

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

**CRR No.935 of 2016 (O&M)
Date of decision: 30.01.2017**

Pinki

.....Petitioner

Versus

Mahant Gopal Dass and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Supriya Garg, Advocate,
for the petitioner.

Ritu Bahri, J.

CRM No.7824 of 2016

For the reasons mentioned in the application, same is allowed and
delay in filing of the revision petition is condoned.

CRR No.935 of 2016

This petition has been filed against the judgment dated
18.12.2015 passed by the Additional Sessions Judge, Ambala, dismissing
the appeal filed by complainant-petitioner against the judgment/order dated
06.06.2014/07.06.2014 passed by the Judicial Magistrate Ist Class, Ambala,
whereby accused-respondent Nos.2, 4 and 7 have been acquitted of the
charges framed against them and respondent Nos. 1, 3 and 8 have been
sentenced on the lower side for commission of offences under Sections 148,
323. 354, 452 and 506 IPC. Further prayer has been made for setting aside
the judgment dated 01.12.2014 passed by the Additional Sessions Judge,

Ambala, whereby accused-respondent Nos. 1, 3 and 8 have been released on probation.

Brief facts of the case are that FIR No.252 dated 22.10.2005, under Sections 147/323/354/452/506 read with Section 149 IPC was registered at Police Station, Ambala City on the basis of statement made by Pinki-petitioner to the effect that on 22.10.2005, at about 3.00 P.M., accused-respondents entered the house of complainant and inflicted injuries to her as well as her mother namely, Kamlesh Rani with blunt weapons. It was further alleged that accused Gopal-Dass had tried to outrage the modesty of the complainant and thereafter, threatened to kill her. In this background, the FIR was registered. On completion of investigation, challan was prepared and presented in the Court.

After presentation of challan, finding a prima facie case, charges under Sections 148/323/354/452/506 read with Section 149 IPC were framed against accused-respondents, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Retired ASI Iqbal Singh (PW-1), Mahindero Devi (PW-2), Pinki-complainant (PW-3), Rajinder Kaur (PW-4), Raj Kumar (PW-5), Anoop Singh (PW-6) and Kamlesh (PW-7). On conclusion of the prosecution evidence, statements of the accused-respondents under Section 313 Cr. P.C. were recorded, wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication. No evidence was led in defence.

Trial Court, after going through the evidence led by the prosecution, acquitted the accused (respondent Nos.2, 4 to 7) of the charges framed against them. However, accused-respondent Nos. 1, 3 and 8 were

held guilty and convicted in the aforesaid terms. On filing an appeal against the said judgment, accused-respondent Nos. 1, 3 and 8 were released on probation vide judgment dated 01.12.2014 passed by the Court of Mr. Deepak Aggarwal, Additional Sessions Judge, Ambala. Complainant-petitioner also filed an appeal against the judgment dated 06.06.2014 and order of sentence dated 07.06.2014, which was dismissed by the Court of Mr. Narender Shura, Additional Sessions Judge, Ambala vide his judgment dated 18.12.2015. Hence, this petition.

Heard.

While releasing accused-respondent Nos. 1, 3 and 8 on probation, the appellate Court has observed that they had faced a criminal trial for almost nine years and they were first time offenders. One of the accused-appellant namely Vajayanti had undergone bypass surgery. Appellant Mahant Gopal Dass had a wife, two minor children and old ailing mother to look after. Similarly, appellant Gaurav had old ailing mother to look after. Moreover, they were sole bread earner of their families. Keeping in view the above facts, their prayer for releasing them on probation was accepted and they were released on probation by furnishing personal bond in the sum of Rs.20,000/- each with one surety in the like amount, for a period of one year. This judgment was passed on 01.12.2014. Till today, they have already undergone the period of probation without violating the conditions imposed upon them.

At this stage, learned counsel for the petitioner has referred to the judgment passed in **State of Rajasthan Vs. Sri Chand**, 2015 (11) Supreme Court Cases 229, whereby the Hon'ble Supreme Court set aside an order of the High Court of Rajasthan dismissing an appeal filed by the State against

the order passed by the trial Court, whereby accused were released on probation. It was held that heinous crime was committed by the accused against a minor girl and there was no reason for granting the benefit of probation.

The aforesaid judgment will not be applicable to the facts of the present case, as in that case, the prosecutrix was taken by the accused to his house, undressed her and then did bad acts with her. Thereafter, he fled away when somebody came at the place of incident due to shouting by the prosecutrix. On the other hand, the facts of the present case are totally different.

In the present case, a perusal of the judgment passed by the trial Court shows that on 22.10.2005, all the accused came to the house of complainant-petitioner and caused simple hurt to her as well as her mother Kamlesh Rani with blunt weapons. Accused Gopal Dass used criminal force intending to outrage the modesty of Pinki (complainant) and thereafter, threatened to kill her.

In the present case, the evidence led by the prosecution is not sufficient to come to a conclusion that all the accused (except accused-respondent Nos. 1, 3 and 8) had committed the alleged crime. Accordingly, having examined the impugned judgments, no illegality, much less perversity, has been found therein warranting interference by this Court. The evidence has been appreciated in the right perspective.

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

30.01.2017
ajp

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No