

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRR 1165/2022
Date of decision: 10.08.2023.

Bhupinder Kaur

.....Petitioner

Vs.

Jasvir Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parminder Pal Singh, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG Haryana.

Nidhi Gupta, J.

In this revision petition, petitioner impugns judgment dated 11.05.2018 passed by the court of Learned Judicial Magistrate (First Class) Ambala, whereby the respondents no. 1 to 4 have been acquitted of the charge under section 323, 354, 506 read with section 34 of IPC; as well as the Judgment dated 18.11.2021 passed by the Court of Learned Sessions Judge, Ambala, whereby the appeal filed by the revisionist/petitioner/complainant was dismissed by way of upholding the above said judgment of acquittal dated 11.5.2018 passed by the Learned Magistrate (First class), Ambala.

Ld. Counsel for the petitioner-wife submits that petitioner is daughter in law of respondents no.1 and 2 herein, and sister-in-law of respondents No. 3 and 4 herein. Petitioner was married to son of respondents no.1 and 2 on 29.2.2012. He has not been named in the FIR. One child was born out of the said wedlock. Husband of the petitioner resides in Italy.

Ld. Counsel for the petitioner vehemently submits that Id. Sessions Judge is in patent error in upholding acquittal of the respondents, as grave irregularity has been committed inasmuch as application of the petitioner under Section 391 Cr.PC for grant of permission to lead additional evidence of independent witness has not been decided while deciding the main case. It is further submitted that Id. Trial Court was wrong in discarding the testimonies of PW2 and PW4 who are parents of the petitioner as interested witnesses. It is submitted that no doubt that these witnesses reached late but even then, being close relatives of the petitioner have narrated their natural reaction qua the intent and act of the accused which is covered by the rule of “*res gestae*” and accordingly, testimonies of these witnesses could not have been disputed.

No other argument has been advanced.

Findings of the Id. Trial Court dealing with these aspects/arguments raised on behalf of the petitioner are contained in paras 8, 12 to 20 of the impugned judgment of Id. JMIC, which are reproduced below:-

“8. It is case of the prosecution that all the accused persons had mercilessly been beating her up and committed lot of atrocities against her. Accused Satvinder, who is brother-in-law of complainant, had even tried to outrage her modesty for the fact that her husband was residing abroad. It must be noted that in order to attract the provisions of Sections 323, 354, 506 read with Section 34 of IPC, it is necessary that the testimony of complainant shall be examined threadbare.

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12. All the above statements of the complainant clearly shows that she has been making consistent improvements in her version with respect to the material aspects of the case. In her

first version, Exhibit PW1/A dated 13.5.2015, she has nowhere mentioned the fact that the accused persons had torn her clothes off. Further, in her statement, Exhibit PW1/B, she has merely stated that when her mother and brother reached at the spot to save her, then the accused persons entered into a brawl with them. However, in her deposition before the court, she had imputed deadly weapons with the accused persons.

13. Further, it is highly unbelievable that the complainant who is an educated lady had given herself to the beatings of the accused persons and never complained about it to any authority. Moreover, she has imputed severe beating given to her by the accused persons. She has also stated that she was taken to hospital for her treatment. However, the prosecution has not cared to place on record the medical report of the complainant. Also, the doctor concerned has not been examined for the best reasons known to the prosecution.

14. Prosecution has examined PW2, mother of complainant and PW4, brother of complainant. Both the witnesses have supported the version of complainant though they were not witness to all the alleged acts of beatings. Therefore, the testimony of PW2 and PW4 to the major aspect of the case is nothing better than a hearsay evidence. It is alleged by complainant when she deposed as PW1 that a servant was sent to her room in order to outrage her modesty. Whereas PW2 has stated in her cross examination that neither did she nor the complainant has reported the matter to police of the fact that Servant was sent to the bedroom of the complainant by the accused persons. It has also been deposed by PW2 that various panchayats have also been held to amicably settle the matter. However, no detail of any of the panchayats has been mentioned by any of the witness.

15. Similarly, PW4, who is brother of the complainant, has also stated that he does not remember the details of any of the

Panchayat. He has also stated that no medical to place of complainant from Government Hospital. It is the story of the prosecution that when the brother and mother of complainant had gone to rescue the complainant, the accused persons, armed with deadly weapons had opened attack against them. Whereas PW4 brother of complainant has stated in his cross-examination, that neither did he, nor any of the persons accompanied with him, had suffered any injuries on that date.

16. Considering the entire version of complainant, who has consistently stated about merciless beatings been given to her, it is highly surprising that she did not sustain any serious injuries on her person. When a person is beaten black and blue, then as a natural cause of event, person is bound to suffer at least bruises. However, nothing of any sort is placed on file to support the fact that the complainant was subjected to atrocities. It is also the version of the prosecution that various Panchayats were conducted. However, no independent witness has come forward to support the version of the complainant. It is further the case of the prosecution that on 10.5.2015, uncle of complainant namely, Malkit Singh had also accompanied the brother and mother of the complainant to rescue her. However, he has also not been joined by the prosecution, though he was one of the material witness.

17. Last, but not the least, complainant has deposed that her husband with whom she had no dispute knew all the acts of atrocities being committed against her by accused persons. However, he did not come forward to depose on behalf of complainant. In this manner, otherwise shaking deposition of complainant remains uncorroborated by the testimony of any independent witness.

18. It is also relevant to point out that at this stage that the complainant has levelled allegations of 354IPC against her brother-in-law, accused. However, there is general allegation

which is not supported by any details as regards the date or time when the accused had attempted to outrage her modesty.

19. This court would like to draw support from the judgement given by a Division Bench of the Hon'ble Punjab and Haryana, High Court, titled as **State of Haryana versus Shamsher Singh, 2006 (3) RCR (Criminal) 345** wherein, it was held that in a criminal trial, the prosecution is cast with a very serious duty to bring on record quality evidence in order to substantiate its allegation against an accused person. It cannot seek conviction of any person without bringing substantial evidence on record as it becomes extremely difficult for the Court to pronounce the person guilty in absence of full-proof evidence, nailing guilt by the accused persons.

20. Also, Ld. Counsel for accused has placed on file documents Ex.D4 to Ex. D8 to show that there is litigation pending between the accused persons and complainant. All the documents of other cases which have been placed on file by ld. Counsel for accused cannot determine the fate of present case as they are not directly relevant, but they can be considered by the court only for the purpose of determining that the relations between the complainant and accused persons was bitter as many litigations were pending”.

It has also come on record that the documents mentioned hereinabove in para 20, pertain to later incidents/cases filed by the petitioner.

Ld. Counsel for the petitioner is unable to show anything to controvert the above findings recorded by the ld. Court below. In view of the above, no case for exercise of revisional jurisdiction of this Court is made out.

Dismissed.

10.08.2023.
Joshi

(Nidhi Gupta)
Judge