

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

CRR No.259 of 2015

Date of decision: 07.05.2015

Santosh Devi

-----Petitioner (s)

V/s

Pardeep & another

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. Ved Parkash, Advocate
for the petitioner(s).

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present revision petition against judgment dated 15.9.2014 passed by learned Additional Sessions Judge, Jind, whereby appeal against the judgment dated 21.7.2012 passed by Judicial Magistrate Ist Class, Safidon in criminal case pertaining to FIR No.166 dated 26.5.2010 under Section 354 IPC registered at Police Station Safidon, acquitting the accused-respondents, has been dismissed.

Briefly stated, a complaint dated 16.12.2009 was moved by the petitioner to the police with an allegation that on 19.11.2009 at about 6-00 p.m., when the complainant-petitioner was coming in a Haryana Roadways bus from Village Kheri Taloda, the conductor of the bus namely Pardeep caught hold of her hand and tried to outrage her modesty. Thereafter, she

reached her house and narrated the incident to her husband, who is posted as a driver in Haryana Roadways. When the husband of the complainant asked the conductor for his conduct, an altercation took place. On the basis of the allegations made in the application, FIR No.166 dated 26.5.2010 under Section 354 IPC was registered and the accused was arrested followed by submission of challan and framing of charge under Section 354 IPC.

During trial, the prosecution examined the complainant Santosh Devi as PW-1 who proved her complaint Ex.PA, Sub Inspector Randhir Singh as PW-2 who proved the FIR Ex.PW-2/A and Endorsement Ex.PW2/B, Jagbir Singh as PW-3 and Surender as PW-4 and supported the case of the prosecution.

In his statement under Section 313 CrPC, the accused denied the incriminating facts appearing against him and pleaded false implication.

While the prosecution witnesses namely PW-1 Santosh Devi has reiterated the contents of the complaint, PW-2 Randhir Singh proved the FIR Ex.PW-2/A and endorsement Ex.PW-2/B.

Considering the aforesaid evidence and the contention of the respondent-accused, learned Judicial Magistrate Ist Class, Safidon vide order dated 21.7.2012, acquitted the accused from the charge framed against him by giving him the

benefit of doubt, as the prosecution had failed to prove the guilt of the accused beyond reasonable doubt. Para 15 of the said judgment reads as under:-

“15. Furthermore, the principle of Criminal Jurisprudence is very much clear that the prosecution side is expected to prove its case beyond shadow of reasonable doubt and not by mere preponderance of probabilities which also has not been done in the present case. The golden thread which runs through the web of Administration of Justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Convictions cannot be based on mere suspicion nor on the conscience of the court being satisfied about the complicity of an accused person. He can be convicted and sentenced only if the prosecution proves its case beyond all reasonable doubts by legal evidence. The Hon'ble Supreme Court has time and again held that between 'May be true' and 'Must be true' there is a long distance to travel, which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned as a convict. Through the offence may be gruesome and revolting to the human conscience but an accused can be convicted only on legal evidence.”

Dissatisfied with the judgment dated 21.7.2012 passed by learned Judicial Magistrate, the petitioner has filed an appeal before learned Sessions Judge, Jind, wherein it was

pleaded that the lower Court has erroneously observed that there was delay in lodging the complaint to the police. The complaint was made well within time and it is after thorough investigation, the FIR was registered. Even prior to the registration of the FIR, the complainant had filed a complaint regarding the same occurrence which has not been finally decided keeping in view the pendency of the present case. It was pleaded that there was no need for examination of any independent witness in such like cases. The said appeal was dismissed by the learned Sessions Court vide judgment dated 15.9.2014. The observations made by learned Sessions Judge, Jind read as under:-

“21. Nextly, the appellant-complainant as shown his complete ignorance about the complaint made by her to the police. She categorically admitted in her cross-examination that she did not know the contents of the application from whom it was got written by her husband. It clearly indicates that the husband of the appellant-complainant was aggrieved by his suspension order and he took recourse to the filing of the present complaint.

22. Nextly, it is the prosecution story that Pardeep, Nephew of the appellant-complaint was accompanying her when she was physically assaulted by the respondent-accused. He was the best witness and there is no satisfactory explanation for his non-examination. Since there are serious doubt about the happenings of the alleged events in the manner alleged, the testimony of this witness would have thrown some light on the facts of the present case and

the non-examination of this witness is fatal to the prosecution story.

23. *Nextly, non-examination of Shri Samerdeep, ASP has also made a dent in the prosecution story. He was the most material witness as he had conducted the inquiry and the prosecution has failed to procure his presence despite availing several opportunities. In the absence of the examination of this witness, the facts coming before him during the course of inquiry could not see the light of the day.*

24. *Consequent upon my aforesaid discussion, it can be conclusively said that it was the duty of the prosecution to bring credit worthy evidence before this Court to seek the conviction of the respondent-accused. A criminal case is to be decided on the basis of the evidence beyond shadow of reasonable doubt and not by mere preponderance of the probabilities. The impugned judgment passed by the learned lower Court is based upon the evidence coming before it and the principle of law. There is no infirmity and illegality in the impugned judgment passed by the learned lower court, hence, there is no merit in the present appeal and the same stands dismissed maintaining the impugned judgment of the learned trial Court. Trial court record be sent back with a copy of this judgment. Appeal file be consigned to the record after due compliance.”*

It is against the judgment dated 21.7.2012 passed by learned Judicial Magistrate Ist Class, Safidon whereby the accused was acquitted and the judgment dated 15.9.2014, whereby the appeal against the aforesaid order dated 21.7.2012

has been dismissed by learned Sessions Judge, Jind, the petitioner has preferred the present revision petition.

Learned counsel for the petitioner has vehemently argued that the findings recorded by the lower Court as well as the lower Appellate Court, for acquitting the respondent, are not based on the evidence on record, rather, the same are based on presumptions. Even the facts of the case as well as the evidence have not been appreciated correctly. He argued that there is error on the part of the Courts below while dealing with the issue of delay in lodging the FIR. The petitioner is not a well educated lady and is not well-versed with the technicalities of law. She had filed a complaint to the police, but no action was taken on the same. She also moved an application for leading additional evidence which was dismissed by the appellate Court on 6.6.2013.

I have heard learned counsel for the petitioner and find that there is no substance in the present revision petition.

A bare perusal of the records would show that the FIR was lodged after about six months of the alleged occurrence and no plausible explanation has come from the prosecution/complainant. One of the essential requisites to ensure a fair trial is that the FIR in respect of a cognizable offence should be lodged as soon as possible. The moment lodging of FIR is delayed, it not only gets bereft of its spontaneity, danger also creeps in the introduction of coloured versions, thought-out stories and twists to

actual facts. Apart from the above, even the complainant has failed to explain the date of filing the application to the police and has further failed to disclose as to who was the author of the application. Rather, the complainant has stated that it is her husband who further got it written by someone else. The complainant also failed to disclose the contents of the application. Moreover, the allegation against the respondent-accused is that he caught hold of the hand of the prosecutrix and tried to outrage her modesty while she was coming in the bus. But interestingly, no independent witness has been named or examined by the prosecutrix/complainant, when she was travelling in public transport.

It is an established principles of law that the revisionary jurisdiction of this Court is very limited. Any interference in the concurrent findings of fact recorded by both the Courts below, especially when no perversity is established, is not warranted. Reference may be made to a judgment of Hon'ble Apex Court in a celebrated judgment of **Ghurey Lal v. State of U.P.** 2008(10) SCC 450.

Therefore, I find no infirmity in the impugned judgments passed by both the Courts below.

Accordingly, the present revision petition is dismissed.

May 07, 2015
ak

(HARI PAL VERMA)
JUDGE