

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

(316)

**Crl. Revision No. 1200 of 2006
Decided on: August 19, 2015.**

Ravinder Kaur

.... Petitioner

Versus

State of Punjab and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Ms. Monika Jalota, Advocate,
for the petitioner.

Mr. Y.K. Gupta, AAG, Punjab.

Mr. J.S. Bhandohal, Advocate,
for respondents No. 2 to 7.

M.M.S. BEDI, J (ORAL)

Petitioner Ravinder Kaur has preferred this revision petition questioning the legality and propriety of order dated 03.12.2005 acquitting the private respondents of the charges of trespassing and assaulting under Sections 451, 323, 356 IPC.

Brief facts relevant for the decision of the present revision petition are that the petitioner had submitted a written complaint before SHO, Police Station Kotwali, Patiala on 05.12.2001 informing that she was married to Harwinder Singh @ Kaka, who was already married but she came to learn later on that he was earlier married to someone else but it was decided between the families that Harwinder Singh @ Kaka would stay with both the ladies for four days each. On the date of occurrence, Sukhdev Kaur previous wife of Harwinder Singh @ Kaka, his mother, his brother Harjit

Singh, Palwinder Kaur wife of Harjit Singh, Harwinder Kaur wife of Manjit Singh and Hardip Singh son of Harwinder Singh came to her residence and started abusing her. Sukhdev Kaur condemned her by saying that she had taken hold of her husband. All the accused assaulted the petitioner-complainant and her husband Harwinder Singh @ Kaka. Her mobile phone was also snatched. The statement of petitioner was sent for investigation to SI Kulwant Singh, who got her medically examined and MLR Ex. PW-3/A regarding her injuries was collected. During course of investigation, site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. Accused were arrested. On completion of investigation, challan against the private respondents-accused was presented on 15.06.2002. Copies of the document and report were supplied to the accused as required under Section 207 Cr.P.C. The accused were charged under Sections 451, 323 and 356 IPC by Chief Judicial Magistrate, Patiala on 20.12.2003.

In order to substantiate the story of the prosecution, the statement of petitioner was recorded and she was examined as PW-1. PW-2 Dr. Ranjit Singh is an eye witness who corroborated the assault on the petitioner. PW-3 Dr. Geetanjali Puri proved MLR Ex. PW-3/A. PW-4 SI Dharam Pal who was posted as ASI at Police Station Kotwali, Patiala proved the FIR and part of the investigation conducted which included arrest of the accused.

After recording the statements of accused under Sections 313 Cr.P.C, Harwinder Singh @ Kaka was produced as DW-1 to falsify the story of the petitioner.

The trial Court on appreciation of evidence acquitted the accused for following reasons:

- (1) The statements of the petitioner as PW-1 and Dr. Ranjit Singh eye witness PW-2, are of not relevance as they have not been cross-examined despite opportunity having been given and cross-examination having been recorded as “NIL”.
- (2) There are major contradictions in the statements of PW-1 Ravinder Kaur and PW-2 Dr. Ranjit Singh.
- (3) Documents Ex. D-1 to D-4 indicate that petitioner is wife of Kulwinder Singh and not Harwinder Singh @ Kaka making her matrimonial status doubtful.
- (4) Harwinder Singh @ Kaka has appeared as DW-1 and demolished the case of the petitioner.

With the assistance of learned counsel for the petitioner, I have carefully gone through the entire record.

Perusal of the statements of Ravinder Kaur PW-1 and Ranjit Singh PW-2 indicate that the said witnesses were examined in-chief as well as cross-examined also. Ravinder Kaur has supported the story of the prosecution by reiterating the allegations in the FIR. She was cross-examined at length. The cross-examination of PW-1 Ravinder Kaur runs into 4 to 5 pages. In her cross-examination she has clarified that after the death of her husband, she had married Harwinder Singh @ Kaka on 12.11.1997. Dr. Ranjit Singh is another witness, who has proved that petitioner had been assaulted by the accused. His cross-examination runs into two and half pages. It is surprising to note that the trial Court has ignored the examination-in-chief of the said two eye witnesses by merely

saying that their testimonies cannot be read into evidence. No doubt the remaining cross-examination of the witnesses had been deferred on 13.05.2005. Thereafter, it was required for the Court to ensure that they were bound down and re-examined to complete the cross-examination. Moreover, proceedings of order dated 13.05.2005 indicate that it was only on account of non-availability of counsel of accused Nos. 1 to 3 Harjeet Singh, Harwinder Kaur and Palwinder Kaur that the cross-examination on behalf of the said accused had been deferred. So far as the cross-examination on behalf of counsel for accused No. 4, 5 and 6 is concerned, it had been concluded.

In view of above circumstances, the testimony of the eye witnesses could not have been ignored. It is also important to notice that the interest of all the accused is same. The cross-examination by accused No. 4, 5 and 6 i.e. Sukhdev Kaur, Angrez Kaur and Hardeep Singh could not have been different from the cross-examination of accused No. 1, 2 and 3 i.e. Harjeet Singh, Harwinder Kaur and Palwinder Kaur respectively as Sukhdev Kaur is wife of Harwinder Singh, Angrez Kaur is mother of Harwinder Singh and Hardeep Singh is son of Harwinder Singh.

The material cross-examination has been conducted and is sufficient enough to enable the Court to appreciate the evidence to determine the culpability of the accused. The trial Court appears to have misdirected itself ignoring the evidence of the two eye witnesses on the ground that they had not been cross-examined whereas the cross-examination has been conducted on behalf of the main accused i.e. wife of Harwinder Singh, mother of Harwinder Singh and son of Harwinder Singh.

The medical evidence proved by PW-3 is sufficient enough to corroborate the oral testimony of PW-1 and PW-2.

The observation of the trial Court that on the basis of uncorroborated testimony, no conviction order can be passed is, on the face of it, abrupt and not worthy of acceptance. The testimony of the petitioner who claimed herself to be wife of Harwinder Singh @ Kaka could not have been thrown out merely on the ground that she had not disclosed her matrimonial status. If the evidence produced on the record is carefully perused, it becomes clear that after death of her husband there was a relationship between the petitioner and Harwinder Singh @ Kaka which she claimed to be that of wife and husband. The testimony of an injured witness in assault case, cannot be ignored merely on the ground that matrimonial status has not been established.

The main reason adopted by the trial Court is that Harwinder Singh @ Kaka has appeared as DW-1 to falsify the stand of the petitioner. The credibility of Harwinder Singh @ Kaka has to be seen in context of his character. It is established that he developed relationship with the petitioner which as per the petitioner is that of husband and wife. The fairness on the part of the petitioner is apparent from her complaint when she mentioned in her complaint Ex.PA from the very beginning that she married to Harwinder Singh but later on came to learn that he was already married to another lady Sukhdev Kaur. There does not appear to be any improbability in the story that Sukhdev Kaur along with her mother-in-law and son Hardeep Singh had trespassed into the house of the petitioner and assaulted her and Harwinder Singh @ Kaka as their relationship is socially not acceptable.

All the four reasons adopted by the trial Court in giving benefit of doubt to the accused in an assault case are patently wrong. The petitioner who is victim at the hands of immorality of DW-1 Harwinder Singh @ Kaka and assaulted at the hands of other accused i.e. his wife, mother and son, cannot be prejudiced merely because investigating officer opted not to appear as witness.

It is pertinent to observe here that PW-4 has to mere establish the lodging of the FIR and the steps of the investigation. No doubt examination of the investigating officer is part of fair trial but merely because the investigating officer opts to stay away from examination as witness cannot be made a sole ground for acquittal. The circumstances of each case have to be seen. When the prosecution story is established on the basis of the material available on the record, and is also corroborated by the investigation proved by another person in place of investigating officer, the factum of investigating officer having not been examined loses its importance for enabling the Court to appreciate the evidence.

In view of above circumstances, I am of the considered opinion that so far as testimony of PW-1 and PW-2 qua accused Sukhdev Kaur, Angrez Kaur and Hardeep Singh is concerned, the same is complete and the direct evidence, medical evidence, the evidence of the investigation officer cannot be ignored qua said accused. So far as accused Harjeet Singh, Harwinder Kaur and Palwinder Kaur are concerned, the testimony of said witnesses may be considered irrelevant as the accused had not been given an opportunity by the Court to cross-examine the witnesses PW-1 and PW-2. The acquittal of Harjeet Singh, Harwinder Kaur and Palwinder Kaur may be justified for the reason adopted by the trial Court but since the cross-

examination of the injured, eye witness and the other witnesses are concerned, no benefit can be granted to the other accused namely Sukhdev Kaur, Angrez Kaur and Hardeep Singh. The cross-examination had been conducted in detail by their Advocate. It was absolutely judicial impropriety on the part of the trial Court to ignore the evidence of the petitioner and PW-2 Dr. Ranjit Singh, so far as accused Sukhdev Kaur, Angrez Kaur and Hardeep Singh is concerned.

This revision petition is dismissed so far as accused Harjeet Singh, Harwinder Kaur and Palwinder Kaur is concerned but it is allowed qua Sukhdev Kaur, Angrez Kaur and Hardeep Singh. The acquittal of Sukhdev Kaur, Angrez Kaur and Hardeep Singh, respondents No.5,6 and 7 is illegal based upon misreading of evidence and absolutely contrary to the facts and the evidence. Without going into the details of the testimony of PW-1 and PW-2 and without appreciating the medical and ocular evidence, the Court has given wrong finding that there are discrepancies in the evidence. The scope of revisional Court to convert the order of acquittal into conviction is meager but the interest of justice in the present case would be adequately met in case the order of acquittal qua respondents No. 5, 6 and 7 is set aside and the trial Court is directed to re-appreciate the evidence and arrive at fresh decision regarding the culpability of respondents No. 5, 6 and 7. Ordered accordingly.

So far as acquittal order of Harjeet Singh, Harwinder Kaur and Palwinder Kaur is concerned, the order of the trial Court is upheld.

The record be sent to the trial Court. Respondents No. 5, 6 and 7 represented by counsel, are directed to appear before the Court of Chief Judicial Magistrate, Patiala for further proceedings on 26.09.2015. They

will be deemed to be on bail against the bail bonds earlier furnished by them. The trial Court shall proceed to decide the case afresh on the basis of material available on record without prejudice to the statutory rights of the parties.

(M.M.S. BEDI)
JUDGE

August 19, 2015
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