

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

234

CRR-2391-2018 (O & M)
Date of Decision:10.01.2019

Dhapa Devi

...Petitioner

Versus

Mahabir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

MANOJ BAJAJ, J.

Complainant-Dhapa Devi has challenged the judgment of acquittal dated 18.08.2015 passed by the Judicial Magistrate Ist Class, Charkhi Dadri in case FIR No.186 dated 15.06.2011 under Sections 323, 427, 447, 506 and 34 of the Indian Penal Code ('IPC' – for short), Police Station Sadar Charkhi Dadri, which has been further upheld by the Appellate Court vide judgment dated 09.02.2018.

As per the allegations in the FIR, on 07.06.2011 when the complainant went to her fields she saw Mahabir, Pawan, Ishwanti and Varsha were causing damage to the tubewell and pipeline. Upon her objection, Ishwanti caught hold of her and Mahabir gave fist blows on her left shoulder. Pawan was attributed a leg blow on her left hip and Varsha was attributed twisting of her finger and push. It is alleged that Vedo Devi, her daughter-in-law reached there and rescued her.

After investigation, the challan was filed only against Mahabir and Pawan for the offences punishable under Sections 323, 427, 447, 506

and 34 IPC. After commencement of trial, prosecution in all examined 9 witnesses and thereafter the statement of accused under Section 313 Cr.P.C. was recorded. Learned trial Court after examining the material on record and evidence proceeded to acquit the accused - Mahabir and Pawan.

Dissatisfied with the judgment of acquittal dated 18.08.2015, complainant carried an appeal before the Appellate Court and the same was dismissed through impugned judgment dated 09.02.2018.

Learned counsel for the petitioner has been heard and with his assistance I have gone through the judgments passed by the Courts below.

Learned counsel for the petitioner has argued that the evidence of the prosecution was sufficient, which successfully brought home the guilt of accused/respondent Nos.1 and 2. It is argued that complainant is injured eye witness who was examined as PW-4. Besides, the evidence of other eye witnesses i.e. PW-2 Vedo Devi, PW-6 Balwan Singh and PW-7 Vinod Kumar, further supported the prosecution case. According to the learned counsel for the petitioner, the charges against accused were established beyond any doubt.

Complainant - Dhapa Devi was examined as PW-4 and this Court finds that her evidence is full of material contradictions to the medical evidence as well as the version given in the FIR. The Courts below have minutely examined the testimony of the complainant to return a categorical finding that there are material variation in her statement and the MLR. Similarly, Vedo Devi - PW-2 clearly stated in her statement that she reached the spot after the occurrence had already taken place. Therefore, she is not the eye-witness of the alleged occurrence. The other witnesses namely

Balwan Singh and Vinod Kumar (alleged eye-witnesses) also stated in their

evidence that they were not present at the spot and no incident took place in their presence. Another eye witness PW-9 Ramphal had turned hostile.

It also needs to be noted that the alleged occurrence took place on 07.06.2011, whereas FIR was recorded after a gap of one week i.e. on 15.06.2011. The delay has also gone unexplained, which raises a serious doubt about the genuineness of the alleged occurrence.

This Court is of the considered opinion that the view adopted by the learned trial Court as well as the Appellate Court is based on correct appreciation of evidence and the Courts have rightly proceeded to extend the benefit of doubt to the accused while acquitting them.

In view of the above, no interference is called for.

Accordingly, this petition is dismissed.

10.01.2019

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No