

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 216

CRM-A-143-MA-2017 (O&M)

Date of decision : 04.07.2022

Subhash Chand

..... Applicant

VERSUS

Jagan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Mukesh Yadav, Advocate, for the applicant.

DEEPAK SIBAL, J. (ORAL)

Through the present application the applicant seeks grant of leave to appeal against the judgment dated 05.03.2016 passed by the Judicial Magistrate, Ist Class, Mahendragarh (for short, the Trial Court) through which the respondents-accused have been acquitted.

The applicant's wife-Savitri Devi (now deceased) filed a complaint before the Trial Court at Mahendragarh as per which the respondents, who had a civil dispute with her husband, on 09.12.2010, at about 10/10:30 a.m., had entered her house. After calling her with the name of her caste they had done obscene acts with her which included catching hold of her breast as also had given her beatings resulting in the fracture of her right rib. Thereafter many persons gathered there and on seeing them the respondents had fled the scene but while doing so they had given her death threats.

After leading of preliminary evidence in the form of statements of the complainant, her husband-Satish Kumar, the alleged eye-witness-Subhash Chand, Jinesh and Dr. Kanwar Singh the Trial Court summoned the respondents to face trial under Sections 323, 325, 354, 452 and 506 read with Section 34 IPC. However, in pre-charge evidence only Satish Kumar and Subhash Chand were examined. From the evidence on record the Trial Court found that a *prima facie* case was made out against the respondents under Sections 323, 325, 354, 452, 506 and 149 IPC and accordingly they were charge-sheeted. The respondents pleaded not guilty and claimed trial.

In the after charge evidence a statement was made on behalf of the complainant that she did not want to lead any further evidence. The respondents also submitted that they do not want to further cross-examine any witness of the complainant who had already been examined at the pre-charge stage. However, the following documents were tendered by the respondents: -

Ex.D1-X-ray report of Jagan, Ex.D2-X-ray report of Ginori, Ex.D3-order dated 27.01.2016 passed by Sh.Ashok Kumar IV, JMIC, Mahendergarh, Ex.D4-DDR entry No.26, Ex.D5-MLR of Ginori, Ex.D6-MLR of Jagan, Ex.D7-order dated 23.11.2015 passed by AC Ist Grade, Mark DA-affidavit of Subhash Chand dated 22.08.2012 and Mark-DB attendance report of HC Mahender Singh at PS City, Rewari.

After considering the evidence on record the Trial Court was of the view that the complainant had failed to show beyond the shadow of reasonable doubt that the respondents had committed the offences for which they had been charged and therefore acquitted them of all charges. Such order of the Trial Court is under challenge through the present proceedings.

Assailing the impugned judgment learned counsel for the applicant contends that as per the documents tendered by the respondents it had virtually been admitted by them that on 09.12.2010 there was a fight that took place between the parties; the MLR of Savitri Devi, which had been duly exhibited, clearly proved a fracture in her right rib and that the motive to give beatings to Savitri Devi was also clear as the respondents had admitted before the Trial Court that there was a civil dispute pending between the parties.

The afore arguments need to be considered only to be rejected.

Savitri Devi was only examined at the pre summoning stage and even at that stage she did not make herself available for her cross-examination. She was not examined at the pre or post charge stage. Therefore, her examination in chief recorded at the pre summoning stage has rightly been discarded by the Trial Court.

There is also found no error in the Trial Court's judgment for not relying

on Savitri Devi's MLR as the same was not got proved through the examination of the concerned doctor as also on account of non production of the x-ray film and report of the alleged fracture.

Statement of Subhash Chand is also found to have been rightly ignored by the Trial Court as admittedly he was not an eye-witness to the alleged incident and that his evidence was based on hearsay evidence.

The Trial Court has further doubted the presence of the respondents due to contradiction in the contents of the complaint when read with the DDR got lodged by the complainant party. No argument was even raised in this regard before this Court to reach at a conclusion to the contrary.

In view of the above, this Court is of the opinion that the findings of the Trial Court warrant no interference.

Leave is declined.

Dismissed.

04.07.2022
shamsher

[DEEPAK SIBAL]
JUDGE

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