

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

CRR No.2679 of 2016 (O&M)
Date of Decision:- October 20, 2016

Rafia

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Anju Sharma, Advocate
for the petitioner.

INDERJIT SINGH, J.

The petitioner has filed this revision petition under Section 401 Cr.P.C. against State of Punjab and other respondents, challenging the judgment dated 27.02.2015 passed by learned Judicial Magistrate Ist Class, Malerkotla, vide which the accused-respondents were acquitted of the charged framed against them and also challenging the judgment dated 30.05.2016 passed by learned Addl. Sessions Judge, Sangrur, vide which the appeal filed by the petitioner against the judgment of acquittal was dismissed.

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

From the record, I find that challan was presented in case FIR No.11 dated 10.02.2011 under Sections 451, 323, 506 read with Section 149

and Rani alias Salma. The brief facts of the case as noted down in the judgment dated 27.02.2015 passed by learned JMIC, Malerkotla, are as under:-

“2. In brief, the case of the prosecution, that on 10.12.2011 HC Gorakhnath along with the police party in connection with patrolling were present at Bus stand Shergarh Cheema where the complainant Rafia suffered a statement. That she is resident of village Rohera. That at about 23-24 year ago she was married with Mohd. Latif resident of village Barkatpura. That her husband Mohd. Latif were three brother and one sister and all were married and they were living separately. That she has no child and she was residing in her house comprising two rooms, one kitchen and bathroom. That the above-said house was purchased by her and her husband in Rs.50,000/- and writing of the same is on her name. That her husband Mohd. Latif was died on 01.08.2010 and her brothers solemnized her second marriage with Gulzar Mohd. Son of Fazal Din resident of village Rohera on 09.01.2011. Therefore she kept her articles in one room. That her sister Gaforran was also married with Abdul Sakoor resident of villager Barkatpura. That on 17.01.2011 she gone to met with her sister Gaforran at villager Barkatpura then he along with her sister at about 4:30 PM gone to disputed house and she saw that her (Jaith) Slamdin and his wife Salma were broken the lock of the main gate of disputed house and they broken that lock then in her presence accused Slamdin, his wife Salma, his son Sony, her mother-in-law Jamilan and her sister-in-law Rani @ Salma and her brother-in-law husband of Rani namely Abdul Salam were entered in her house. That when she tried to restrained them her sister-in-law Rani @ Salma gave slap on her face then she stand with her sister Gaforran. That accused Sony broken the lock of disputed house and they shifted her article from one room to another room and she told about the incident to her brother Mohmad @ Babu and he came on the spot. That there was negotiation regarding compromise with accused persons but no compromise is effected. Therefore she suffer the present statement. On the basis of above said inquiry FIR was registered against the accused. Accused were arrested and after completing the other formalities challan against the accused person was present in the court for judicial verdict. Hence, action to be taken against the accused.

The prosecution examined PW-1 ASI Gorakhnath, PW-2

Goforran, eye witness, PW-3 Rafia, complainant, PW-5 Head Constable

Malkiat Singh and PW-5 Des Raj. In defence, accused tendered into

evidence documents Ex.D1 to D4 regarding the previous litigation between the complainant and accused.

Learned JMIC, Malerkotla, after appreciating the evidence, acquitted the accused-respondents of the charges framed against them. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Sangrur, vide judgment dated 30.05.2016.

Aggrieved from the above-said judgments, present revision petition has been filed.

After going through the record, I find that it is case of complainant that accused by constituting unlawful assembly and with the common object committed criminal trespass in the house of complainant and also caused simple hurt on the person of complainant and gave threat to her life. Learned Magistrate held that prosecution did not examine the marginal witnesses of the alleged agreement namely Noor Din and Ramjanaan through which the complainant alleged that she had purchased the disputed house from accused Jamilan and the Court further held that the prosecution failed to prove on record the ownership of the complainant on the disputed house. Learned Magistrate also held that there are major contradictions in the statement of eye witness Gaforran and complainant Rafia. The eye witness stated that the accused Rani @ Salma pushed the complainant, but the complainant stated in her examination that accused Rani @ Salma gave slap on her face. The Courts below further held that there is no medical record qua the injuries.

The Courts below also held that complainant made major improvement in her statement because in the earlier statement which was

was registered she did not disclose about the alleged threat to life allegedly given by the accused persons. It is further held that there is delay of almost 24 days in recording the FIR. The occurrence took place on 17.01.2011 and the FIR in the present case was got registered on 10.02.2011. Though, it is settled law that delay in recording the FIR in itself is not fatal to the case but in case of unexplained long delay, the Court is to appreciate the evidence more cautiously and carefully. In the present case, there are six accused but allegation is that one of the accused has given the slap to the complainant, which is also contradictory as the eye witness stated that only push has been given. So, a reasonable doubt exists in the prosecution case and there is every possibility of concocting a version, specially when the parties are litigating with each other as per documents Ex.D1 to D4. The injury is also not supported by medical evidence. Furthermore, the version regarding threat has not been given at first instance.

In view of these facts as noted down by learned Courts below, I find that a reasonable doubt exists in the prosecution version and both the Courts below have passed the impugned judgments as per evidence and law and in no way, the findings can be held as perverse or against the law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below.

Therefore, finding no merit in the present revision petition, the same is dismissed.

October 20, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No