

CRM-A-490-MA-2014

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

CRM-A-490-MA-2014 (O & M)

Date of Decision:04.07.2018

Salochna Devi

... Petitioner

Versus

Suresh Kumar, ASI and others

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. J.S.Cooner, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Salochna Devi has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondents-ASI Suresh Kumar and others, challenging the impugned judgment dated 06.02.2014 passed by learned Judicial Magistrate Ist Class, Ambala, vide which respondent Nos.1 to 4 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 there is sufficient material on record to warrant the conviction of respondents No.1 to 4. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that a complaint was filed against ASI Suresh Kumar, HC Shamsher Singh, Gurmail Singh and Gurmail Singh

CRM-A-490-MA-2014

alias Golu under Sections 392, 395, 447, 506, 511, 34 and 120-B of IPC.

The brief facts of the complaint, as noted down by learned trial Court in the impugned judgment, are as under:-

“2. Brief facts of the present complaint are that the complainant is a resident of village Rattanheri, P.S.Mahesh Nagar, Ambala Cantt. District Ambala and she belongs to respectable family and having grown up children, one of her sons is a Lambardar of the village. Her husband is running a general Kariana Store in the same village and earning his livelihood from the shop and also sells the Milk as she is having Buffaloes. On 22.01.2004, at about 11.00 P.M., when the husband of the complainant had gone to meet her daughter at village Yakopur, Distt. Yamuna Nagar and who was to return on next day i.e. 23.1.2004 as he was having some personal work with his relative on 22.01.2004 at about 11.00 p.m. there was telephone call as the telephone connection was in the room of the husband of the complainant where he used to sleep, she came to attend the call after opening the lock of the room as there was none in the room to attend the telephone call. As soon as complainant opened the lock of the door for attending the call, suddenly 11-12 persons entered into the room forcibly without her consent and were in the police Uniform with arms and sticks (dandas), they did not show any order of any superior authority and did not call any male member of the family or any neighbourer and threatened the complainant if she will try to make any noise then she will be finished for ever and they had pointed out the pistol towards her to put the complainant under threat of her life and all the accused mentioned above and other police official who were accompanying them started breaking the locks of the Almirahs and started removing the articles lying in the Almirahs. All the accused have taken away forcibly by using the criminal force

CRM-A-490-MA-2014

and snatched the following articles:

- i) 4 Tolas gold Bangles.*
- ii) 2 Tolas gold (Haar) Necklace*

and removed the rings (2) from the hands of the complainant weighing approximately one Tolas. These ornaments were presented to the complainant by the father-in-law of the complainant at the time of marriage of the complainant and also taken away the ₹15,000/- cash at Gun point and the complainant could not make any noise as she was put under threat of life, these incidence was seen by their neighbourer and his wife namely Jamuna s/o Sh. Chhaju Ram and Chhoti W/o Sh. Jamuna and her family member, while leaving the house one of the police officer left his hand stick (Danda) which is still in the possession of complainant. The complainant could identify the two of the police officials who were known to the complainant as they have visited their shop for purchasing daily use articles, wherever they used to come on patrolling duty and two accused could be identified as they belonged to same village and all these accused made a conspiracy to make the wrongful loss of above mentioned articles by putting the complainant into fear of death by all the accused armed with deadly weapons. The complainant informed her husband through telephone who came early in the morning on next day and searched the Almirah in which all valuable and cash was kept by the husband of the complainant. On checking, the complainant and her husband came to know regarding the missing of above said ornaments and cash and could judge the loss suffered and caused by the accused at Gun point. On same day i.e. 23.12004, the complainant went to the police station Mahesh Nagar, Ambala Cantt with her husband for informing the SHO, regarding this occurrence but they detained the husband of complainant and a false case was got registered against her husband who was later on released

CRM-A-490-MA-2014

on bail. The complainant along with her husband approached the S.P.Ambala against the wrongful act of the police station official Mahesh Nagar and he assured that after enquiry a proper action will be taken against the wrong doer but no such action has been taken by the police as the political rivalry in the village, police is acting on the influence of other two accused who belong to same village and having good influence over the police and local administration. All the accused have committed the offence under Sections 392, 395, 447, 506, 511, 34 and 120-B of IPC, while doing criminal act. Hence, the present complaint.”

On the basis of preliminary evidence, respondent Nos.1 to 4/accused were summoned to face trial under Sections 392, 447, 506 and 120-B of IPC.

In pre-charge evidence, complainant herself appeared into the witness-box as CW 1 besides examining Mangat Ram as CW 2 and Kanta Rani as CW 3. Thereafter, respondent Nos.1 to 4/accused were charge-sheeted under Sections 120-B, 392, 447 and 506 of IPC, to which they pleaded not guilty and claimed trial.

In after charge-evidence, the complainant examined herself as CW 1 besides examining Kanta Rani as CW 2 and Mangat Ram as CW 3. Thereafter, in the statements under Section 313 Cr.P.C., the accused denied all the incriminating evidence against them and pleaded their innocence. In their defence, the accused examined DW 1 EHC Ram Pal, DW 2 Jagir Singh, DW 3 Hari Singh and DW 4 Sohan Lal. Thereafter, learned defence counsel closed the evidence on 06.02.2014.

CRM-A-490-MA-2014

Learned trial Court, after appreciating the evidence, acquitted the accused-respondent Nos.1 to 4 vide impugned judgment dated 06.02.2014.

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

I have heard learned counsel for the applicant and have gone through the record.

Perusal of the record shows that the findings given by learned trial Court are as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. 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.

Firstly, there is no independent corroboration to the case of the complainant. CW 1 is the complainant herself and CW 3 Mangat Ram is the husband of the complainant. The trial Court has also held that CW 2 Kanta Rani is also relative of the complainant. The trial Court has not relied upon the statement of the complainant. As per the complainant, Jamuna Ram and Kanta Rani were already in the house of the complainant. The trial Court held that it is very surprising to note that these people were there in the house of the complainant at 11.00 P.M. and no reason has been mentioned regarding the same. Further, on the date of occurrence, FIR No.18 was registered against the husband of the complainant under the Excise Act. It is also in the evidence that there is a motive to file the

CRM-A-490-MA-2014

complaint against accused Nos.3 and 4 as accused No.3 namely Gurmail Singh contested the election for the post of Sarpanch against the husband of complainant in the year 2000 and husband of the complainant had been defeated and accused No.4 namely Gurmail Singh @ Golu was the polling agent of accused No.3. Otherwise also, if 11-12 persons will come to the house of the complainant, the entire village will come to know regarding the occurrence, but no independent witness has been examined. It is also on the record that there are so many cases against Mangat Ram, husband of the complainant under the Excise Act etc. as he used to sell the liquor. There is nothing on record as to whether any representation has been made to the higher police authorities or any other authority. There is no mention regarding the stolen property. In a criminal case, the complainant is to prove the case beyond doubt. The trial Court has rightly held that in the present case, a reasonable doubt exists in the case of the complainant.

From the perusal of the record, I find that after scrutinizing the evidence and appreciating the evidence in right perspective, learned trial Court has correctly given the findings and acquitted accused-respondents. In view of the above discussed evidence, I find that the impugned judgment dated 06.02.2014 passed by learned Judicial Magistrate Ist Class, Ambala is correct, as per evidence and law 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.

04.07.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No