

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-850-MA-2016

Date of Decision:-04.07.2016

Poonam

....Applicant-appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. S.S. Sahu, Advocate
for the applicant-appellant.**

RITU BAHRI, J. (Oral)

Present application has been filed by the applicant-complainant under Section 378(4) of the Criminal Procedure Code for grant of special leave to appeal from the judgment of acquittal dated 15.02.2016, passed by the Additional Sessions Judge, Fatehabad whereby respondent Nos.2 and 3 (accused) have been acquitted.

After completion of the investigation, the final report u/s 173 CrPC was presented in the Court on 04.01.2014. Perusal of said report reveals that on 20.12.2013, when ASI Baldev Raj, E/ASI Milakhraj and W/HC Bhagwanti were patrolling in the area of Bus Stand, Bisla Chowk, Poonam wife of Jeet Ram, Caste Kumhar, resident of village Bhardana accompanied by her brother-in-law Kalu Ram son of Leelu Ram, presented a complaint stating that her husband and father-in-law were confined in

Hisar Jail. That day, at about 1:00 PM, when she was alone in the house,

Paramjeet and Ranjit entered the house under the influence of liquor. They molested her, tore her clothes and forcibly tried to pull her inside their shop. When she raised cries of “*bachao-bachao*”, they fled in Bolero no.HR-62/4368. They outraged her modesty and while going threatened to see her as and when they got the opportunity. Since she was residing alone in the house with her two children, these persons were harassing her for the last three months with evil intention. They also abused her and harassed her children. On this complaint, a case under Section 354-B IPC read with Section 34 IPC was registered and special reports were sent. ASI Baldev Raj inspected the spot, recorded statements of witnesses and arrested the accused. Bolero vehicle No.HR-62/4368 used in the commission of offence, was recovered from accused Ranjit. Accused were medico legally examined and put behind bars. The seized vehicle was deposited in the Malkhana. Accused were produced in the court and were released on bail. Offences under Sections 452 & 506 IPC were added. On completion of necessary formalities, challan u/s 354, 452 & 506 IPC read with Section 34 IPC was prepared and presented in the court for trial of accused.

The accused were charge-sheeted, vide order dated 20.02.2014 under Sections 452, 354B & 506 IPC read with Section 34 IPC by the learned Chief Judicial Magistrate.

Prosecution examined ASI Baldev Raj as PW1, W/HC Bhagwanti PW2, Poonam PW3, Constable Sukhbir PW4, ASI Rajaswinder PW5. Thereafter, the statements of accused were recorded u/s 313 CrPC.

In defence, the accused tendered Ex.D1 certified copy of judgment dated 20.09.2013 of the Court of Additional Sessions Judge, Fatehabad in Criminal Appeal No.50 of 21.12.2011 titled Lilu Ram & Ors.

Vs State of Haryana. The trial Court after hearing the both the parties relied upon the statement of the complainant and held that both the accused intruded her house and outraged her modesty. They were convicted under Sections 354 & 452 IPC read with Section 34 IPC. However, in appeal the appellate Court took into account the fact that husband and father-in-law of complainant Poonam have been convicted in a criminal case lodged by father of accused under Sections 323 & 325 IPC and sentenced to imprisonment. The appeal against the judgment of conviction and order of sentence was also dismissed vide judgment Ex.D1. In the above background, the evidence of present complainant was examined. The complainant had not examined any independent witness. From the cross-examination of the complainant it was revealed that the application had been drafted by her brother-in-law in village Bhardana, which suggested a deliberate act. In the first complaint Ex.PW3/A and in the statement on oath of the complainant before the Court, the only act attributed to the accused was that they harassed her (***Ched Chad Ki***), torn her clothes and dragged her towards their shop. In the statement before the Court, she improved over her initial version and asserted that besides harassment (***Ched Chad***), the accused also scuffled with her. The allegation of “scuffle” was conspicuously missing in her statement under Section 161 CrPC. The Investigating Officer did not take into possession any allegedly torn clothes of the complainant. In the absence of any torn cloth, the allegation of “scuffle” in the complaint (Ex.PW3/A) and statement under Section 161 Cr.P.C., the version of the complainant was disbelieved.

Further, the appellate Court had taken into account the

allegations of the prosecutrix was that the accused had entered her house

after consuming liquor. The medico legal reports do not remotely suggest that the accused had consumed liquor and were in a state of intoxication.

The above fact coupled with the fact that the hostility and enmity between the parties as the husband and father-in-law of the complainant had been convicted on a complaint made by father of the accused. Further, the allegation of molestation in the broad day light at 1:00 PM become more doubtful specially keeping in view that on account of the enmity the brothers would enter the house of the complainant, in broad day light, at about 1:00 PM, molested her and torn her clothes and dragged her towards their shop in the vicinity of the house where several public persons would always be present. Considering the gaps in the statement of the prosecutrix, uncorroborated by circumstances, has led the acquittal of the accused.

After hearing the learned counsel for the applicant, going through the record, this Court is of the considered view that the prosecution has miserably failed to prove that an offence under Section 354 IPC has been committed. Moreover, neither there was assault on the complainant nor there was any criminal force used on her to outrage her modesty. There are material improvements in the deposition of the complainant as compared to the allegations made out in the complaint Ex.PW3/A that the accused had harassed her (*Ched Chad ki*), however, in her deposition she made improvement that the accused had scuffled with her and torn her clothes. The investigating officer did not take possession of any torn clothes keeping the old enmity between the families.

In view of above, no interference is warranted in the impugned judgment dated 15.02.2016 passed by the Additional Sessions Judge, Fatehabad. Such judgment, containing valid reasons, cannot possibly be

interfered with by this Court, in exercise of limited jurisdiction of this Court under Section 378(4) Cr.P.C., unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the applicant-complainant, so, the impugned judgment deserves to be and is hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant petition to leave to appeal is hereby dismissed as such.

July 04, 2016
naresh.k

(RITU BAHRI)
JUDGE