

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**211****CRM-A-358-2019 (O&M)****Date of decision: 21.09.2023****Ravinder Kaur****...Appellant(s)****Vs.****Talwinder Singh & Others****...Respondent(s)****CORAM:****HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: -

Mr. Surinder Garg, Advocate
for the appellant.

NIDHI GUPTA, J.

Present appeal is filed against judgment dated 18.12.2018 passed by learned Judicial Magistrate, 1st Class, Gidderbaha, District Sri Muktsar Sahib, whereby accused/respondents herein, have been acquitted in complaint registered under Sections 323, 324, 506, 148, 149, 354, 354-A, B, C, D IPC.

2. Brief facts of the case as set out by the appellant are that the appellant was married to Satinderpal Singh on 26.03.2006. No child was born out of this wedlock. On 21.03.2010, husband of the appellant died. Thereafter, the appellant inherited half the share of the land which was in the name of her husband and other half was inherited by her mother-in-law Sukhwinder Kaur. However, in-laws of the appellant ousted her from the matrimonial home and took forcible possession over her share of the land. Thereafter, the appellant started residing at Malout with her mother. She made an application for partition of land in the Court of AC First Class, Gidderbaha and the land was partitioned and on application for possession, the appellant got warrant of possession. On 13.12.2012, the

appellant along with Kanungo Halqa, Patwari Halqa and her mother went to the spot. All the accused/respondents herein were present at the spot. The Patwari Halqa and Kanungo Halqa returned and made a report that police help was required. The appellant remained there with her mother. Thereafter, respondent No.1 and Amritpal Singh raised lalkara to teach a lesson to the appellant for taking possession of the land and Amritpal Singh and Karnail Singh with an intention to outrage her modesty, held the arm of the appellant and respondent No.1 gave fist blow on the face of the appellant, which caused injury on nose of the appellant. Respondent No.2 gave fist blow on stomach of the appellant. Accused/respondents started abusing the appellant and her mother. They also threatened the appellant to kill her. Respondent No.1 caught hold of the appellant and tore her clothes and also caught hold of her breast. Appellant and her mother raised hue and cry after which accused/respondents ran away from the spot while giving threats to kill them. Mother of the appellant got her admitted in Civil Hospital, Gidderbaha. Police officials of Police Station Kotbhai recorded some part of statement of the appellant but no action was taken against the accused/respondents. Only action under Section 107/151 Cr.P.C. was taken as respondent No.1 and accused Amritpal Singh were police employees and they had conspired with the police.

3. Learned counsel for the appellant inter alia submits that the learned trial Court has wrongly acquitted the respondents on the ground that in support of her allegations, only the testimony of the appellant is forthcoming and no other evidence has been led by the

appellant to prove her case. Learned counsel contends that the learned trial Court has failed to appreciate that mother of the appellant, who was an eyewitness to the entire occurrence, had already died and therefore, she could not be produced as a witness by the appellant. It is further submitted that learned trial Court also failed to appreciate that admittedly, the appellant had complained of pain meaning thereby that some incident had taken place. It is submitted that in this regard learned trial Court was in error in ignoring the evidence of CW5-Dr. Vinay Bansal. It is further submitted that it has been amply proven on record that there was a land dispute between the parties which led to the altercation and therefore, truth of the allegations made by the appellant cannot be doubted. Learned counsel submits that the appellant had brought on record Rapt No.23 which was registered by her regarding her being mishandled by the respondents and even proceedings under Section 107 and 151 Cr.P.C. were conducted against the respondent No.1 which shows that, that incident had happened as mentioned by the appellant, but the learned trial Court has wrongly acquitted the respondents by ignoring the said evidence.

4. Learned counsel further submits that findings of the learned trial Court that there was a delay in filing the complaint as occurrence was stated to be of 13.12.2012 but present complaint was registered on 01.10.2013 and the same was not explained by the appellant, are incorrect as earlier, the appellant was persuading the police officials to take action against the respondents and when no action was taken only then the appellant had filed the present complaint. Learned counsel

contends that this is sufficient and satisfactory explanation of the delay, so, it cannot be said that there was a delay in filing the present complaint.

5. No other argument is raised on behalf of the appellant.

6. I have heard learned counsel for the appellant.

7. On appraisal, consideration and appreciation of all the pleadings and submissions made before it, as also the oral and documentary evidence placed on record by the parties, the learned trial Court has returned the following findings:-

“14. Considered the submissions and perused the file. In the present case statement of the complainant Ravinder Kaur is the sole Independent testimony to be relied upon. Although the complainant has stated that her mother as well as her brother were present at the place of occurrence. But none of them has been examined. In the preliminary evidence Harmeet Kaur mother of the complainant has been examined on the basis of which accused persons were summoned. But this witness has not turned up later on. During the course of arguments, it has been submitted by the Ld. Counsel for the complainant that Harmeet Kaur mother of the complainant has died. But no proof with regard to her death has been placed on file. Even, if mother of the complainant has died, what abstained the complainant from examining her brother. Her brother is also stated to be present at the time when a statement has been recorded by ASI Ram Singh in the hospital.

15. Now it is to be seen whether the sole testimony of complainant is credible and trustworthy enough to convict the accused persons or not?

16. The case of the complainant is that on 13.12.2012 complainant alongwith her mother went to take possession of the disputed land. Her husband has already died. Her brother-

in-law along with other relatives did not want to give her share. Kanungo as well as Patwari were already present there. That no warrant of possession exhibit CW 3/A was executed. 20-25 persons were already present there. Kanungo stated that there are chances of fight and hence help of the police would be needed. Hence, no demarcation was done. She further stated that Amritpal Singh and Karnail Singh caught hold of her arms and Talwinder Singh gave a blow over her nose. Babu Singh gave a blow on her stomach. This is a statement to the police which has been recorded on 13.12.2012.

17. Later on in the complaint, the complainant has made a major improvement by stating that accused Talwinder Singh caught hold of her breasts and also tore off her clothes. She stated that the police did not recorded statement as per her version. That she was under intoxication. Proceeding under 107/151 Cr.P.C. exhibit CW3/D was done. She got admitted herself to the civil hospital, Gidderbaha. There she was medico-legally examined. Now comparing the statement exhibit CW 4/A along with the version of the complaint and her statement on oath there is major improvement with regard to building of offence under Section 354 IPC. There is no mention of any holding of breasts and tearing of clothes in rapat No.23as well as her first primary statement exhibit CW 4/A to the police.

18. In order to validate her statement and her complaint, the complainant stated that she was under intoxication when her statement was recorded by the police. No proof regarding the same has been placed. Moreover, it is the case of the complainant that her medical examination was done after almost 10-12 minutes of the occurrence. Had it been so, the medico-legal report would have mentioned the same.

19. The complainant has even stated that the police intentionally did not recorded the statement. The complainant

signs in English and even has produced excerpts from a newspaper mark X in which news regarding the said occurrence has been published. Carefully examining mark X the same is also silent over any remark of sexual outrage over the complainant by the accused persons.

20. Then the presence of Kanungo/Patwari at the time of occurrence is doubtful. The complainant states that the Kanungo and Patwari were not present at the time of occurrence as they stated that there are chances of fight and police help is needed. But the report of the Patwari exhibit CW3/C states that the complainant went in mid as the atmosphere was tensed. As per rapat No. 23 Ex. CW4/C as well as in the primary statement of the complainant exhibit CW 4/A the complainant has stated that the injuries were inflicted by the accused persons under the protection of the Kanungo Gurjant Singh. But the complaint is a silent on any such aspect.

21. Another major discrepancy is with regard to the statement of the complainant regarding tearing of her clothes. The complaint states that clothes of Ravinder Kaur were torn from front. In cross examination, Ravinder Kaur has stated that after the incident she immediately went to the hospital then police recorded her statement in the hospital at that time she was in the same attire. That her kameez was torn about half foot and 6 inches long. That she changed her attire/suit on the next day. But the excerpt of the newspaper mark X in which the complainant alongwith her mother has been shown does not show any tearing of clothes. Hence, no evidence of tearing of clothes of any kind is proved by the complainant.

22. The complainant further states that blow was given over her nose and in stomach also blows were given. The medical of the complainant has been done by Dr. Vinay Bansal examined as CW 5. The medicolegal report is exhibit CW 5/C. The said

report mentions only of complaint of pain with no external mark of injury. Even the complainant states that she went for medicolegal examination about 10-15 minutes after the occurrence. Considering the complaint in totality as well as the statement of the complainant on oath, it seems highly improbable that injuries were inflicted on the complainant alone although her mother was also present with her and also no external mark of injury is there.

23. Further the major blow to the case of the complainant is added by delay in filing of the present complaint. The said occurrence is stated to be of 13.12.2012 however the present complaint has been filed on 01.10.2013. This delay has not been explained by the complainant. This adds major chances of concoction and improvement in the version of the complaint. Also as discussed above the rapat No. 23 states no offence of sexual outrage however the complaint mentions it.

24. Admittedly there has been dispute with regard to land between the accused and the complainant. Exhibit D1 and D2 further signifies that the appeal is pending in FCR in Chandigarh. It seems that the present complaint is a counter blast of the litigation pending between the parties earlier. It seems that the present complaint is filed as an outburst as the complainant did not get possession of her share because appeal before the FCR is pending.”

(Emphasis supplied)

8. From the above extract, it is clear that there are major discrepancies and substantial improvements subsequently made in the different versions of the occurrence narrated by the appellant. I am in complete concurrence with the reasoning of the learned trial court that even if it is accepted that the mother of the appellant had expired, there

was no explanation as to why the appellant had not produced her brother as witness, who was the second eyewitness to the occurrence.

9. Furthermore, in her first statement Ex.CW4/A to the police recorded on the date of incident itself on 13.12.2012, the appellant/complainant had stated that the accused had hit her and given her a blow on the nose and her stomach. Even the Rapat No.23 i.e. Ex. CW4/C, makes no mention of sexual assault upon the appellant by the respondent-accused. However, subsequently when the appellant made the present complaint she had improved upon her above said first version and now alleged that the accused had torn off her clothes and had caught her breast. Learned trial Court has found that the appellant led no evidence to support her above said allegation. On the contrary, there was evidence on record in the form of the news report, Mark X, as per which the clothes of the appellant are not shown to be torn, and the said news report is also silent regarding any sexual assault made upon the appellant.

10. Another major discrepancy in the story of the appellant is that as per the appellant, the Kanungo and Patwari were not present at the time of occurrence. However, the Patwari has presented the report Ex.CW3/C as per which the appellant had left the place of occurrence midway as the atmosphere was tense.

11. Even further, even the medical record does not support the allegations made by the appellant that she had been given blows by the respondent-accused on her nose and her stomach. As per the medico-legal report, Ex.CW5/C, it has been recorded that although the appellant

complained of pain, however, there were no external injuries found on her person.

12. Besides all of the above, admittedly, the appellant has not been able to satisfactorily explain the inordinate delay of about ten months in filing of the complaint. Nothing has been produced before this Court to prove or to show as to how she was pursuing the present case before the police, as claimed by the appellant.

13. Learned counsel for the appellant is unable to controvert or dispute the above said findings of the learned trial Court, or show anything whatsoever to this Court in negation of the above findings.

14. In view of the above undisputed findings of the learned trial Court, I find no ground is made out to interfere in the impugned judgment. Present appeal accordingly stands **dismissed**.

15. Pending application(s) if any also stand(s) disposed of.

21.09.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No