

CRA-AS-172-2015

[1]

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

(Sr.No.269)

CRA-AS-172-2015

Date of Decision:-April 28, 2017

Surinder Kaur

.....Petitioner

V/S

Harwinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. Narinder Singh, Advocate for the petitioner.

Mr. Abhishek Chautala, DAG Punjab.

A.B. Chaudhari, J. (Oral)

Heard learned counsel for the appellant.

The appellant has sought leave to appeal against the order of acquittal dated 02.09.2015 passed by the trial Court. The learned trial Judge has convicted Manmohan Singh alias Gurmohan Singh only for the offence under Section 323 of IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month.

However, the trial Court has acquitted the other accused persons. Insofar as injury to the appellant-Surinder Kaur is concerned, learned counsel for the appellant submitted that the oral testimony of Surinder Kaur could not have been disbelieved by the trial Court and, therefore, the trial Court ought to have recorded conviction for assault on her. He, therefore, submitted that the order of acquittal for assault on Surinder Kaur is required to be set aside.

Upon hearing learned counsel for the appellant, I have perused the reasons and the discussion about the evidence of Surinder Kaur made by the trial Court. The trial Court had found material discrepancies in the evidence of Surinder Kaur in her oral evidence as well as medical evidence. In the absence of any corroboration by medical evidence, the trial Court gave benefit of doubt to the respondents and recorded the order of acquittal. Following are the reasons recorded by the trial Court in paragraphs 21 and 22, which I quote hereunder:-

“21. A conspectus of the record has shown that this case had been initiated on the statement of Surinder Kaur which was recorded by the ASI Sikandar Singh Investigating Officer of this case at 8.10 P.M. On 29.10.2011 in regard to the occurrence stated to have happened at 7.00 P.M. On 27.10.2011. In her said statement, Surinder Kaur had named Gurdial Singh and Manmohan Singh as accused, who as per her version had initially given injuries to her with sotis and when her husband Gurmukh Singh had intervened so as to rescue her, then, the accused Manmohan Singh by way of picking the spade lying on the spot had given its blow on the head of Gurmukh Singh from its adverse side.

22. A further perusal of the record has shown that Surinder Kaur had got recorded her supplementary statement vide DDR No.43 dated 14.11.2011 wherein she had added the names of Satvir Singh and Harvinder Singh who have inflicted injuries on her person. Although, Surinder Kaur in her supplementary statement had given an explanation that at the time of recording her statement on 29.10.2011 she was not in her full senses but her MLR Ex.PW3/C which was scribed at 12.30 P.M. On 28.10.2011 has not shown that she was unconscious in any manner or that the injuries on her person were such that she was not in a position to give true and correct version of the incident. In fact, the injuries on her person are either abrasions or complaints of pains on various parts of the body. Meaning thereby, she was not having any such serious injury on her person which could have restrained her to give a correct version of the occurrence to the police. Otherwise also, even as per the version of the occurrence to the police. Otherwise also, even as per the version of the complainant Surinder Kaur as PW1, the occurrence had taken place at 7.00 P.M. On 27.10.2011 over the placing of bundles of charri crop.

Although, she has stated in her cross-examination that her brother-in-law (Jeth) Surmukh Singh had taken her and her husband to the hospital in a car belonging to his friend Amrik Singh after 12 O'Clock at night of 28.10.2011. But MLR Ex.PW3/A pertaining to Gurmukh Singh has shown that he was admitted in hospital at 8.50 P.M. On 27.10.2011 itself the day of occurrence but the MLR Ex.PW3/C pertaining to the complainant Surinder Kaur has shown that she was admitted in the hospital at 12.30 A.M. On 28.10.2011. There is no explanation on record as to why and how her time of admission in the hospital was 12.30 A.M. On 28.10.2011 whereas the time of admission of her husband Gurmukh Singh was 8.50 P.M. On 27.10.2011, though as per her own version both of them were taken together to the hospital by Surmukh Singh in one car of Amrik Singh.”

The above reasons, to my mind do not show any perversity on the part of the trial Judge because the inconsistencies brought by the prosecution in the evidence were writ large to give benefit of doubt to the accused. At any rate the trial Court under the same judgment convicted Manmohan Singh alias Gurmohan Singh and awarded him the sentence to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month, thus offence under Section 323 of IPC only was proved by the prosecution.

In the light of Para 24 of the decision in the case of **Darshan Singh versus State of Punjab, 2010 Vol.2 Supreme Court Cases 333**, I think, it would not be possible to interfere with the order of acquittal.

Leave to appeal is dismissed. Appeal is summarily rejected.

(A.B. CHAUDHARI)
JUDGE

April 28, 2017

pankaj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No