

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

CRR-125-2013

Date of decision:-8.8.2018

Dharambir

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Deepa Jain, Advocate for
Mr.Yash Dev Kaushik, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 20.12.2012 passed by learned Additional Sessions Judge, Palwal vide which he had dismissed an appeal against judgment of conviction dated 4.11.2011 and order of sentence dated 7.11.2011 passed by Additional Chief Judicial Magistrate, Palwal, vide which he had convicted accused Dharambir for the offences under Sections 323 and 354 IPC and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.1,000/- and in default thereof, to further

undergo simple imprisonment for fifteen days for the offence under Section 323 IPC and to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for fifteen for the offence under Section 354 IPC. Both the sentences were ordered to run concurrently.

The accused-convict – Dharambir, who is the petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence passed by Additional Chief Judicial Magistrate, Palwal and judgment in appeal passed by Additional Sessions Judge, Palwal be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story are that the complainant Pushpa Devi wife of Sh.Ram Parshad, resident of Nai Basti, Samshabad, Tehsil Palwal, District Faridabad had brought a criminal complaint under Sections 148, 323, 452, 354, 506, 341 & 504 read with Section 149 IPC against the accused Dharambir, Bhawani Shankar, Mahesh Chand, Mukesh, Smt.Mamta and Om Dutt on the allegations that her husband Ram Parshad has been working as a Teacher at Hindu Senior Secondary School, Ballabgarh; that on 11.8.2004 at about 8:00/8:30 p.m. when she was all alone at home, then accused Dharambir entered her room with wrong intention; that Bhawani Shankar also followed him; that both of them started doing obscene acts with her; that they hugged her; that Dharambir caught hold of her breast, whereas Bhawani Shankar put her on the bed after pulling her hairs; that in the meanwhile, her husband Ram Parshad arrived at the spot. According to

the complainant, she had raised noise, as such, accused ran away from the spot. However, after some time accused Dharambir and Bhawani Shankar accompanied by their co-accused, namely, Mahesh Chand, Mukesh, Mamta and Om Dutt again reached their home and they started assaulting her husband; that at that time Dharambir and Bhawani Shankar were armed with iron rods, Mukesh with a knife, Mamta and Om Dutt with sticks; that Bhawani Shankar had given an iron rod blow to Ram Parshad hitting him on head, Dharambir gave an iron rod blow hitting Ram Parshad on his hands, Om Dutt and Mukesh gave stick blows to Ram Parshad; that when the complainant intervened, then Dharambir gave an iron rod blow to her hitting her on head, Bhawani Shankar gave an iron rod blow hitting her on legs, whereas Mukesh and Mamta took her in a grass; that the complainant and her husband were given severe beatings; that Mukesh had put a knife on the neck of Ram Parshad threatening to kill him. According to the complainant, she and her husband raised noise, hearing which, another person by the name of Ram Parshad and Parmod came there and rescued them from the clutches of accused; that the accused left the spot giving threat to kill the complainant and her husband; that subsequently the complainant and her husband went to Police Post Camp, Palwal but no action was taken. Therefore, the complainant had filed a private complaint in the Court of law.

After recording the preliminary evidence, the accused were ordered to be summoned to face trial under Sections 323, 354, 452 and 506 read with Section 149 IPC vide order dated 15.4.2010. Subsequently, the complainant made a statement in the Court on 11.6.2011 that she did

not want to prosecute Bhawani Shankar, as such, proceedings against him were dropped.

During the course of pre-charge evidence, the complainant Pushpa Devi got her own statement recorded as CW1 and her husband Ram Parshad has appeared as CW2. They placed on record copy of medico legal report of Ram Parshad as Mark-A and copy of medico legal report of Pushpa as Mark-B.

After hearing arguments, charge for the offences under Sections 323, 354 and 506 IPC was framed against accused Dharambir, whereas charge for the offences under Sections 323 & 506 read with Section 34 IPC was framed against the remaining accused, to which, they pleaded not guilty and claimed trial.

During post charge evidence, accused subjected CW1 Pushpa Rani, CW2 Ram Parshad to further cross-examination, whereas the complainant had examined CW3 Dr.Tek Chand, who proved copy of medico legal report of Ram Parshad as Ex.CW3/A and copy of medico legal report of Smt.Pushpa as Ex,CW3/B.

With that the post charge evidence of the complainant stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

In defence evidence, the accused tendered copy of compromise dated 24.9.2004 as Ex.D1 and copy of judgment dated

15.2.2011 as Ex.D2.

After hearing arguments, learned Additional Chief Judicial Magistrate, Palwal acquitted accused Mahesh, Mukesh, Mamta and Om Dutt, whereas convicted and sentenced the accused Dharambir as mentioned supra.

Feeling aggrieved, the complainant Pushpa Devi had filed an appeal against acquittal of Mahesh, Mukesh, Mamta and Om Dutt, whereas Dharambir accused convict had filed appeal with regard to his conviction and sentence. Both the appeals filed by the complainant Pushpa Devi and accused Dharambir were dismissed by learned Additional Sessions Judge, Palwal vide a consolidated judgment dated 20.12.2012, which left petitioner – accused Dharambir aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the revision petition.

In the instant case, the complainant has been able to prove her case against Dharambir by bringing sufficient oral and documentary evidence, in the form of her own statement appearing as CW1 and that of her husband as CW2. Both of them deposed in a natural and convincing manner as regards accused Dharambir. Although both these witnesses were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material part. A few minor contradictions and variations in their statements do not go to the root of

matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance.

No satisfactory or plausible explanation could be given by Dharambir for his alleged false implication in this case. Further the complainant Pushpa Devi would not have invited social stigma on her name without any rhyme or reason. Since the incident had happened at the house of the complainant, the complainant and her husband were the best witnesses to depose in that regard. The medical evidence duly corroborates the ocular evidence.

The prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt. The courts below were justified in reaching such conclusion. The conviction of the accused for such offences does not call for any interference.

The learned counsel for the revision petitioner has prayed that sentence of the accused – convict be reduced. The Courts below have been quite lenient with the petitioner with regard to the quantum of

sentence imposed upon him. No scope for reduction in the sentence is made out keeping in view the nature of allegations against him. For that reason, no leniency can be shown to the accused – convict. The request in that regard is declined.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision petition is found to be without any merit and is dismissed accordingly. C.J.M. Palwal to issue re-arrest warrants of the Revisionist to make him undergo the remaining sentence.

8.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No