

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.26070 of 2019(O&M)
Date of Decision: 23.01.2020

Sarita

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Sanjiv Kodian, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.S. Chahal, Advocate
for the complainant.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner in her second attempt seeks grant of regular bail in case bearing FIR No.246 dated 30.09.2016 registered under Sections 302, 148, 149, 323, 452 and 506 IPC at Police Station Salhawa, District Mahendergarh.

[2]. Earlier prayer of the petitioner was got dismissed as withdrawn vide order dated 11.07.2018 passed in CRM-M No.29974 of 2017.

[3]. As per prosecution case, the occurrence took place on 28.09.2016, when a jeep came to be halted in front of the house of the complainant which was being driven by Om Parkash Makdana uncle of Sarita and 3-4 persons were sitting in the jeep. On seeing the jeep, the complainant bolted the door of the house from inside and her husband informed the Sarpanch Bhupinder of the village on telephone. Petitioner Sarita and her mother Suman were duly armed with kulahries and they scaled over to the house of the complainant Rajbala from the adjoining house belonging to one Sultan Singh. After coming inside the house of the complainant, Sarita gave a kulahri blow on the head of Suresh Janghu. Ankit opened the door from inside thereby facilitating the other accused persons to enter the house. When son of the complainant i.e. Monu came forward to save his father, then Sarita and her mother attacked on the head of Monu with their kulahris. In the meantime, other companions of the accused party also came inside the house.

[4]. As per allegations in the FIR, Sarita also inflicted second blow with kulahri on the head of the husband of the complainant. As per MLR of Suresh Janghu, two injuries were found on his head. Two injuries were allegedly inflicted by Sarita (petitioner).

[5]. Co-accused Ankit has been granted regular bail by this

Court vide order dated 05.04.2017 passed in CRM-M No.10860 of 2017. Similarly, co-accused Rajbir has also been granted regular bail by this Court vide order dated 26.05.2017 passed in CRM-M No.17550 of 2017.

[6]. Learned Senior Counsel for the petitioner by referring to photographs collectively attached as Annexure P4 stated that the petitioner was not armed with any weapon, rather she was empty handed and this fact can be appreciated from the cross-examination of PW 5 Rajbala (complainant) herself. Petitioner is daughter-in-law of the complainant and wife of Sanjeet.

[7]. As per cross-examination of PW-5, relation between the petitioner and her husband Sanjeet was strained due to habit of the petitioner in talking with one Sandeep working in BSF. The matter was reported to Sarpanch Bhupinder who made the petitioner to understand, however, still she kept on talking with Sandeep. PW 5 with reference to photograph Ex.D1(objected to) stated that in the photograph, she was having lathi in her hand. Similarly, in photograph Ex.D2 (objected to), her husband and the complainant were having lathies in their hands. She stated that they took lathies in their hands just to stop the accused party who were carrying axes in their hands. Rajbir and petitioner were not having any arms in their hands. With reference to Exs.D3 to D5 (objected to), the witness stated that

those photographs were in respect of occurrence itself. The witness has also seen the video in pen drive Ex.P6 (objected to) and stated that as per this video, the accused party was standing in front of the gate of the complainant i.e. outside the house and they were not having any weapon in their hands. The witness has also seen the video of the occurrence which took place inside the house as per Ex.P6. In further cross-examination of the witness, she has stated that Sarita scaled down in her house and Ankit opened the gate of the house from inside and thereafter, Sarita gave injuries to her husband by kulahri. When Sarita was on the common wall, Rajbala and her husband were having lathies in their hands. Complainant showed her lathi to the petitioner and asked her to go back. She did not inflict any injury to the petitioner/Sarita even when Sarita gave kulahri blow to her husband. The witness did not disclose the police as to when Sarita handed over the kulahri to her mother before scaling down the wall. The witness was confronted with video of inside the house wherein Sarita was shown empty handed, when she alighted from the wall. The witness denied the suggestion that when Sarita scaled down the wall, the complainant and her husband started beating her with lathies.

[8]. Learned Senior counsel further relied upon cross-

examination of PW-4 Sanjeet (husband of the petitioner). In his cross-examination with reference to photograph Ex.D1 (objected to), he admitted that the photograph pertains to occurrence in which his mother Rajbala (complainant) was having a lathi in her hand. With reference to photograph Ex.D2 (objected to), the witness also admitted that in the said photograph, his father and mother were having lathies in their hands, but he voluntarily stated that they took lathies in their hands so as to stop the accused who were having kulahries in their hands. He admitted that in photograph Ex.D2 (objected to), Rajbir and Sarita were not having any arms in their hands. Photographs Exs.D3 to D5 (objected to) were in respect of the occurrence itself. The witness also admitted that the accused party also prepared video of the occurrence. With reference to pen drive Ex.D6, he stated that the accused party was standing in front of the gate of the complainant and they were not having any weapon in their hands. The witness further stated that when Sarita initially jumped in their house, she was empty handed. Complainant and her husband were having lathies in their hands at that time. PW-4 and his parents had not tried to over-power Sarita (petitioner) and also did not inflict any injury upon her. In the pen drive video, the parents of the witness and PW-4 himself were seen surrounding the petitioner Sarita and his parents were

trying to hit Sarita with lathies. Sarita was shown to be empty handed.

[9]. Learned Senior Counsel by relying upon postmortem report stated that following injuries were seen on the person of the deceased:-

1. Stitched lacerated wound, 20 x 0.5 cm on left fronto-parieto-occipital scalp, bifurcating into A 'Y' shaped posteriorly, on dissection surgically done left parietal-occipital craniectomy.

2. Surgically done tracheosotmy.

[10]. Learned Senior Counsel further submitted that co-accused Om Parkash Makdana has already been granted bail. The role attributed to the petitioner in the context of giving axe blow on the head of Suresh Janghu would be debatable as the same has not been medically corroborated. Suresh Janghu has suffered only one injury on his head, which was a lacerated wound and the injury has also been attributed to the co-accused Rajbir as per statement of PW-4 Sanjeet. The prosecution was lodged against 12 persons. 8 of them were not challaned by the police. Common intention or object in the context of murder of Suresh Janghu would remain debatable as the accused party had come to the complainant only to drop the petitioner at her matrimonial house who was not pulling well with her husband.

There was no common intention or object of the accused persons to commit murder of Suresh Janghu. The material witnesses have already been examined. Petitioner is in custody since 04.10.2016 along with her minor child. Sanjeet and complainant Rajbala have been examined as PW-4 and PW-5. Out of 23 prosecution witnesses, only 12 have been examined so far. The application under Section 319 Cr.P.C is also pending consideration before the trial Court. Trial of the case in any case may take long time to conclude.

[11]. On the other hand, learned State counsel and learned Senior Counsel for the complainant objected to the prayer of the petitioner on the ground that as per initial medico legal report, two lacerated wounds on the scalp 3 inches apart were found on the head of the deceased and the same were kept under observation. Petitioner has disclosed her complicity in her disclosure statement which led to recovery also.

[12]. Having heard learned counsel for the parties, at this stage, without forming any opinion on merits of the case, it can be seen that the petitioner is in custody since 04.10.2016 along with a minor child. An application under Section 319 Cr.P.C is also pending consideration before the trial Court. Petitioner is a lady. The statements of prosecution witnesses viz-a-viz. PW 4 and PW 5 would be considered by the trial Court in accordance

with law in the context of the fact whether the petitioner was empty handed or armed with kulahri. Rajbir has also been attributed blow on the head of the deceased. The receipt of injury by the deceased on his head with reference to MLR and postmortem report would also be debatable as per opinion of the Doctor. At this stage, the case of the petitioner can be considered for release on regular bail in view of her custody of more than 3 years and 3 months as on date with a minor child.

[13]. In my considered opinion, the trial of the case may take some time as 12 prosecution witnesses have been examined out of 23 witnesses. An application under Section 319 Cr.P.C is also pending consideration before the trial Court.

[14]. In view of above, at this stage, without meaning anything on merits of the case, it would be just and appropriate to release the petitioner on regular bail subject to her furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

[15]. Nothing expressed hereinabove, would be construed to be an opinion on merits of the case.

23.01.2020

Prince

**Whether reasoned/speaking
Whether reportable**

**(RAJ MOHAN SINGH)
JUDGE**

**Yes/No
Yes/No**