

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

CRM No.A-226-MA of 2013 (O&M)

Date of decision: September 10, 2018

Tara Singh

...Applicant

Versus

Ajmer Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.M.S.Dhami, Advocate
for the applicant.

Mr.M.L.Saini, Advocate
for respondents No.1 to 5.

Mr.Pawan Sharda, Sr.DAG, Punjab
for respondent No.6-State.

INDERJIT SINGH, J.

Applicant-Tara Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Ajmer Kaur and other respondents, challenging the judgment dated 07.02.2013 passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar, whereby accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that in case special leave to file appeal is not granted, the applicant would suffer irreparable loss and injury. It is, therefore, prayed

that leave to appeal be granted.

From the record, I find that challan was presented against accused Ajmer Kaur, Raj Kumar, Mastan Singh, Piara Singh and Bhag Singh in case FIR No.32 dated 14.05.2011, under Sections 306 and 149 IPC. The brief facts of the case as noted down in the judgment passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar, are as under:-

“2. The accused were challaned by the officer In-charge Police Station Kathgarh on the allegations that one Ajmer Kaur wife of Raj Kumar, who was residing on the motor of Fateh Singh at village Paniali Kalan, moved an application against Sona that he made an attempt to commit rape with her and respectable of village had collected, but accused Ajmer Kaur alongwith her husband Raj Kumar, Ex-Sarpanch Bhag Singh, Mastan Singh and Piara Singh residents of village Paniali Kalan were giving threats to his son either to pay Rs.1,00,000/- or he can be sentenced up to 10 years, as a result of which his son Sona remained under tension and he had been telling this fact to him. On intervening night of 13/14.5.2011, after taking the meals, his son had taken milk and had gone to sleep, but in the morning at about 5.00 a.m, when he did not get up, he found that he was lying dead. His son had committed suicide on account of the tension given by the accused that either to pay Rs.1,00,000/- or that he will be sentenced up to 10 years. It was so stated by Tara Singh father of the deceased before the police in his statement Ex.PE, on the basis of which FIR was registered. Some respectable of the village had also made joint statement Ex.PF, alleging that Sona died on account of harassment and tension given by the accused persons. Then the police reached at the place of occurrence, prepared the inquest report and dead body was sent for post-mortem and after post-mortem, viscera was sent to the Chemical Examiner, Government of Punjab, Kharar. In the report of Chemical Examiner aluminum phosphide insecticide was detected. Therefore, cause of death in this case was declared as consumption of aluminum phosphide poison. Statements of the witnesses were recorded and ultimately, on completion of investigation, the final report under Section 173 (2) Cr.P.C. was filed in the Court.”

On presentation of challan against accused-respondents, 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

Section 306 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Anil Kumar Malik, PW-2 Om Parkash, who proved the photograph Mark-B, PW-3 Tara Singh, complainant, PW-4 Manmohan Singh, who is maternal uncle of deceased, PW-5 Kashmir Singh, brother of complainant Tara Singh, PW-6 Piara Singh, Sarpanch, PW-7 Baldev Singh Saini, Draftsman, who prepared scaled site plan Ex.PG, PW-8 Constable Som Nath, PW-9 Dilbagh Singh, who formally arrested accused Piara Singh, PW-10 DSP Bhagwant Singh, Investigating Officer, PW-11 Head Constable Hussan Lal, who proved the FIR Ex.PE/5, PW-12 Head Constable Shinder Pal and PW-13 ASI Jasvir Singh, who deposed regarding arrest of Ajmer Kaur, Mastan Singh, Raj Kumar and Bhag Singh.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. They denied the correctness of the evidence and pleaded their false implication. Accused Ajmer Kaur took the plea as noted down in the impugned judgment as under:-

“Accused Ajmer Kaur has further pleaded that on 26.04.2011, she along with her husband Raj Kumar and two sons was residing at the motor of Fateh Singh. On that day, her husband had gone to do labour at the farm house of Mastan Singh and Piara Singh at a distance of 10 killas and his sons had gone to school. At about 11.00 a.m., after doing her household work, when she was taking bath, then deceased Jaspal alias Sona came there. He removed the cot and caught hold her while she was naked. She raised raula, which attracted Brij Mohan her nephew and on seeing him Jaspal Singh alias Sona ran away from there and she told the entire occurrence to her husband and then she alongwith her husband went to the house of Jaspal Singh alias Sona and identified him there in the house. Then they told about that fact to Mastan Singh, who advised them to inform village Sarpanch Piara Singh, but he was not available. Then they reported the matter to the police against

Jaspal Singh about outraging her modesty by him, but no action was taken by the police. Then on 28.4.2011 two police officials came to village Paniali and they called them to the house of Jujhar Singh, but before going there, they took Bhag Singh along with them, where Bhag Singh told Jujhar Singh and Tara Singh to ask Jaspal Singh alias Sona to feel sorry for the misdeed done by him, but they refused to bring Jaspal Singh in the panchayat, rather Piara Singh Sarpanch insulted Bhag Singh and asked them to go. Then they were called by the police in the police station on 03.05.2011, where she pressed that FIR should be lodged on the basis of complaint moved by her on 26.4.2011, but the SHO was pressing that she should compromise with the accused. Then a panchayat was convened at the instance of SHO PS Kathgarh, where accused Piara Singh was also present. Again she requested that Jaspal Singh should feel sorry for the misconduct on his part, but Tara Singh father of deceased, Jaspal Singh and Piara Singh Sarpanch refused, rather they were compelling her to compromise with Jaspal Singh and for that she will be paid money by them, but since it was a matter of her reputation, she did not agree to it. The police kept continue to call her and her husband Raj Kumar in the police station till 13.5.2011 for compelling her to compromise with Jaspal Singh. On 13.5.2011, Jaspal Singh consumed some intoxicant at his residence and was found dead by his parents on 14.5.2011. They did not give any threat either to Jaspal Singh alias Sona or to his parents that he will be got convicted and nor any demand of money was made by them from Jaspal Singh.”

Accused also examined DW-1 Kulvir Singh, who proved FIR No.35 dated 01.06.2011 registered at Police Station Kathgarh, on the basis of application filed by Ajmer Kaur as Ex.DA and also examined DW-2 Darshan Singh.

Learned Sessions Judge, Shaheed Bhagat Singh Nagar, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 07.02.2013.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned counsel for

private respondents as well as learned State counsel appeared and contested

the application.

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

The perusal of the findings given by learned Sessions Judge, Shaheed Bhagat Singh Nagar shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court.

The perusal of the record further shows that it is even admitted by the prosecution witnesses that deceased Jaspal Singh @ Sona tried to molest/rape Ajmer Kaur regarding which Panchayat was also convened. It is the case of the accused that Panchayat put pressure upon her for not getting registered FIR. As per case of the accused, police also put pressure upon her not to get registered FIR regarding molestation incident. It is also in the evidence that FIR was not registered by the police till the commission of the offence in the present case i.e. suicide by Jaspal Singh @ Sona. The only allegation of the prosecution is that he committed suicide because Ajmer Kaur and other accused were threatening him to get him sentenced for 10 years and also demanding ₹1 lakh for not getting registered the FIR of earlier incident.

The perusal of the record shows that when the police is not registering the case and even not ready to register the FIR and no criminal

threat of sentencing to Jaspal Singh @ Sona in that molestation case. It is on the record that FIR has been got registered regarding earlier incident of molestation by Ajmer Kaur after registration of the present case, when accused (Jaspal Singh @ Sona) of that case, had already died.

Learned trial Court has appreciated all these facts correctly, as per evidence and law. Learned trial Court, while giving findings, held that there is admission of witnesses of prosecution that deceased had committed a bad act on 26.04.2011 and application given by accused Ajmer Kaur Ex.PN and FIR EX.DA are on record qua earlier occurrence that he tried to commit rape. It is also held by the Court that when complaint was made to the police, both the parties were called for in the police station, where panchayat was convened and they pressed Ajmer Kaur for compromise but she was pressing for registration of a case, whereas, other party was compelling for compromise and immediately, thereafter, FIR was not registered by the police. It is in the cross-examination of PW-3 Tara Singh, complainant that Ajmer Singh and Jora Singh had given slaps to his son that he had earned a bad name to their family due to the bad act done by him with Ajmer Kaur and in the panchayat convened in the village, the panchayat members had stated that his son had done bad deed. This witness further stated in the cross-examination that he cannot say that his son was under tension for slaps given by Ajmer Singh and Jora Singh before the panchayat.

The Court below further held that as per statement of PW-3, after 29.04.2011, the parties had been going to the police station on 01.05.2011 and 03.05.2011 and in case, on 29.04.2011, Ajmer Kaur had

application was given to the police. It is also finding of learned trial Court that although PW-3 Tara Singh has stated that application was given to DSP Bhagwant Singh but no such application has been produced. PW-3 Tara Singh further stated that he does not know whether he had stated in the application that other party is giving threats or demanding money. PW-6 Piara Singh, Sarpanch, also stated that deceased did not give any application in writing to him that accused are giving threat to him.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 07.02.2013 passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

September 10, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No