

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

CRM No.A-867-MA of 2011 (O&M)

Date of decision: September 05, 2016

Darshana Devi

...Applicant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ram Pal Verma, Advocate
for the applicant.

Mr.Vikas Chopra, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Samrat Malik, Advocate
for respondents No.2 to 6.

INDERJIT SINGH, J.

Applicant-Darshana Devi has filed this application under Section 378 Cr.P.C. seeking permission for leave to appeal against State of Haryana and other respondents, challenging the impugned judgment dated 10.05.2011 passed by learned Sessions Judge, Sonipat, whereby the appeal filed by the accused-respondents against the judgment of conviction dated 16.01.2010 and order of sentence dated 18.01.2010 passed by learned Sub Divisional Judicial Magistrate, Ganaur, was allowed and they were acquitted.

It is mainly stated in the application that there is legal question

involved in the appeal and learned Sessions Judge has ignored the same. It

is, therefore, prayed that leave to appeal be granted.

The brief facts of the case are that challan was presented against Smt.Omi, Nirmala, Smt.Darshana, Mahender Singh, Dharamender and Manoj in case FIR No.273 dated 06.12.2003 under Sections 323 and 452 read with Section 34 IPC. The brief facts of the case as noted down in the judgment passed by learned SDJM, Ganaur, are as under:-

“2. Brief facts of the prosecution case are that on dated 6.12.2003, the complainant handed over a written complaint to SI Dharampal. The case is Ex.PW1/A. Ex.PW1/A is to the effect that the complainant namely Darshna Devi wife of Joginder who is the resident of village Bajana Kalan was working in her house on 3.12.2003. The persons namely Mahender son of Mange and Manoj son of Dharampal quarreled with her in her house. She was also given beatings. She was brought out of her house in the street, where she was given merciless beatings by Omi wife of Mahender, Nirmala wife of Dharampal and Darshna wife of Krishan. At that time, Mahender was standing having 'Lathi' in his hand. On that date, the husband of the complainant namely Joginder son of Bhale Ram had gone to village Urlana. However, her sister-in-law (Jethani) namely Dharam Devi was present. In that quarrel, gold chain of complainant was snatched along with her ear rings. In the intervening night of dated 3-4.12.2003, Dharmender entered in her house after breaking the door of her house and tried to commit rape upon her. She raised the noise but it was not heard by anyone. She was also pressurized for compromise and was being given threat by the accused since 5.12.2003. Hence, this complaint.”

Learned SDJM, Ganaur, after appreciating the evidence, acquitted accused Dharamender and convicted and sentenced accused Smt.Omi, Nirmala, Smt.Darshana, Mahender Singh and Manoj under Sections 323 and 452 IPC read with Section 34 IPC. Appeals were filed by accused-respondents and learned Sessions Judge, Sonipat, accepted the appeals and acquitted the accused-respondents vide impugned judgment dated 10.05.2011.

application seeking leave to appeal has been filed by the complainant-applicant.

Notice of motion was issued and learned State counsel as well as learned counsel for respondents No.2 to 6 appeared and contested the application.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the judgment passed by learned Sessions Judge, Sonipat shows that findings have been given as per evidence and law. The evidence has been appreciated in right perspective. In no way, the findings given by learned Sessions Judge, Sonipat can be held as perverse or against the law. Learned Sessions Judge, Sonipat, discussed the evidence in minute details and then found that the case has not been proved beyond reasonable doubt and acquitted the accused.

From the record, I find that learned lower Appellate Court after discussing the evidence held that first part of the occurrence took place on 03.12.2003 whereas second part pertains to the intervening night of 3/4.12.2003 and the FIR was lodged on 06.12.2003 and held that it is an unexplained delay. Secondly, the Court held that with regard to the first part of the occurrence of day time of 03.12.2003, no concern was shown by the complainant. She did not take the matter seriously. It was on the intervening night of 3/4.12.2003, which allegedly disturbed her and make her move for redressal of her grievances.

Learned Sessions Judge, Sonipat held that complaint Ex.PA/1 was made by the complainant on 06.12.2003 at about 10.15 a.m. The delay

is sought to be explained by complainant Darshana Devi stating in her

deposition on 21.04.2005 that the accused had been pressing hard for compromise. The Court further held that had it been a matter of delay on account of attempted but failed compromise, her husband was not to be a non-participant. From MLR, it is clear that he was available and had gone with the complainant to the doctor for her medico legal examination. The Court also held that Darshana Devi has also changed her version that she had gone to the police station just after the occurrence of day time and when the police had not registered the case against the accused, she had contacted the Deputy Commissioner, Sonipat and consequent upon a telephonic communication of then Deputy Commissioner to the SHO, Police Station Ganaur, she had immediately gone to the police station. The Court held that there is nothing to support her on this count.

Learned Sessions Judge, Sonipat further held that in her examination-in-chief dated 10.08.2009, the complainant was testified in so many words that on the day of occurrence, all the accused exerted pressure on her in the police station to compromise the matter and that huge crowd of villagers had accompanied the accused in a trolley. No such person was produced to lend credence to the statement of the complainant for the reasons best known to the prosecution. The Court further held that when Dharam Devi had entered the witness box, she has given absolutely no support. She has not supported the prosecution version at all. She is rather categorical that she had not even seen the alleged occurrence.

Learned lower Appellate Court further held that though Dharam Devi stated to be eye witness to the occurrence but complainant stated that her jethani Dharam Devi had come to the spot only after half an hour of the occurrence. The Court discussed the statement of complainant.

It is stated that there are three aspects in the interface of which creditworthiness of Darshana Devi is to be evaluated; one is complaint Ex.PW1/A given to the police, other one is her statement recorded on 21.04.2005 and her statement recorded on 10.08.2009 i.e. after appearance of accused Dharamender and Manoj pursuant to order dated 08.09.2006.

The Court after discussing the evidence found the version discrepant. Learned Sessions Judge, Sonipat also held that almost all the injuries are contusions, complaint of pain and swellings. The X-ray was advised but no X-ray was got conducted nor produced and no grievous injury was found by the doctor.

The perusal of the judgment passed by learned Sessions Judge, Sonipat shows that the evidence has been appreciated in right perspective. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the lower Appellate Court. In no way, the findings can be held as perverse. The impugned judgment dated 10.05.2011 passed by learned Sessions Judge, Sonipat, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

September 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No