Kaur (respondent No.2) and Rupinder Kaur (respondent No.4) gave some white colour tablets to Manisha on 12.09.2010 as she was vomiting and had nausea. Manisha refused to take the tablets. However, she was forced by Harsimrat Kaur (respondent No.2), Rupinder Kaur (respondent No.4) and Davinder Singh (respondent No.1) to take those tablets. After consuming the tablets, Manisha started bleeding. The accused started saying that unless and until their demand for a flat at Chandigarh was met, she would not become a mother. A panchayat was convened on 31.10.2010 with the request to the accused to rehabilitate Manisha, but they refused to do so and refused to return her 'streedhana'. They informed the Panchayat

that they had taken peremptory action by giving an application to the District Magistrate, Sangrur. Davinder Joshi (respondent No.1) got the Swift car transferred from the name of Manisha in his own name after threatening her. The complainant requested that action be taken and accused be punished. Three lists detailing the entrustments of articles given in marriage to Balbir Singh (respondent No.5) , Harsimrat Kaur (respondent No.2), Rupinder Kaur (respondent No.4) and Paramjit Kaur (respondent No.3) were submitted.

On the basis of the statement of the complainant, FIR was registered and investigation carried out. Statements of witnesses were recorded under Section 161 Cr.P.C. and police report (challan) was filed in the Court of the learned Sub Divisional Judicial Magistrate, Gidderbaha. The learned Sub Divisional Judicial Magistrate, Gidderbaha vide order dated 03.08.2013 in view of the offence under Section 313 IPC being alleged which was exclusively triable by the Court of Session, committed the case to the Court of Session for trial.

The learned Sessions Judge, Sri Muktsar Sahib from the perusal of the report under Section 173 Cr.P.C and the documents on record found a prima facie case punishable under Sections 498-A, 406, 506 and 313 IPC to be made out and framed charges against the accused (respondents).

The prosecution in order to establish its case examined as many as 17 witnesses.

The learned Sessions Judge, Sri Muktsar Sahib after

considering the evidence and material on record had acquitted the respondents. Aggrieved against the same, the State has filed the present application seeking leave to appeal against the said acquittal.

Mr. P.P.S. Thethi, Addl. AG, Punjab appearing for the applicant-State has contended that the case is clearly made out against the respondents and the learned Sessions Judge gravely erred in acquitting them. It is submitted that it is a case where Manisha had complained of bleeding as she was forced to take tablets by Harsimrat Kaur, Rupinder Kaur and Devinder Singh, which resulted in termination of her pregnancy. Therefore, a case for the offence punishable under Section 313 IPC was clearly made out for which the respondents were liable to be held guilty and convicted.

We have given our thoughtful consideration to the contention of the learned counsel for the applicant-State, however, find no merit in the same.

The learned Sessions Judge, Sri Muktsar Sahib considered the case as regards the miscarriage caused to Manisha without her consent regarding which the allegations were made. According to the prosecution, Harsimrat Kaur (respondent no.2), Rupinder Kaur (respondent No.4) and Devinder Kumar (respondent No.1) administered white coloured tablets to Manisha on 12.09.2010. The learned Sessions Judge, however, noticed that there was no medical report of any qualified doctor that Manisha was pregnant; besides, after

administering tablets why had Manisha not taken a precaution and consulted a doctor. She neither took any medicine nor informed her parents. It was also noticed that when bleeding started, even then she did not consult any doctor. She did not consult any gynaecologist. Reports Ex.P-8 dated 09.09.2010 and Ex.P9 dated 14.10.2010 were prepared and proved by Ranbir Singh (PW-10). It was held that he only ran a clinical laboratory and he was not a qualified doctor. It was held that it was highly difficult to take into consideration the laboratory report dated 09.09.2010 of a private person. The report of Dr.Jagdish Goel (PW-11) is dated 19.09.2010 but he recorded last menstrual period as 26.07.2010 without examining the patient. It was observed that no reliance could be placed on the laboratory report dated 19.09.2010 when the report had been given without examining the patient. There was no other outdoor slip of the doctor or any other medical treatment given to Manisha in this matter. The report of Bombay Computerized Clinical Laboratory, Gidderbaha is dated 14.10.2010 whereby pregnancy test and urine report of Manisha were found negative. Therefore, it was held that the ingredients of Section 313 Cr.P.C. were not made out.

As regards the other charges, learned counsel for the State has not seriously pressed them.

After giving our thoughtful consideration to the matter, we find no infirmity with the judgment and order passed by the learned Sessions Judge, Sri Muktsar Sahib which would

warrant interference of this Court.

In the circumstances, there is no merit in the application seeking leave to appeal against the acquittal of the respondents and the leave to appeal is accordingly declined.

The application seeking leave to appeal has been dismissed on merit, therefore, the application for condonation of delay in filing the application seeking leave to appeal is only academic and the same is also dismissed.

(S. S. SARON)
JUDGE

(REKHA MITTAL)
JUDGE

20.08.2015
A.Kaundal