

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

CRM A-759-MA of 2018

Date of Decision : November 14, 2018

ChandniApplicant

VERSUS

State of Haryana and othersRespondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present : Mr. S.N.Yadav, Advocate
for the applicant.

T.P.S. MANN, J.

The victim, who was already having a child, aged 2½ years, has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of special leave to appeal against the judgment dated 7.7.2017 passed by learned Additional Sessions Judge, Rewari whereby Virender and Dharambir, the two accused in the case, who are respondents No.2 and 3 herein, were acquitted of the charges under Sections 323, 313 read with Section 34 IPC.

According to the prosecution, on 14.10.2016, the victim alongwith her mother-in-law Lali was cutting crops. An altercation arose regarding the boundary of agricultural land with the accused. Dharambir caught hold of her and Virender gave a kick blow on her stomach. As she was having a pregnancy of about 1½ months, some problem occurred and she was got admitted in General Hospital, Rewari. On the basis of statement made by the victim, FIR for the offences under Sections 313 read with Section 34 IPC was registered on 20.10.2016.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that though the applicant was examined by the prosecution in support of its case as PW8 but despite the same, the prosecution failed to establish its case against the accused beyond reasonable doubt. With regard to alleged abortion caused by the assault lodged by the accused, the medical evidence brought on record did not show any sign of attack. PW1 Dr. Vandana, PW6 Dr. Vijay Arpan and PW12 Dr. Baljeet Yadav testified that when the applicant was admitted in the hospital she was not bleeding and was normal. No injury was detected on her abdomen. Even the Investigating Officer could not collect any material as to why no complaint was made by the applicant to the police upto 16.10.2016. Even on 17.10.2016, the applicant did not make any complaint to the police despite the fact that there was a Police Post in the close vicinity of her village. The detection of blood and reporting of abortion was only on 18.10.2016. All this while, the applicant did not have any sign of miscarriage. Therefore, it cannot be concluded that the miscarriage suffered by the applicant on 18.10.2016 was result of any assault on 14.10.2016.

Neither in the initial complaint submitted by the applicant nor at the time of her medico-legal examination, there was any mention that the accused were aware about the pregnancy of the applicant. For the first time, this fact was

brought on record by the prosecution when the applicant and her mother Lali Devi made statement in the Court to that effect. Apparently, an attempt had been made to improve upon the version of the prosecution as regards causing of miscarriage or the accused having been aware of the factum of pregnancy.

It may be worthwhile to mention here that there was a dispute between the parties regarding the boundary of the land and at the relevant time the accused were using a JCB for levelling their fields. The presence of JCB at the spot was admitted by the applicant and also by the Investigating Officer. This version of the defence was found by the learned trial Court to be more probable than the prosecution version.

In view of the above, no fault can be found with the impugned judgment of acquittal passed by the learned trial Court whereby respondents No.2 and 3 stood acquitted of the charges against them.

The application is without any merit and, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

November 14, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No