

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17829-2015 (O&M)

Date of Decision: May 15, 2020

Gurnam Singh

... Petitioner

VERSUS

State of Punjab and another

... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present Mr. Gursimran Singh Bawa, Advocate for
Mr. Ramdeep Partap Singh, Advocate
for the petitioner.

Mr. Davinder Bir Singh, D.A.G., Punjab.

Mr. Dheeraj Mahajan, Advocate
for respondent No. 2.

JAISHREE THAKUR, J.(Oral)

1. That the petitioner is aggrieved against the order of Additional Sessions Judge, Gurdaspur dated 07.05.2015 vide which the order of the trial Court has been set aside with a further direction to the petitioner to appear before the trial Court and face trial.

2. In brief, the facts of the case are that a complaint dated 21.07.2009 under Sections 452, 354, 376, 511/506 IPC was filed against the petitioner by one Narinder Kaur (since deceased), wife of respondent No.2. In the complaint, it was submitted that the wife of respondent No.2 was residing along with her husband and children in the house of the petitioner as a tenant for the last 12-13 years. On 30th of July, 2009 around 10.00 AM, when the

wife of respondent No.2 was alone at home and doing her domestic works then the petitioner entered the house forcibly, caught her from her arms and was about to take her inside the house upon which she made an effort to rescue herself. It was alleged that the petitioner took out a knife from his inner pocket and threatened to murder her and dragged her on the floor as a consequence she suffered injuries on her neck and arms . It was alleged that during this period the petitioner also tore the clothes of the complainant and made an effort to rape her. She managed to escape and meanwhile her brother-in-law Buta Singh came to the house and the petitioner fled away.

3. The petitioner was summoned to face trial after pre-charge evidence had been led under Sections 452, 323, 354 IPC by order dated 06.01.2011. The petitioner faced trial and was discharged by the JMIC, Gurdaspur by an order dated 17th July, 2014. While discharging the petitioner by the aforesaid order, the trial Judge noted that no complaint had been moved to any authority regarding the occurrence, nor was there any evidence produced from the locality. The only eye-witness was one Buta Singh, who was a near relative of the complainant. It is worthwhile to note that the complainant- Narinder Kaur expired during the pendency of the case and the matter was pursued by her husband- Sukhbir Singh. Aggrieved against the order, a criminal revision was filed, which was allowed and the case was remanded back to the JMIC to proceed in accordance with law.

4. Learned counsel appearing on behalf of the petitioner assails the impugned order in view of Section 378(4) of the Criminal Procedure Code on the ground that only an appeal can be filed before the High Court against the order of acquittal and the revision petition would not be maintainable. Apart from the grounds of maintainability, the petitioner also argues that the

respondent No. 2 herein is neither an eye-witness and after the death of his wife, he would not be competent to file the revision petition.

5. Per contra learned counsel appearing on behalf of the respondent argues that there is enough evidence available on the record by way of an MLR which was conducted upon the deceased showing abrasions on her body apart from the star witness namely Buta Singh who saw Gurnam Singh- petitioner herein dragging the victim on the floor. It is argued that the witness- Buta Singh had clearly stated that he saw Gurnam Singh who had a knife in his pocket and he ran away on seeing him. Therefore, the Additional Sessions Judge, Gurdaspur rightly set aside the order of discharge and directed the trial Court to proceed in accordance with law.

6. I have heard learned counsel for the parties and after going through the file, this Court is of the opinion that there is no valid reason for setting aside the order as passed by the Additional Sessions Judge, Gurdaspur. However, this argument is not sustainable since the said section pertains to an order of acquittal whereby the petitioner in the instant case was discharged. Dr. Raj Bassi had stepped into the witness box as CW-1 and had proved the MLR of the deceased as Ex.C-1/A. Whereas Buta Singh had stepped into the witness box as an independent witness and clearly stated that he saw Gurnam Singh dragging Smt. Narinder Kaur (the deceased) on the floor, apart from stating that he had a knife. The said statement is in consonance with the statement recorded by the complainant herself before she died. The argument as raised that there was a delay in getting the medical conducted stands explained by the respondent. In fact

the instant complaint filed pertains to 30th July 2009 whereas the medical was conducted on the next day itself. The Additional Sessions Judge, Gurdaspur rightly came to the conclusion that the evidence of Buta Singh could not be discarded simply because he was a close relative of the injured.

The incident was duly informed to the police on the 30th of July 2009 itself, however, no action was taken thereon which led to an application being filed to the police station to take necessary action. Therefore, since there is enough material available on the record, this Court has no hesitation in dismissing this petition and upholding the order dated 07.05.2015 so passed by the Additional Sessions Judge, Gurdaspur.

7. Accordingly, the present petition stands dismissed. However, any observation made herein would have no bearing on the merits of the instant case. Parties are directed to appear before the trial Court on 28th July, 2020.

May 15,2020

seema

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No