

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-AD-139-2015 (O&M)

Date of decision: 17.03.2016

Nisha Sidhu

..... Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the 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?*

PRESENT: Mr. Arjunveer Sharma, Advocate
for the appellant.

RAMENDRA JAIN, J.

CRM-39986-2015

Sufficient cause has been shown to condone the delay in filing the present appeal. Therefore, the application is allowed and the delay of 455 days in filing the present appeal is condoned.

CRA-AD-139-2015

Being aggrieved by the judgment dated 31.05.2015, passed by the learned Additional Sessions Judge, Ludhiana, acquitting respondents No. 2 and 3 namely, Vishal Kumar and Om Parkash, the appellant-complainant-Nisha Sidhu has preferred the present appeal.

2. In nutshell, the appellant-complainant belongs to Scheduled Caste. She claims herself to be the legally wedded wife of respondent

No. 2-Vishal Sharma of upper caste as their marriage was solemnized on 25.03.2007. On 04.12.2008, the appellant-complainant made a statement Ex. PA to the police that on 20.11.2008, she was slapped and forcibly administered some poisonous substance by respondent No. 2 with an intention to get rid of her. She was being maltreated, humiliated, misbehaved by respondent No. 2 being a member of scheduled caste community by addressing her as 'Churey Chamar' in public view.

3. On the above statement of the appellant-complainant, a case under Sections 307, 506, 120-B of the Indian Penal Code (IPC) and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act') was registered. The police swung into action. Respondents No. 2, 3 and Vijay Laxmi @ Madhu Sharma (wife of respondent No. 3) were arrested. The appellant-complainant was medico-legally examined. Statements of relevant witnesses were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented against them before the learned Illaqa Magistrate.

4. On commitment of the case to the Court of Session, the learned trial Court framed charges under Sections 307, 506, 120-B IPC and Sections 3(2)(v), 3(1)(x) of the Act against respondents No. 2, 3 and aforesaid Vijay Laxmi @ Madhu Sharma, to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 9 witnesses.

6. After closure of the prosecution evidence, statements of

respondents No. 2 and 3 and Vijay Laxmi @ Madhu Sharma under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which they denied and pleaded their false implication.

7. During trial Vijay Laxmi @ Madhu Sharma expired, therefore, proceedings against her got abated.

8. After scanning the evidence brought on record and hearing learned counsel for both the sides, the learned trial Court did not find itself convinced with the arguments of learned Addl. Public Prosecutor. Consequently, it acquitted respondents No. 2 and 3.

9. Learned counsel for the appellant-complainant contended that the impugned judgment is based on surmises and conjectures. Learned trial Court has failed to appreciate that two FIRs No. 36 dated 08.03.2007 under Section 376 IPC and No. 57 dated 08.03.2010, under Sections 452, 427 read with Section 34 IPC were lodged against respondent No. 2 and his family members prior to the present case. The above fact is in itself sufficient to prove that there was constant dispute between the appellant-complainant as she belongs to 'Valmiki' caste and respondent No. 2, a 'Brahmin' by caste. For that reason, the private respondents wanted to get rid of the appellant-complainant by killing her. It was well proved on record from the statement of appellant-complainant as PW-1 that in the early hours of the morning of 20.11.2008, respondent No. 2 had administered some poisonous substance to her and then fled away and she could only be saved by taking her to the hospital. The learned trial Court has misread the prosecution evidence while acquitting

respondents No. 2 and 3.

10. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant-complainant, we find no merit in the instant appeal for the reasons to follow.

- (i) PW-4 Dr. Rupesh Kumar Chaudhary, Associate Professor, Department of Psychiatry, DMC Ludhiana, has testified that the appellant-complainant was admitted in the medical unit IV vide CR No. 128486 on 22.11.2008, with the history of ingestion of some unknown substance up to 11-15 tablets. Hence, it is evident on the record that the appellant-complainant herself had consumed 11-15 tablets. Since, there was no forcible administering of some poisonous substance to the appellant-complainant, therefore, respondents No. 2 and 3 have rightly been acquitted under Section 307 IPC.
- (ii) To prove the offence under Sections 3(2)(v) and 3(1)(x) of the Act, it was necessary for the prosecution to prove that on which particular date, time and place, respondents No. 2 and 3 had insulted her in the name of her caste and, that too, in public view. Since, no such particulars are disclosed by the prosecution, therefore, the learned trial Court has rightly held that no such offence was found to have been committed by respondents No. 2 and 3. Simply because the

appellant-complainant belongs to 'Valmiki' caste and respondents No. 2 and 3 are 'Brahmins' is not sufficient to convict respondents No. 2 and 3, more particularly, when prosecution has miserably failed to bring on record the caste certificate of the appellant-complainant to prove that she belonged to scheduled caste.

11. We have gone through the impugned judgment and found no illegality or perversity in the same. The instant appeal being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 17, 2016

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