

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-2616-MA-2018 (O&M)

Date of decision:11.09.2023

Rajinder Kaur

... Applicant

Vs.

State of Punjab & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. D.S. Malwai, Advocate for the applicant.

Mr. R.S. Pandher, Sr. DAG, Punjab.

...

SUKHVINDER KAUR, J.

1. Appellant-Rajinder Kaur has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against the judgment dated 30.08.2018, passed by learned Additional Sessions Judge, Sangrur in Sessions Case No.6, dated 11.09.2015 vide which respondents No.2 to 6 have been acquitted.

2. The factual scenario, as highlighted by the prosecution, is that on 17.09.2012 SI Sukhwinder Singh along with other police officials after getting ruqa reached at Civil Hospital, Sangrur and he obtained opinion of the doctors regarding the fitness of the complainant-Rajinder Kaur to suffer her statement. The doctors opined that the complainant-Rajinder Kaur was fit to give the statement. Therefore, the Investigating Officer got recorded the statement of complainant-Rajinder Kaur. She suffered the statement that she is resident of Village Kakuwala and was married to one Pardeep Pal

Singh about four years ago. Out of their wedlock, one son, namely, Kurkeerat Singh aged about 2½ years was born. She alleged that her father-in-law, mother-in-law, sister-in-law and brother-in-law started beating her, soon after her marriage. She was not allowed to meet her husband. On 16.09.2012 at about 4:00 P.M. when she was watching T.V. in her room and the door of the room was partly closed, her father-in-law, namely, Kulwant Singh, mother-in-law, Rajvir Kaur, brother-in-law, Lali Singh and sister-in-law, Jasvir Kaur entered in her room. They exhorted to teach a lesson to the complainant for not bringing her share of land from her parents. Rajvir Kaur caught hold the complainant from her hair and and her father-in-law caught her from her arms. Lali Singh and Jasvir Kaur gave kick blows in her stomach. She raised alarm. Then Lali Singh said that she should be finished and with intention to kill her, put some poisonous substance in her mouth. Thereafter all of them left her room. Then the complainant informed about this incident to her brother, Gurpreet Singh. She started vomiting and in the meantime, her brother, Gurpreet Singh reached there and she was got admitted at Civil Hospital, Sangrur. On the basis of the said statement, FIR was registered. During the investigation, statements of the witnesses were recorded. Rough site plan was prepared. On 21.12.2012, on the statement of her maternal uncle Virsa Singh, offence under Section 498-A IPC was added and thereafter on 05.01.2013, on her own statement, offence under Section 406 IPC was added. All the accused were formally arrested and after completion of investigation, challan was presented against all of them. Initially the present challan was committed by the learned JMIC, Sunam vide order dated 28.02.2014. However, on 26.04.2014, the learned

Additional Sessions Judge, Sangrur sent it back on the ground that the application under Section 156(3) read with Section 173(8) Cr.P.C. had not been disposed of by the Magistrate. In pursuance to such order passed by the Additional Sessions Judge, Sunam, the Magistrate vide order dated 02.07.2014 returned the challan to the concerned SHO for further investigation. Thereafter, the police again presented challan on 19.09.2014 before the Magistrate. Accordingly, the case was committed for trial vide order dated 31.08.2015.

3. After finding a prima facie case against all the accused, they were charge-sheeted for the offence under Sections 307/406/498-A IPC, to which they did not plead guilty and claimed trial.

4. After concluding the trial, the trial Court acquitted the accused, namely, Kulwant Singh, Rajvir Kaur, Kulvir Singh, Jasvir Kaur and Pardeep Pal Singh.

5. Aggrieved by the said decision, appellant-Rajinder Kaur has preferred the present application for seeking leave, to file an appeal against acquittal of the accused.

6. We have heard Mr. D.S. Malwai, Advocate for the appellant and have also perused the record.

7. Learned counsel for the appellant has contended that the trial Court has not properly appreciated the evidence on record and has wrongly ignored the testimony of PW1 Rajinder Kaur which is consistent and trustworthy and she has been duly corroborated by PW2 Gurpreet Singh, her brother, who after receiving the phone call from her had reached at her matrimonial house and then shifted her to Civil Hospital, Sangrur. This

approach of the trial Court is also erroneous that in the absence of any MLR and report of FSL regarding the poisonous substance, the case under Section 307 IPC is not proved. He has argued that the negligence on the part of the doctors should not have been made the basis to give benefit to the accused. He has also submitted that it is quite obvious from the conduct of the doctors that they were hand in glove with the private respondents and in order to save them from the clutches of law, they purportedly did not prepare the MLR and did not send the vomit etc. to the FSL to get the report regarding administration of poisonous substance. He has urged that the trial Court has also wrongly placed reliance upon the plea of the complainant in the alleged compromise that the complainant had assured not to commit any wrong in future when apparently she was made to say so in order to save her matrimonial life. She was residing separately and even her husband was not visiting her being under the pressure of his family. He has vehemently contended that the judgment of acquittal passed by the trial Court against the private respondent is totally illegal and unjustified and deserves to be reversed and the accused persons deserve to be convicted as per law.

8. In order to prove its case, prosecution has examined PW1 Rajinder Kaur, who has deposed in detail, as per the prosecution story that on 16.09.2012 at about 4:00 P.M. when she was watching T.V. in her room, then her father-in-law, Kulwant Singh, mother-in-law, Rajvir Kaur, brother-in-law, Lali and sister-in-law (Jethani), Jasvir Kaur entered in her room. Rajvir Kaur caught hold the complainant from her hair and her father-in-law caught hold her from the arms. Lali and Jasvir Kaur gave kick blows in her stomach. She raised alarm. Then Lali Singh said that she should be finished

and with intention to kill her, put some poisonous substance in her mouth and then all the accused persons left her room. She informed about this incident to her brother, Gurpreet Singh. She started vomiting. Thereafter her brother, Gurpreet Singh reached there and she was got admitted at Civil Hospital, Sangrur. She has also deposed that motive to treat her with cruelty and harassing her was the ancestral property which she had inherited from her father but had got it transferred in favour of his brother.

9. PW2 Gurpreet Singh the brother of the complainant has also deposed on the similar lines as PW1 Rajinder Kaur.

10. PW3 Dharminder Singh, Draftsmanm, Tehsil Complex, Sangrur had prepared the scaled site plan Ex.PW2/A of the place of occurrence and has proved the same.

11. PW4 Gurjit Singh @ Jiti has also deposed on the similar lines as PW2 Gurpreet Singh and has stated that he had accompanied Gurpreet Singh to the matrimonial house of his sister, when Gurpreet Singh had gone there after receiving the phone call from his sister, regarding administering of some poisonous substance to her by the accused persons and then along with Gurpreet Singh, they had got admitted the complainant to Civil Hospital, Sangrur.

12. PW5 Dr. Sanjeev Aggarwal, Medial Officer, Civil Hospital, Sangrur has deposed that on 16.09.2012, he was posted as Medical Officer at Civil Hospital, Sangrur and on that day, he sent medical Ruqa Ex.PW4/A regarding admission of Rajinder Kaur wife of Pardeep Pal Singh, resident of village Kaku Wala, Tehsil Dirba, District Sangrur, with alleged history of poisoning. He identified his signatures on the medical ruqa. He further

deposed that on 17.09.2012, on police request Ex.PW4/B regarding whether Rajinder Kaur was fit for making statement or not, Dr. Rahul declared patient fit for making statement vide Ex.PW4/C. He identified the signatures of Dr. Rahul as Ex.PW4/C-1. He further deposed that on 24.09.2012 on police request Ex.PW4/D regarding preparation of MLR of Rajinder Kaur and any injury in her mouth due to poisoning, he gave his opinion as Ex.PW4/E that no MLR was prepared as there was no injury on her person. He identified his signatures upon his opinion. He further deposed that on 19.11.2012 on police request Ex.PW4/F regarding the treatment given to Rajinder Kaur during 16.09.2012 to 23.09.2012 at Civil Hospital, Sangur, he gave the opinion (Dr. Sanjeev Aggarwal and treating physician Dr. Gourav Mittal) that at the time of admission patient was unconscious, but her pulse was 70 per minute and blood pressure was 120/70. He has further deposed that there was no definite symptoms of poisoning and patient was treated symptomatically. Afterwards the patient was shifted to medical ward of Civil Hospital, Sangrur, where she was treated by physician Dr. Gourav Mittal. He further stated that as per record and treatment given by physician, there were no signs and symptoms of poisoning and the police was informed well in time regarding the case. He proved the joint opinion as Ex.PW4/G and identified his signatures over the same.

13. PW6 ASI Sukhwinder Singh is the Investigating Officer of this case and he has deposed regarding all the investigation proceedings conducted by him.

14. PW7 Dr. Rahul Gupta, Medical Specialist, Civil Hospital, Sangrur has deposed that on 17.09.2012, he was posted as Medical Officer at

Civil Hospital, Sangrur and on the police request Ex.PW4/B, he gave his opinion Ex.PW4/C.

15. PW8 Dr. Gourav Mittal, Mittal Health Care, Sangrur deposed that on 19.11.2012, he was working as a Medical Officer at Civil Hospital, Sangrur and on that day, on police request Ex.PW4/F, he gave joint opinion with Dr. Sanjeev Aggarwal as Ex.PW4/G that patient did not have definite symptoms of poisoning and patient was treated symptomatically. Police was informed well in time regarding this case. He further deposed that on police request Ex.PW4/E, he gave his opinion as Ex.PW7/A and the detailed report of treatment given to Rajinder Kaur from 16.09.2012 to 23.09.2012 at Civil Hospital Sangrur that there were no symptoms suggestive of poisoning. He has further deposed that patient was kept under observation and investigated. As patient's TLC was slightly on the higher side, so she was given antibiotic I.V. fluids and PPI (proton pump inhibitors). Further patient kept on making complaints like, nausea/vomiting/headache/low mood/vertigo on different dates, along with history of poor intake, so patient was kept till 24.09.2012 for symptomatic treatment only. He further deposed that however course in hospital was uneventful and patient was never seriously ill. He identified his signatures upon his opinion. He brought the bed head ticket in original and proved its attested photocopy as Ex.PW7/B.

16. PW9 ASI Amarjit Kaur has deposed that she along with Rajinder Kaur and the other police party took into possession the jewellery and dowry articles lying at the house of Kulwant Singh and the same were identified by Rajinder Kaur complainant as the same articles that had been given to her at the time of her marriage.

17. PW10 Inspector (retired) Gurdev Singh is a formal witness who has deposed regarding various police proceedings conducted during the investigation.

18. PW11 SI (retired) Nishan Singh has deposed that on 22.12.2012 when he was posted as ASI at Police Station Dirba, the offence under Section 498-A IPC was added after inquiry, at the instance of SHO Krishan Kumar Panthe.

19. PW12 DSP Krishan Kumar Panthe, Sub Division, Rajpura has deposed regarding the investigation conducted by him in this case when he was posted as SHO at Police Station Dirba.

20. PW13 Varinder Kumar has deposed regarding purchase of one refrigerator, LCD and one cooler from the shop of his father being run under the name and style of M/s Goyal Electronics and has produced on record copy of invoice as Px.PW12/A.

21. PW14 Dhanwant Singh has deposed that he was running a shop in the name and style of M/s Mani Jewellers at village Hero Khurd, Mansa and on 23.11.2008, mother of the complainant, namely, Harmail Kaur had purchased gold ornaments from his shop weighing 395 grams and has produced on record the invoice as Ex.PW13/A.

22. PW15 Rakesh Benipal, Assistant Manager, Malwa Gramin Bank at Badalgarh, Tehsil Moonak, District Sangrur has deposed that agriculture term loan of Rs.4,50,000/- was taken by Jeet Singh S/o Hardam Singh and Harmail Kaur w/o Jaswinder Singh on 26.09.2008. He has further deposed that they have also taken Kissan Credit Card loan of Rs.2 lakhs on 26.09.2008 from the same bank. He has produced on record the statement of

account pertaining to 26.09.2008 to 31.01.2013, Ex.PW14/C to Ex.PW14/E.

23. In defence the accused persons examined DW1 Narsi Singh, who has deposed that compromise was effected between the parties two times on 02.11.2011 and 05.06.2011 and identified his signatures on the compromise statements Ex.A1 and Ex.A2. He was Sarpanch of village Kakuwal from the year 2008 to 2013. he has further deposed that complainant Rajinder Kaur has got recorded her statement/compromise to the effect that she would be responsible for any act done by her.

24. DW2 Manjit Singh produced the original inquiry file No.8656/P dated 31.10.2011 Ex. DB and identified the signatures of SP (Head Quarter) Sh. Narinder Kaushik upon inquiry report. He has stated that in the aforesaid inquiry, statement of Pardeep Pal Singh and compromise dated 12.11.2011 between the parties were recorded.

25. DW3 Bhagwant Singh has stated that his house is situated near the house of the accused and no occurrence had taken place on 16.09.2012 at the house of the accused persons.

26. Accused persons also tendered copies of compromise Ex.DY, DY1 and medical report Ex.DY2 in the defence evidence.

27. It is well settled law that while hearing appeals against acquittal, the judgments of acquittal should not be interfered with lightly and Courts have to be extremely careful while hearing such appeals. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against

acquittal, where the presumption of innocence in favour of the accused is reenforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of “caution” was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence.

28. Now adverting to the present case, it is to be seen that whether there is any perversity on facts or law. After having heard learned counsel for the appellant at length and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was unable to prove its case against the accused beyond the reasonable doubt.

29. In the case in hand, the criminal law was set in motion by PW1 Rajinder Kaur, who suffered statement before the police on the basis of which the present FIR was registered against the accused persons. While appearing as PW1 Rajinder Kaur in her examination-in-chief has deposed regarding the alleged occurrence of 16.09.2012. Her brother Gurpreet Singh has stepped into the witness box as PW2, who has stated regarding reaching at the matrimonial house of the complainant after receiving phone call from her. He further stated that on reaching there, he found his sister vomiting and he along with Gurjit Singh @ Jiti and Gurbinder Singh @ Rupinder took his sister to the Civil Hospital, Sangrur. PW3 Gurjit Singh @ Jiti has also deposed in the similar manner.

30. As per deposition of the complainant PW1 Rajinder Kaur, she was forcibly administered some poisonous substance by the accused persons

with the intention to kill her. So the medical evidence in the present case is of utmost importance in order to prove the case of the prosecution. The prosecution has examined PW4 Dr. Sanjeev Aggarwal, Medical Officer, Civil Hospital, Sangrur, who had given the treatment to the complainant. As per his deposition, on 16.09.2012, he sent medical ruqa Ex.PW4/A regarding admission of Rajinder Kaur with alleged history of poisoning. As per the hospital record, she remained admitted in the hospital from 16.09.2012 to 23.09.2012. As no MLR was prepared by Dr. Sanjiv Aggarwal on arrival of the complainant, so the police forwarded a request Ex.PW4/D to ascertain whether any MLR of Rajinder Kaur had been issued or not. Vide his opinion Ex.PW4/E. Dr. Sanjiv Aggarwal has specifically stated that no MLR was prepared as there was no injury on the person of Rajinder Kaur. The treatment was provided to Rajinder Kaur at Civil Hospital, Sangur by PW4 Dr. Sanjeev Aggarwal and PW7 Dr. Gourav Mittal. On 19.11.2012, the police moved a written request PW4/A regarding the treatment being given to the complainant Rajinder Kaur while she was admitted at Civil Hospital, Sangrur. The detailed report Ex.PW4/G regarding treatment being given to the complainant from 16.09.2012 to 23.09.2012 was given by the aforesaid doctors. The relevant portion of the said report is extracted as below:

“Above patient Rajinder Kaur wife of Pardeep Pal Singh resident of village Kakuwal, P.S. Dirba was admitted on 16.09.2012 at 05:50 P.M. with alleged H/o consuming some intoxicant as narrated by relatives.

At the time of admission, patient was unconscious, but her pulse was 70 per minute and BP 120/700. There was no definite symptoms of poisoning and patient was treated symptomatically. Afterwards patient was shifted to medical

ward of Civil Hospital, Sangrur where she was treated by physician Dr. Gaurav Mittal. As per record of Rajinder Kaur given by physician there were no signs and symptoms of poisoning. Police was informed well in time regarding this case.”

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As per record, patient Rajinder Kaur wife of Pardeep Pal Singh, 28 years old female, was admitted at Civil Hospital, Sangrur on 16.09.2012 (05:50 P.M.) with diagnosis of alleged poisoning.

However, there were no symptoms suggestive of poisoning, patient was kept under observation and investigated. As patient's TLC was slightly on higher side i.e. 11000/CC so she was given antibiotic, I/V fluids and proton pump inhibitors.

Further patient kept on complaining of different complaints like nausea/vomiting/headache/low mood and vertigo on different dates, along with there was history of poor intake, so patient was kept till 24.09.2012 for symptomatic treatment only. However, course in hospital was uneventful. Also, patient was never seriously ill.”

31. The trial Court has rightly held that the aforesaid medical reports Ex.PW4/G and PW7/A given by the treating doctors leaves no doubt that PW1 Rajinder Kaur was not administered any poisonous or stupefying substance as alleged. Rather the medical evidence that has been produced on record by the prosecution falsifies the version of the complainant that she had been administered some poisonous substance on 16.09.2012 by the accused persons with the intention to kill her. Perusal of these reports reveals that there is specific finding by the aforesaid doctors that Rajinder Kaur was having poor intake and her TLC count was on the higher side. Again there is a categoric finding given by the treating doctors that the patient was never

seriously ill during her stay in the said hospital and there were no signs and symptoms of poisoning.

32. We do not find any substance in this contention of the learned counsel for the appellant that the doctors were hand in glove with the private respondents and in order to save the accused person and to help them, they did not send the contents of the vomit to the FSL in order to ascertain that whether any poisonous substance had been administered to Rajinder Kaur or not.

33. Even during the pendency of the trial before the trial Court, an application was moved under Section 319 Cr.P.C. by the complainant for summoning Dr. Sanjiv Aggarwal and Dr. Gourav Mittal to face trial under Section 201 IPC as additional accused alleging therein that Dr. Sanjiv Aggarwal and Dr. Gourav Mittal in conspiracy with accused persons did not send the contents of the vomit to the FSL and did not prepare any MLR. This application was dismissed by the trial Court vide order dated 19.08.2016.

34. Strange enough, though the allegations were made by the complainant that the said doctors were in conspiracy with the accused persons, but when Dr. Sanjiv Aggarwal stepped into witness box as PW4 and Dr. Gourav Mittal appeared as PW7, then the prosecution did not raise any doubt on the authenticity of their statements and on the record produced by them. The trial Court has rightly observed that if the prosecution was of the view that both the doctors were hand in glove with the accused persons then the aforesaid foundation should have been laid by taking the permission from the Court to cross-examine the aforesaid witnesses, but on the contrary,

prosecution has relied upon the testimonies of PW4 Dr. Sanjiv Aggarwal and PW7 Dr. Gourav Mittal. So the above said contention of learned counsel for the appellant regarding the aforesaid doctors being hand in glove with the accused persons is liable to be discarded.

35. The trial Court has further rightly held that admittedly PW1 Rajinder Kaur was got admitted at Civil Hospital, Sangrur by her brother and none of the accused persons were present in Civil Hospital, Sangrur at that time, so in that eventuality, this contention of learned counsel for the appellant is devoid of any force that PW4 Dr. Sanjiv Aggarwal and PW7 Dr. Gourav Mittal were having conspiracy with the accused persons to save them, when there was no such occasion for entering into the alleged conspiracy. Specific observations have also been made by the trial Court that there was no cutting or overwriting over the admission record Ex.PW7/B produced before the trial Court. Moreover, it is made out from the medical reports given by the doctors concerned that Rajinder Kaur complainant was given the symptomatic treatment by the doctors and she recovered from her illness. On the basis of symptoms, the concerned doctors came to the conclusion that the aforesaid case was not a case of poisoning. Satisfactory explanation regarding non-preparation of MLR has been given by PW4 Dr. Sanjiv Aggarwal that no MLR was prepared as there was no injury on the person of the complainant, Rajinder Kaur.

36. Trial Court has also rightly taken view of the fact that the Investigating Officer of the case did not visit even a single time, the room of the complainant, where she was allegedly administered the poisonous substance. PW5 ASI Sukhwinder Singh, who is the Investigating Officer has

admitted in his cross-examination that he did not collect any traces of vomit from the house of the accused as it remained locked for several days. He has further admitted that he had prepared the site plan of the house of the accused while standing outside.

37. Thus, the trial Court has rightly reached at the conclusion that in view of the medical evidence, it is highly unsafe to rely upon the bald statement of PW1 Rajinder Kaur that accused persons had administered some poisonous substance to her with the intention to kill her and the prosecution has failed to prove its case against the accused persons beyond shadow of reasonable doubt.

38. Addition of Section 498-A IPC was lateron made in this case on the basis of statement of Virsa Singh s/o Bant Singh. It is again strange that no statement of the complainant regarding offence under Section 498-A IPC was recorded, who was the appropriate person being the alleged victim but it was added on the basis of statement of Virsa Singh, maternal uncle of the complainant. The trial Court has rightly held that during her deposition, PW1 Rajinder Kaur has nowhere stated that the accused persons had demanded any dowry from her or her family members at the time of her marriage. The motive attributed by the complainant regarding the alleged occurrence is that she had inherited 2.5 acres of land from her father which she got transferred in the name of her brother. The trial Court has rightly held that the said motive is falsified from the fact that the complainant had transferred the aforesaid property in the name of her mother four years prior to her marriage with Pardeep Pal Singh. So there was no occasion for the accused persons to harass the complainant for the property which had

already been transferred by her even before her marriage. Trial Court has further rightly held that vague and omnibus allegations of commission of cruelty without specifying the date and year of the occurrence have been levelled.

39. The trial Court has further rightly held that offence under Section 406 IPC was also not proved as ingredients of the said offence are not made out. There is no specific allegations regarding the specific entrustment of dowry articles of the complainant to any of the accused persons. The complainant has nowhere stated that she ever demanded her *Istridhan* and the accused had refused to hand over the same to the complainant. As such, offence under Section 406 IPC is also not proved.

40. Thus the trial Court has rightly reached at the conclusion that the prosecution could not prove its case beyond shadow of reasonable doubt against the accused and the accused have been rightly acquitted by the trial Court.

41. In view of the above, the appeal being bereft of any merits stands dismissed.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

11.09.2023
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |