

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

CRA-S-1253-SB-2015(O&M)

Date of decision:-29.8.2019

Renuka Chaudhary

....Appellant

Versus

State of Haryana and another

....Respondents

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

Present : Mr.Ranbir Singh, Advocate
for the appellant.

Mr.Harkesh Kumar, AAG, Haryana.

Mr.Sidharth Grover, Advocate
for respondent No.2.

H.S. MADAAN, J.

Briefly stated, the facts of the case as per version of the complainant Pithy Chaudhary wife of Honey Chaudhary are that on 8.2.2010 at about 4:30 p.m. while she was working in the kitchen of her house and her mother-in-law Smt.Bishan Chaudhary was also there, they heard cries of daughter of the complainant, namely, Baby Aryaki, aged about five years; when the complainant and her mother-in-law came out of the kitchen, they saw that accused Renuka Chaudhary had trespassed into their house with an intention to kidnap Aryaki forcibly in order to murder her; the complainant and her mother-in-law tried to take

back the girl from Renuka Chaudhary, upon which she pushed the complainant saying that statements be got made from complainant's husband Honey Chaudhary and her brother Pinku regarding the Will of Nabheet Kalyan in their favour in the Court so that she might become owner of the property of Nabheet, otherwise she would kill daughter of complainant; saying so Renuka Chaudhary pressed the neck of Baby Aryaki and it was with great difficulty that complainant got Aryaki released from the clutches of Renuka; thereafter Renuka Chaudhary said that she had asked the complainant several times telephonically that Honey and Pinku should make statements in her favour in the Court but despite that they were not agreeable; Renuka Chaudhary threatened that she would kill Honey, Pinku and other family members like Nabheet Kalyan; that she further pointed out towards a yellow colour bag, which she was carrying in her hand stating that there was a pistol in the bag and since her father is an Advocate, he had told her to commit murder of any person and he would not allow anybody to harm her. According to the complainant, she got frightened and thereafter Renuka was sent out of their house with great difficulty, then door was bolted from inside as there was an apprehension that some persons accompanying Renuka Chaudhry would be there outside the house. The local police was informed. Formal FIR in the matter was registered.

The investigation in the case started, during the course of which, the Investigating Officer carried out spot inspection, collected call details of mobile phone of the accused, recorded statements of witnesses.

However, since till April, 2011, no effective action in the

matter had been taken by the police, the complainant Pithy Chaudhary filed a private complaint for the offences under Sections 364, 452, 506 read with Section 120-B IPC and 25 of the Arms Act against accused Renuka Chaudhary and her father Ranbir Singh on these very allegations contending that she had lodged FIR No.37 dated 8.2.2010 under Sections 364, 511, 452 and 506 IPC as well as under Section 25 of the Arms Act but the police had not initiated any action against the accused; representations made to the higher authorities had not resulted in any positive result; that the Investigating Officer had not recorded the statements of witnesses who were present at the spot at the time of occurrence as well as out of the petrol pump, who had witnessed accused Renuka entering house of the complainant and also when she left the house of complainant while giving abuses to the complainant and her family members. Therefore, she was compelled to file the private complaint.

The complaint was filed on 6.4.2011. The proceedings in the complaint case took place. When it was fixed for arguments on the point of summoning of accused, an application under Section 210 Cr.P.C. was filed for staying the proceedings of the case by applicant – Renuka Chaudhary. The complainant did not submit any reply to the application. The trial Magistrate dismissed the complaint qua accused No.1 Ranbir Singh, whereas summoned accused No.1 Renuka Chaudhary for the commission of the offences under Sections 452, 364 and 506 IPC.

Thereafter, JMIC, Karnal committed the case to the Court of Sessions vide order dated 24.12.2011 as offence under Section 364

IPC was exclusively triable by the Court of Sessions.

Several revision petitions were filed by both the parties in the High Court. However, vide directions issued in Criminal Revision No.2797 of 2012 dated 3.7.2013 by this Court, the complaint case was ordered to be tagged with the police challan. It was further directed that the trial Court would proceed further as per provisions of Section 210 Cr.P.C. In the meanwhile, the investigating agency had collected the statements made by witnesses in the complaint case, summoning order passed by the trial Court and on completion of other formalities, challan was prepared and filed in the Court.

The police chalan and the criminal complaint were tried together since they had arisen out of the same incident.

Charge for the offences under Sections 452, 364 read with Section 511 IPC and Section 364 read with Section 506 IPC was framed against the accused by the trial Court of Additional Sessions Judge, Karnal, to which, she pleaded not guilty and claimed trial and the case was fixed for prosecution evidence.

During the course of its evidence, the prosecution examined as many as eight witnesses.

PW1 ASI Sultan Singh, who had recorded formal FIR Ex.PB after making endorsement Ex.PA/1 on ruqa Ex.PA received from ASI Dharam Pal and thereafter had sent special reports to the concerned officers had deposed in that regard.

PW2 SI Baljit Singh, who had partly investigated the matter and had filed challan against the accused in the Court had testified in that respect.

PW3 ASI Dharam Pal to whom complainant had submitted application Ex.PA on 8.2.2010 while he along with other police officials was present at Chaudhary Petrol Pump, Taraori in connection with patrolling deposed that he had appended his endorsement Ex.PA/2 below the application Ex.PA and sent the same to the police station for registration of FIR and thereafter visited the spot and carried out investigation; thereafter the investigation was handed over to the then SHO Police Station, Taraori.

PW4 Pithy Chaudhary – complainant deposed as per her version in the FIR and the complaint.

PW5 Gian Chand and PW6 Hukam Singh had provided the ocular evidence supporting the prosecution case.

PW7 Inspector Manoj Verma, who had carried out investigation in this case partly deposed in that regard.

PW8 Bishan Chaudhary, mother-in-law of the complainant supported her version on material points while giving eye-witness account of the incident.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against her were put to such accused but she denied the allegations contending that she is innocent and has been falsely implicated by the police at the instance of complainant and her relations, who are close to Sh.R.S. Dalal, the then DGP, Haryana only to put pressure upon her to withdraw the criminal and civil litigation pending against husband, brother and maternal uncle of the complainant; that complainant's relations namely

Ram Kumar, Om Lata, Pardeep, Honey Chaudhary had forged a Will in connivance with their Advocate after death of her husband regarding which she had got compared the signatures of Nabheet and as per report of Forensic Expert, the signatures on the Will were forged and for that reason the complainant had lodged a false FIR and filed false complaint against her in the said case; that the police had found the truth and did not want to take action against her. She further stated that Pithy Chaudhary had also lodged similar complaint to the police on 18.1.2011, which was found to be false and proceedings under Section 182 Cr.P.C. were initiated against Pardeep Chaudhary, which are pending adjudication; that Pardeep Chaudhary was also declared a proclaimed offender by the Court in a NDPS case and has been found guilty in another case. She further stated that the other case filed by the complainant party against her relations was also found false.

During her defence evidence, the accused examined Sh.Satish Kumar, Ahlmad the Court of CJM, Karnal who proved the calender Ex.DW1/A under Section 182 Cr.P.C. filed against Pradeep Chaudhary. Besides that the accused also tendered documents Ex.DD to to Ex.DK in evidence.

After hearing arguments, learned Additional Sessions Judge, Karnal concluded that the prosecution had succeeded in establishing the guilt of the accused for commission of offence under Sections 452 and 506 IPC though it had failed to prove charge under Sections 364 read with Section 511 IPC, as such accused Renuka Chaudhary was convicted for the offences under Section 452 and 506 IPC, whereas she was acquitted of the charge for the commission of

offence under Section 364 read with Section 511 IPC by giving her benefit of doubt.

After hearing the accused/convict on the point of quantum of sentence and considering the facts and circumstances of the case, she was granted benefit of probation under Probation of Offender's Act and she was ordered to be released on furnishing probation bonds in the sum of Rs.20,000/- with one surety in the like amount for a period of one year.

The accused/convict felt aggrieved by the said judgment dated 16.10.2014 and had filed an appeal before this Court, notice of which was given to the complainant as well as State of Haryana.

I have heard learned counsel for the parties besides going through the record.

It may be mentioned here that during pendency of the appeal, the appellant/accused as well as the complainant have entered into a compromise and copy of the compromise deed dated 15.11.2018 has been placed on record. A prayer has been made for quashing of FIR on the basis of compromise. The matter was referred to the trial Court for recording statements of the parties. As per report received from Additional Sessions Judge, Karnal, statement of complainant Pithy Chaudhary and accused Renuka Chaudhary have been recorded, which have been forwarded to this Court. Both of them have admitted the compromise stating that the judgment of conviction and sentence passed against Renuka Chaudhary be set aside. Learned counsel appearing for the respondent – complainant has admitted the factum of compromise stating that he has no objection, if the appeal is accepted.

I have examined the case with the assistance of learned counsel of the appellant, learned counsel of the complainant and the State counsel and on merits also and I find that the conviction against the appellant cannot be maintained due to various legal infirmities and lacunae in the prosecution case. Furthermore, since the dispute was between the relatives, which has since been sorted out and to ensure that no bad blood remains between them and they live in peace and harmony in future, the ends of justice demand that judgment of conviction passed against Renuka Chaudhary be set aside.

Learned counsel for the appellant has referred to judgment dated 1.5.2019 passed by a Co-ordinate Bench in CRM-M-11097-2019 having title **“Rahul Versus State of Haryana and another”** in which case the accused was convicted for the offence under Section 379-A IPC and sentenced to undergo rigorous imprisonment for five years by the trial Court, the appeal against that had been filed; in the meanwhile the parties had compromised the matter, which was found to be genuine and the FIR along with other proceedings were quashed.

Learned counsel for the appellant has further placed reliance upon **Sube Singh Sube Singh and another Versus State of Haryana and another, 2013(4) RCR(Criminal) 102**, by a Division Bench of this Court wherein while dealing with the aspect of compounding of offences at stage of appeal when the matter had been compromised between the parties, it was observed that the High Court is vested with unparallel power to quash criminal proceedings at any stage to secure ends of justice.

Next judgment referred to was **Dr.Arvind Barsaul etc.**

Versus State of Madhya Pradesh & Another, 2008(2) RCR(Criminal)

910 by the Apex Court in which while dealing with a case when a husband had been convicted on complaint by wife under Section 498-A IPC and appeal against conviction was pending, however, the parties had entered into compromise, the proceedings were quashed though offence was not compoundable.

Even otherwise, there are several infirmities and lacunae in the prosecution case, which have not been appreciated properly by the trial Court.

Firstly there has been unexplained delay in reporting the matter to the police. The incident as per the prosecution story took place on 8.2.2010 at about 4/4:30 p.m., whereas the matter to the police was reported at about 9:50 p.m. by submitting written application Ex.PA. The explanation given for the delay is that the complainant had informed her husband telephonically and he had returned home at 8:30 p.m.; thereafter the police was called and application Ex.PA was submitted. This is not very convincing explanation more particularly when a police party had been on duty nearby and under the circumstances the police should have been informed at the earliest. Even if, it is taken that the complainant had informed her husband telephonically, then why it took him about four hours in reaching home and then drafting the application Ex.PA calling the police and giving it to the police officer has not been explained satisfactorily. The whole thing seems to be surrounded by suspicion.

Secondly, the story set up by the prosecution itself is improbable and unconvincing. Accused Renuka Chaudhary going to

house of the complainant, trying to take away her daughter when so many persons were there at the petrol pump near the house of complainant side, allegedly for the reason that she wanted the complainant to prevail upon her husband and brother not to depose in the Court regarding Will does not sound convincing. The case of the prosecution is that the accused was carrying a bag at that time and she threatened that a pistol was there in the bag but it is not case of the prosecution that she had taken out the pistol and threatened the complainant, her mother-in-law or the child. After the accident, no attempt is said to have been made to catch hold of the accused and hand her over to the police and it is quite strange to believe that she simply walked into the house, tried to take away daughter of the complainant and when the complainant and her mother-in-law resisted and took away the minor daughter from the custody of the accused, she simply walked away giving threats to the complainant and her family members. The whole story appears to be highly unrealistic and is difficult to believe.

Thirdly, during the course of investigation, the police had not recovered any bag or pistol from the possession of the accused, which also puts a question mark over the truthfulness of the allegations in that regard made by the complainant.

Fourthly, as the prosecution story goes, the accused had tried to strangle the daughter of complainant but then said daughter was not got medically examined after the incident to show that there were marks on her neck showing that an attempt to strangle her had been made. This also amounts to loophole in the prosecution story.

Fifthly, the two sides had been involved in the protracted

litigation, which could be the motive for registration of the FIR against the accused and filing of private complaint by complainant against the accused.

Sixthly, in the private complaint, father of Renuka Chaudhary namely Ranbir Singh was impleaded as an accused but then he had not been summoned to face trial, that means story of complainant with regard to Ranbir Singh was disbelieved.

During the trial, the trial Court had acquitted accused Renuka Chaudhary for the offences under Sections 364 read with Section 511 IPC, which means that story set up by the complainant with regard to her attempt to kidnap the minor girl with intention to murder her had not been accepted. The only offences for which the accused has been convicted are under Sections 452 and 506 IPC i.e. for house trespass and criminal intimidation, therefore major part of the story of the prosecution has been disbelieved by the trial Court in light of the factual position arising from analysis and appreciation of evidence led by the prosecution and the accused as well as stand taken by the accused in her statement under Section 313 Cr.P.C.

After the trial, learned Additional Sessions Judge, Karnal came to the conclusion that accused had trespassed in the house of complainant and had criminally intimidated her. A person going all the way just to held out threat is difficult to believe.

One more thing to be noticed is that according to the complainant, accused had given her several threats telephonically. During the course of investigation, call details of mobile phone of the accused had been collected as stated by PW7 Inspector Manoj Verma

but nothing incriminating from such call details is shown to have come out of the same.

Thus the prosecution had been unable to prove its charge against the accused for the offences under Sections 452 and 506 IPC even and conviction of accused for such offences is not justifiable. On merits also, the appeal deserves to be accepted. The appellant is acquitted of the charge for which she has been held guilty and convicted vide the impugned judgment in view of the settlement arrived at between the parties as well as on merits.

The appeal stands allowed accordingly.

Necessary intimation be sent to the quarter concerned.

29.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No