

CRA-S-724-SB-2015

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

CRA-S-724-SB-2015 (O & M)
Date of Decision: 29.11.2019

Pushpa

... Appellant

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Johan Kumar, Advocate,
for the appellant.

Mr. Vijesh Sharma, DAG, Haryana.

HARNARESH SINGH GILL, J.

CRM-5130-2015

This is an application under Section 5 of the Limitation Act for condonation of delay of 23 days in filing the present appeal.

It is stated in the application that the present appeal was filed within limitation period, but because of objection raised by the Registry of this Court and while removing the said objection, delay of 23 days had occurred, which is not intentional on the part of the applicant-appellant.

The application for condonation of delay is duly supported by an affidavit.

Keeping in view the contents of the application, which are supported by an affidavit, the delay of 23 days in filing the present appeal, is condoned.

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The present appeal is directed against the judgment dated 16.10.2014 passed by the learned Additional Sessions Judge, Palwal, vide which respondent No.2-Inderjeet has been acquitted of the charges framed against him on the ground that the prosecution had failed to prove its case beyond the shadow of reasonable doubt.

As per the prosecution version, on 13.07.2011, complainant, Pushpa appeared in the police station Camp Palwal and moved an application against the accused regarding outraging her modesty and also beatings at the instance of accused persons and also using filthy language on her caste with the contents that she hails from village Taraka and belongs to Chamar caste. On 28.03.2011 at about 4/5.00 p.m., when she was coming back to her house after finishing her duty from Mahesh Hospital, Palwal, then on the way under Railway Bridge near Jeewan Jyoti School, 6-7 boys went around her alongwith their motor-cycles and started teasing her. Out of the abovesaid persons, Inderjeet son of Rajbir, caste Jat, resident of village Janachauli and his cousin brother Vikas son of Sukh Ram, resident of Krishna Colony, Palwal touched her breast and private parts. When she opposed their wrongful acts, accused Inderjeet put up a pistol on her neck with the threat that in case she raised any voice, then she would be killed. Accused Vikas snatched her bag containing money and other articles. She made a report regarding this act on 30.03.2011 in the police station, but accused persons started threatening her for getting back her complaint. As she refused to take back her complaint, on 20.04.2011 she was again stopped by accused Inderjeet and Vikas under the Railway Bridge and they

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started using filthy language against her and also misbehaved with her by uttering filthy remarks about her caste. They asked her to take back her complaint and in the event of not doing so, they threatened to kill her family members. She again refused to take back her complaint and the accused persons also manhandled her with kick and fist blows. She received kick blows on her abdomen, due to which her pregnancy of 1-1/2-2 months was terminated and the child was died in the womb. She had been operated upon because of the rupturing of her ovary tube. On the basis of the complaint submitted by the complainant, FIR under Sections 354, 343, 323, 506 and 34 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes Act, 1989 was registered.

After completion of investigation and necessary formalities, challan was submitted against respondent No.2, whereas the other accused-Vikas, was declared as juvenile.

Charges under Sections 294, 354, 392, 342, 323, 506 read with Section 34 IPC and Section 3 of the SC & ST Act were framed against respondent No.2-Inderjeet to which, he pleaded not guilty and claimed trial.

To prove its case, the prosecution had examined as many as eight witnesses.

Statement of respondent No.2 under Section 313 Cr.P.C. Was recorded, wherein he denied the incriminating material against him and pleaded false implication. However, he did not lead any evidence in his defence.

After taking into consideration the evidence on record, the trial Court vide judgment dated 16.10.2014, acquitted respondent No.2 of the

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charges framed against him.

Aggrieved of the judgment dated 16.10.2014, the present appeal has been filed.

The prosecution had examined as many as eight witnesses. PW 1 Vijay, who is brother-in-law of complainant-Pushpa (PW-2) appeared as PW-1 and other than the complainant's version, he deposed about miscarriage of foetus of Pushpa due to the injuries caused by the accused. However, he stated that he had not been present at the spot and had been told about the incident by the complainant.

Similarly, PW2-Pushpa stated that she belongs to Chamar caste and the accused persons had abused her in the name of her caste; that the accused had given her threats to kill and that accused Vikas had snatched her bag on 29.03.2011; that she had narrated the entire incident to her husband; that the next morning they had gone to the police station, but in vain; that again on 20.04.2011 at 6.00 p.m., accused Inderjeet and Vikas had threatened her to withdraw the case and when she had refused from doing so, the accused had given blows on her abdomen as a result whereof, the bleeding started and she had suffered a miscarriage; that later on she was operated upon in Mittal Nursing Home, Palwal, for her baby tube got damaged.

Similarly, Rajesh, husband of Pushpa, appeared as PW-5 and stated that Inderjeet had country made pistol and he had used derogatory remarks as 'Dhedh Chameri' against the complainant and accused Vikas was also with Inderjeet at that time.

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As noticed above, in defence, respondent No.2 did not lead any evidence.

After taking into consideration the evidence on record, respondent No.2 was acquitted of the charges framed against him by the trial Court by extending him the benefit of doubt. Hence, the present appeal.

I have heard learned counsel for the appellant and the learned State counsel and with their able assistance, have gone through the record of the trial Court which was requisitioned vide order dated 03.04.2019.

Learned counsel for the appellant has argued that while passing the impugned judgment, the trial Court has ignored the testimony of PW-1 Vijay and PW-2 appellant-complainant, Pushpa as there are specific allegations against respondent No.2, who had stopped her on her way back to him and used filthy language besides having put his hands on her private parts. It has been further argued that the statement of DSP Rajbir Singh that accused were not found innocent in enquiry and accordingly, challan was presented, was also ignored by the learned trial Court. It is further argued that the occurrence was witnessed by one Budh Ram Sharma, Deepak Sharma, Ami Lal and Mange Ram, who had rescued victim Pushpa from the clutches of respondent No.2, but the Investigating Officer had not arrayed them as witnesses.

After hearing the learned counsel for the appellant, I do not find any merit in the present appeal and the same is liable to be dismissed.

The occurrence took place on 28.03.2011 at 4.00 p.m. and duty time of appellant-Pushpa is from 9.00 a.m. to 4.00 p.m. and while at home,

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she did not narrate all this to her father-in-law, mother-in-law or to any of the family members and on the next date i.e. 29.03.2011, when the appellant came back from her duty, only then she had narrated all to her husband Rajesh. So there is an unexplained delay.

Even as per the the reports of the Deputy Superintendent of Police, no occurrence had taken place and accordingly, cancellation report was forwarded. DSP Rajbir Singh (PW-8) could not, in his testimony, state anything as to on what basis he had added the offences in the FIR.

As regards the appellant having been operated at Mittal Nursing Home, no record was placed on record, but record of Sri Sai Hospital had been placed on record.

The factum of snatching of bag and other articles or the alleged country made pistol, was not proved before the trial Court. No recovery in this regard was effected nor there is any eye-witness regarding the complainant having been rounded up by the accused on 28.03.2011 with the common intentions and to outrage her modesty. Still further, it was not proved on record that the occurrence had taken place at the public place.

In view of the above, I do not find any infirmity or illegality in the judgment passed by the learned trial Court, which may warrant interference by this Court in the present appeal.

Hence, the present appeal is dismissed.

29.11.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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