

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

(i) Crl. Appeal No.S-2662-SB of 2015 (O&M)

Sanjeev

...Appellant

VERSUS

State of Haryana

...Respondent

(ii) Crl. Appeal No.S-3250-SB of 2015 (O&M)

Sachin Gupta and another

...Appellants

VERSUS

State of Haryana

...Respondent

(iii) CRM No.A-1760-MA of 2015 (O&M)

State of Haryana

...Applicant

Versus

Sachin Gupta and others

...Respondents

Date of Decision: March 06, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravinder Malik, Advocate
for the appellant (in CRA No.S-2662-SB of 2015) and
for respondents No.2 to 7 (in CRM No.A-1760-MA of 2015).

Mr.Vikram Bali, Advocate
for the appellants (in CRA No.S-3250-SB of 2015)and
for respondents No.1 and 8 (in CRM No.A-1760-MA of 2015).

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the applicant-State (CRM No.A-1760-MA of 2015) and
for the respondent-State (in both the appeals).

INDERJIT SINGH, J.

CRA No.S-2662-SB of 2015 and CRA No.S-3250-SB of 2015 have been filed by the appellants against State of Haryana, challenging the judgment of conviction and order of sentence dated 09.03.2015 passed by learned Judge, Special Court, Panipat, whereby they were held guilty and convicted under Sections 323 and 427 IPC and were released on probation under Section 4(1) of Probation of Offenders Act, 1958 for a period of one year on their furnishing probation bonds in the sum of ₹50,000/- with one surety each in the likewise amount with the condition to appear and receive sentence when called upon during the period of one year and in the meantime to keep peace and be of good behaviour.

CRM No.A-1760-MA of 2015 has been filed by applicant-State of Haryana under Section 378(5) Cr.P.C. seeking permission for leave to appeal against Sachin Gupta and other respondents, challenging the judgment dated 09.03.2015 passed by learned Special Judge, Panipat, whereby the accused-respondents were acquitted of the charges framed against them except accused Sanjeev, Sachin and Sandeep, who were convicted under Sections 323 and 427 IPC only and have been acquitted under Sections 354 and 506 IPC.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Panipat, are as under:-

“2. Sum and substance of the story of the prosecution, as laid open in the report submitted in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as – the Code), is that on 12.06.2010, complainant wife of Sanjeev, resident of Aggarsain Colony, Panipat moved an application before S.H.O., in Police Station Model Town, Panipat on that averments that on that day, i.e.

on 12.06.2010 at about 12.30 pm, she came to the Court premises to meet her counsel namely Shri K.C.Sharma, Advocate, in connection with her case. After consulting her counsel, when she came out of the Court complex, and was in the process to start her Aactiva, Sachin Gupta, Advocate, alongwith his companions and her husband Sanjeev reached there and caught hold of her and started damaging her Aactiva. Sachin Gupta, Advocate, exhorted, addressing her as 'Chamari', to teach her a lesson for getting a case registered against Sanjeev. Thereafter, Sachin instigated Sanjeev and thereafter, she was pushed due to which she fell down and they pressed her breast. Sachin gave her beatings with fists and kick blows. She was rescued by the persons present there and thereafter, all the assailants fled away from the spot on a motor-cycle bearing no.HR-06-0635. 3. It has been further averred by the complainant in her complaint that thereafter, she went to her home and found that the accused persons dragged her mother out of the house, hurled abuses and gave her beatings with fists and kick blows and she was rescued by her neighbours. The accused persons hurled abuses in the name of her caste 3 and then fled away. She has prayed for taking legal action against the accused persons. Investigations were put into motion. Spot was inspected and rough site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. Accused were arrested. On completion of investigation a final report in terms of sub-section (2) of Section 173 of the Code was prepared and was presented before the learned Additional Chief Judicial Magistrate, Panipat, by Officer-incharge of Police Station, Model Town, Panipat."

On presentation of challan against accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-sheeted under Sections 147, 149, 323, 354, 427, 452, 506 IPC and Section 3(i)(x) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined Dr. Neelam Arya, Sr. Scientific Officer, FSL, Madhuban as PW-1, Rohtash Kumar SI as PW-2, Rakesh Saini as PW-3, Mehkari wife of Dharam Singh as PW-4, SI Rajinder Singh as PW-5, Subhash son of Gordhan Ram as PW-6, Dr. Geeta

Sharma as PW-7, Sat Narain retired SI as PW-8, Joginder Kumar as PW-9, Pardeep Singh retired DSP as PW-10, Inspector Vikram as PW-11, Rajeev Deshwal as PW-12, Geeta wife of Sanjeev Kumar as PW-13, Dr. Pankaj Mutneja as PW-14, Dr. Naveen as PW-15 and Virender Vij DSP as PW-16

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. They denied the correctness of the evidence and pleaded themselves as innocent. Accused also stated that the marriage of accused Sanjeev with the complainant took place in the year 2002. It was a love-cum-inter caste marriage. In the year 2007, the complainant got the job of Computer teacher in Kendriya Vidyalaya at Banswara (Rajasthan) and the complainant pressurized accused Sanjeev to sell the house situated at Panipat and to shift at Banswara (Rajasthan). When accused Sanjeev refused for the same, the complainant falsely implicate accused Sanjeev alongwith other accused persons in the instant case as well as other litigations, even though no occurrence, as alleged, ever took place.

In defence, accused examined Sudhir Arora, Sr. Accountant as DW-1, Joginder, Motor Registration Clerk as DW-2, Sukhender Singh as DW-3, Mahabir Singh son of Surat Singh as DW-4, and Kurban son of Nizam as DW-5.

Learned trial Court, after appreciating the evidence convicted and sentenced accused Sanjeev, Sachin and Sandeep and acquitted Bimla, Usha, Roshan, Vijay and Sunita, as stated above.

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

From the evidence on record, I find that the prosecution has

duly proved its case by leading cogent evidence qua occurrence No.1, which took place in the Court complex.

The prosecution examined PW-7 Dr.Geeta Sharma, who medico legally examined Mehkari mother of Geeta complainant and the doctor found multiple small abrasions of 0.2 to 0.1 cm on left and front side of chest and neck and the injuries were simple in nature. The doctor during cross-examination stated that possibility of injuries mentioned in MLR Ex.P22 by self-infliction or by friendly hands cannot be ruled out.

Learned trial Court after discussing the evidence in minute detail, found the version contradictory and improbable and gave benefit to the accused qua occurrence No.2, though Mehkari has been examined as a witness and also doctor deposed regarding the injuries. The Court discussed this occurrence that in the morning of 12.06.2010, complainant was present at her matrimonial house when her mother Mehkari came to her and after having casual conversation with her, she left her matrimonial house in order to meet her counsel. At that time, her mother Mehkari was present at her matrimonial house. As per the version of Mehkari PW-4, she was present at the matrimonial house of her daughter Geeta and was inside a room while bolting the room from inside. At about 2.00 pm, accused Sanjeev started to break open the door and also started to abuse her. He gave beatings to her and dragged her with her hair. He also gave kick and fist blows to her. Thereafter, all the family members of Sanjeev i.e. Bimla, Usha, Roshan Lal, Vijay Pal and Sunita along with Sachin and Sandeep came there and all of them gave beatings to her. She also deposed that all the accused dragged her in the street and gave beatings to her.

The Court held that presence of Geeta and Mehkari at the house

of Sanjeev on 12.06.2010 is doubtful. Accused have proved on record copy of complaint Ex.D1 moved by complainant Geeta against accused Sanjeev and his family members regarding demand of dowry and perusal of the same shows that complainant Geeta herself has mentioned that accused persons in conspiracy with each other turned her out from her matrimonial house in bare three clothes alongwith her daughter. It also shows that Ex.D1 has been moved by the complainant on 02.06.2010 and she has given her address as House No.256, Basant Vihar, Karnal and not as House No.82, Aggarsain Colony, Panipat. Learned trial Court, after discussing all these facts and the fact that FIR No.264 dated 07.06.2010 got registered by the complainant against accused Sanjeev and his family members under Sections 323, 342, 498-A IPC etc., found that second occurrence has not been proved beyond reasonable doubt and accused Bimla, Usha, Roshan, Vijay and Sunita, who were related with the second occurrence, have been rightly acquitted by the trial court.

The findings have been given by learned trial Court while appreciating the evidence in right perspective and benefit of doubt has rightly been given by the trial Court.

As regarding first occurrence, from the perusal of the record, I find that it has been duly proved by the complainant by brining cogent evidence. First of all, the complainant deposed as per prosecution version consistently and there are no material contradictions or discrepancies. The photographs have also been proved on the record and further mechanic has been examined to show that damage to the Activa has also been caused. Furthermore, injuries on the person of Geeta have also been duly proved.

There is nothing to disbelieve all this evidence. There is nothing in the

cross-examination of Geeta, which may make her statement unreliable. The Court has correctly convicted accused Sanjeev, Sachin and Sandeep under Sections 323 and 427 IPC.

As regarding Section 3(i)(x) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, the Court below held that there must be specific allegations against the accused. Vague statement that the accused uttered humiliating words may not be enough. It is further held that the *mensrea* which is an essential ingredient so as to constitute the offence under the Act is also missing in this case. Two witnesses Mahabir and Kurban have been given up by the prosecution being won over by the accused. No other person has been examined by the prosecution to depose about the occurrence. The Court also held that the offence is complete if it is proved that the accused is a member of non-scheduled caste category and has intentionally insulted or intimidated with intent to humiliate the complainant, a member of a Scheduled Caste, in any place within public view. The complaint Exhibit P28 and deposition of PW-13, Geeta are silent with respect to any obscene remark regarding the caste of the complainant. There is no averment in the complaint that the accused had the knowledge that the complainant belonged to a Scheduled Caste and the complainant has nowhere stated that the accused were well aware that the complainant belonged to a Scheduled Caste community.

In view of the above discussion, I find that the findings have been given by the Court below after appreciating the evidence in right perspective. There is nothing on the record to show that any material evidence has been misread by the trial Court. The Court below also

discussed that offence under Section 354 IPC is not made out. Even the

facts of the case nowhere show that intention of the accused was to outrage the modesty of the complainant. Rather, from the facts of the case as given in the FIR, it is clear that intention was to scuffle and to cause injuries to the complainant and to cause damage to the Activa. Therefore, neither the intention of the accused was to outrage the modesty nor force was used to outrage the modesty. So, the Court below has also rightly acquitted the accused under Section 354 IPC. Learned trial Court also after discussing the evidence, has given benefit of doubt qua Section 506 IPC.

From the above discussion, I find that Sanjeev, Sachin and Sandeep have been rightly convicted under Sections 323 and 427 IPC and have been correctly released on probation keeping in view the matrimonial dispute and nature of the injuries, which are simple.

As regarding the application for grant of leave to appeal, I find that accused have been rightly acquitted by appreciating the evidence in right perspective. In no way, the findings can be held as perverse or illegal or against the evidence. Nothing has been pointed out by learned State counsel as to which material evidence has been misread and which material evidence has not been considered by the Court below. The judgment passed by learned Addl. Sessions Judge, Panipat, qua acquittal of some of the accused and qua acquittal of accused under Section 354 IPC, is correct, as per evidence and law. No ground is made out for grant of leave to appeal.

Resultantly, finding no merit in all the cases, the same are dismissed.

March 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No