

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-A-1041-2019 (O&M)

Date of Decision:-5.9.2019

Sushila

... Applicant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Hemant Bassi, Advocate for the applicant.

GURVINDER SINGH GILL, J.(Oral)

1. The applicant has approached this Court challenging order dated 16.1.2019, whereby the learned Court of Judicial Magistrate 1st Class, Hansi, District Hisar has acquitted the accused Baljeet and Dharambir in respect of the charges framed against them for offences under Section 323, 342, 354 and 506 read with Section 120-B of Indian Penal Code.
2. A few facts, necessary to notice for disposal of this appeal are that a private complaint was filed at the instance of Sushila, wherein it has been alleged that she was married to Virender in the year 1999. She was thrown out of her matrimonial home in the year 2006. Subsequently her husband, who was HIV+ve, died in the year 2012. It is alleged that on 1.6.2014 her father-in-law called her to matrimonial home while representing that 'Sawa-mani' religious function was to be performed and while acceding to his request she went to her matrimonial home in Village Sisai Kali Rawan. However, when

she reached there her brother-in-law Baljeet attempted to commit rape upon her and tore her clothes and also gave beatings to her. It is further alleged that her other brother-in-law Dharambir also caused injuries to her. She was allegedly confined illegally in a room and was threatened not to raise any alarm failing which she would be killed.

3. After summoning of the accused, the complainant herself stepped into witness box and also examined CW-2 Chander Singh and Dr. Chander Shekhar (Medical Officer) as CW-3. The accused in their defence also led evidence in the shape of DW-1 Satyawar, DW-2 Milap Singh and DW-3 Renu.
4. The learned trial Court, upon thrashing the evidence, reached at a conclusion that the evidence led by the complainant is not sufficient enough and does not substantiate the allegations. So much so, there was a delay in the medical examination of the complainant inasmuch as while the occurrence is stated to have taken place on 1.6.2014, but the medical examination took place on 4.6.2014. There is nothing on record to show as to what prevented the complainant during these three days to get herself medically examined. Further, in the present case, the accused in their defence have examined DW-3 Renu, who is none else, but the daughter of the complainant and who has also stated in favour of the accused. Rather, the said daughter categorically deposed that her mother is a liar. Still further another submission that has been noticed by the trial Court is that the complainant herself is HIV+ve and in these circumstances it is unlikely that the accused, who would also be knowing about this fact, more particularly since complainant's husband had died being HIV+ve, would make any attempt to commit rape upon the prosecutrix and incur the risk of contracting the said disease.

5. This Court does find any infirmity or any perversity in the findings as recorded by the trial Court as regards the acquittal of the accused. There is no infirmity in the impugned judgment and the same is hereby upheld. Consequently, the application seeking leave to appeal is dismissed and so is the appeal against acquittal.

5.9.2019

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No