

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.52 of 2013

Date of decision: 12.02.2015

Mamta Devi

.....Petitioner

versus

Tej Pal and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Ms.Avin Arora, Advocate for
Mr.Pritam Saini, Advocate for the petitioner

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Impugned in the present revision petition is the order dated 4.10.2014, passed by the learned Additional Sessions Judge, Kurukshetra, vide which the order dated 26.4.2013 passed by the learned Judicial Magistrate 1st Class, Kurukshetra was set aside and the accused respondents were discharged.

I have heard learned counsel for the petitioner and have also carefully gone through the file.

Briefly stated, the allegations against the respondents Tej Pal and Angrej Singh are that they accompanied by their wives, namely, Bimla Devi and Mewa Devi entered the house of the complainant on 11.7.2005. There accused Tej Pal caught hold the complainant by her breast and took her in arms and kissed her on

the face and breast. Angrej Singh accused put his hand on the string of the *Salwar* of the complainant. However, husband and brother of the complainant were present and due to their intervention, rape could not be committed.

After recording the preliminary evidence, the learned Magistrate summoned the accused for offences under Sections 452, 354, 323, 506 read with Section 34 IPC. Thereafter, pre-charge evidence was recorded and the accused were charge sheeted by the learned Magistrate.

Accused preferred appeal against the framing of charge.

I have heard the learned counsel for the petitioner and have carefully gone through the record.

I am of the view that allegations from its face are absurd. It is not possible that two brothers in the presence of their wives will commit such an act, as alleged above. In such case, their wives, who were arrayed as accused, will be the first person to object to the act of their husbands. Learned Additional Sessions Judge has come to the conclusion that two males from the side of the complainant were present, namely, her brother and her husband. If the accused had committed such act, then they would certainly have reacted. It was stated that CW2 Krishan Kumar brother of the complainant is having criminal background. He was accused in FIR No.219 dated 5.6.2007 under Sections 392, 506 read with Section 34 IPC and Sections 25, 54, 59 of the Arms Act, 1959. He admitted that at the time of occurrence, he was in jail. Therefore, he could not see the occurrence. Moreover, as per version of her brother Krishan Kumar,

the occurrence took place in the kitchen of the complainant, whereas according to the complainant the occurrence took place in the courtyard. The trial Court also noticed that as per version of the complainant, her husband and brother were also given injuries by the accused Angrej Singh. No medico legal report has been placed on file. Except the husband and brother of the complainant, there is no independent witness, though Dever, Jeth and father-in-law of the complainant were also residing in the said house, as per admission of Krishan Kumar, which is denied by the complainant. The accused were stated to be empty handed. Therefore, offence under Section 452 IPC is not made out. The learned Additional Sessions Judge also noticed that there was earlier enmity between the parties. Complainant and her husband were challaned under Section 107/151 Cr.P.C. at the instance of the accused party. Therefore, it was held that pre-charge evidence if it goes unrebutted by the accused, is unlikely to result in conviction of accused.

I am of the view that no conviction can be based on such type of unnatural, undependable and discrepant evidence. Therefore, I am of the view that if the pre-charge evidence goes unrebutted, it is unlikely to result in the conviction of the accused. Hence, the accused were rightly discharged by the learned Additional Sessions Judge, Kurukshetra. I find no ground to interfere in the said order.

The revision petition is dismissed.

12.02.2015

gk

**(Kuldip Singh)
Judge**