

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**222****CRR-2456-2017(O&M)****Date of decision: 09.10.2023****Bhupinder Kaur****...Petitioner (s)****Vs.****State of Punjab & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. J.S. Jaidka, Advocate
for the petitioner .

NIDHI GUPTA, J.

Challenge in the present petition filed by the complainant, is to the order of acquittal dated 30.09.2014 passed by learned Judicial Magistrate, First Class, Ludhiana passed in Criminal Case No.92B/1 titled as "State Vs. Jagdish Kumar @ Disha"; and judgment dated 06.04.2017 passed by learned Additional Sessions Judge, Ludhiana passed in Criminal Appeal No.43 of 03.12.2014 titled as "Bhupinder Kaur Vs. Jagdish Kumar @ Disha & Another" whereby order passed by learned trial Court has been upheld.

2. Brief facts of the case are that the present case was registered on the statement of petitioner herein that she is a housewife and is a mother of two children of the ages of three years and one year. She stated that her husband Rur Singh runs a hotel in Sanket Mandi Himachal Pardesh and that he had gone away for the work for the last two weeks. She further stated that on 18.04.2013, at about 10.30 AM Jagdish Kumar @ Disha/respondent No.2 herein, who runs a tailor shop in her village, came to her house on a red coloured motorcycle. He parked his motorcycle in

front of the gate of her house and entered her house and inquired about her mobile number. Complainant further disclosed that aforesaid Jagdish Kumar pulled out her chunni from her head and caught hold of her arm. She further alleged that respondent No.2 started doing obscene acts with her. Complainant resisted the acts, but he did not stop. Complainant raised alarm and respondent No.2 fled away from the spot on his motorcycle. Roshan Singh, a neighbour witnessed the aforesaid Jagdish Kumar fleeing on the motorcycle on the road. Complainant requested to take action against respondent No.2 on the allegation that he entered in her house with bad intention and committed obscene acts with her and outraged her modesty. On the basis of the above statement of the petitioner/complainant, FIR No.25 dated 18.04.2013 under Sections 354 and 448 IPC was registered.

3. Learned counsel for the petitioner inter alia submits that respondent No.2/accused has been acquitted by the learned Courts below only on the ground that there was delay in lodging the FIR. It is submitted that there was no such delay in registration of the FIR and therefore, the sole ground on which respondent No.2 has been acquitted in the present case is factually incorrect.

4. Notice of motion.

5. Mr. Jaswinder Singh Arora, DAG Punjab accepts notice on behalf of respondent No.1-State.

6. No other argument is raised on behalf of the petitioner.

7. I have heard learned counsel for the petitioner.

8. Perusal of record of the case shows that respondent No.2 has been acquitted vide concurrent findings recorded by both the Courts below. In this regard, findings of the learned trial Court are relevant and are reproduced hereinbelow:-

“21. PW-3 HC Swaran Chand had joined the investigation and as a witness to the arrest of the accused. In his cross-examination he admitted that the accused was not arrested at the spot and was arrested after 2-3 hours after registration of the FIR and the accused was not got identified from complainant Bhupinder Kaur.

22. PW-4 HC Nand Lal is the MHC at police station Koom Kalan with whom the case property i.e. motorcycle bearing No.PB-58-B-2841 was deposited.

23. PW-5 Usha Rani proved on record the original record pertaining to the driving licence No.0141185 dated 6.3.1998 which issued in the name of Jagdish Kumar S/o Ram Lal Village Baliewal, PO Rattangarh, Ludhiana.

24. PW-6 ASI Jasvir Singh was the investigating officer, who in his cross-examination admitted that no time of arrest of accused Jagdish Kumar has been mentioned anywhere and he had got identified the accused from Roshan Singh and recorded his statement. He further admitted that the complainant Bhupinder Kaur had not stated that age or identification marks of the person, who had outraged her modesty and the accused Jagdish Kumar after his arrest was not identified from the complainant. He also admitted that in the site plan the location from where the eye witness Roshan Singh had seen the occurrence was not the house of Roshan Singh was not shown in the site plan in Ex.P3. The investigating officer further stated that there was 7-8 persons in the house of the complainant, but no family member was present nor made any statement to

him regarding occurrence. The investigating officer also stated that there was no sign of any occurrence having taken place at the place of occurrence when he reached the spot. As there was time gap of 3 to 3:30 hours between the time of occurrence and lodging the FIR. From the entire evidence of the investigating officer it is clear that a partial investigation has been conducted as the offence being heinous in nature. It was the responsibility of the investigating officer to conduct a thorough investigation. It has also been admitted by the investigating officer that the accused was identified by the alleged eyewitness Roshan Singh, however, the complainant Bhupinder Kaur had not identified the accused.

25. After the closure of the evidence of the prosecution the statement of the accused under Section 313 Cr.P.C. was recorded and the accused got examined witness in defence. DW-1 Paramjit Kaur sister-in-law (Devrani) of the complainant Bhupinder Kaur stepped into the witness box as a defence witness and stated that the husband of the complainant as well as her husband are real brothers and the houses are joint and the entrance gate of both the houses is same. She further stated that the site plan Ex.P3 is incorrect as her house has not been shown in the site plan. The dividing wall of about 4 feet exists between their houses and every activity is visible from each other's house. She further deposed that the accused Jagdish Kumar never come to her house nor any alleged occurrence took place. During her cross-examination she admitted that all the time she did not keep watch on the house of Bhupinder Kaur. Further, it is clear that when the complainant raised hue and cry and as admitted by the complainant that there came 2-3 persons after hearing hue and cry. It is hard to believe that after she raised hue and cry then her sister-in-law who is also a family member will not

come present. When there is no enmity or family dispute shown by the complainant nor by the DW-1 Paramjit Kaur and the house being a joint house.

26. Another witness Manjit Kaur W/o Jagdish Kumar stepped into the witness as DW-2 and stated in her examination in chief that on 18.4.2013 she was present in the shop along-with her husband and her husband accused Jagdish Kumar did not leave the shop at the time when the alleged occurrence stated to be happened by the complainant. In her cross-examination she deposed that the distance between her shop and house of Bhupinder Kaur is about 1km and the distance between her house and the house of complainant is about 3km. She further deposed that her husband never leaves the shop alone without her.

27. DW-3 Pritpal Singh member panchayat of the village where the accused resided stepped into the witness box and stated that on 18.4.2013 at about 8:30am he had seen the accused and his wife going on their motorcycle and further stated that a false case has been foisted upon the accused Jagdish Kumar and no such dispute ever came in the village panchayat. In his cross-examination he stated that Jagdish Kumar is a tailor by profession, however he has never seen Jagdish Kumar delivering the stitched clothes to the houses of his customers. DW-1 Paramjit Kaur, who was examined by the accused in his defence is the real sister-in-law (Devrani) of the complainant Bhupinder Kaur and it has also come on record that she is residing in the adjoining house and it has also come on record that there is only common entrance towards both the houses. As discussed above the entire version of the complainant as well as the alleged eyewitness to the alleged occurrence does not inspire confidence of the Court, and it has also come on record that the accused was not arrested on the spot and was

never identified by the complainant after his arrest. The first information to the police regarding alleged occurrence was given by the alleged eyewitness Roshan Singh. The other villagers were not examined and neither their statements were recorded by the police, who were admittedly present in the house of the complainant. Furthermore, the investigating officer has also admitted that there were no signs of resistance nor there was any signs of physical force being used by the accused on the complainant. No medical report has been placed on record regarding the alleged force. Similarly, it has not been proved that the accused had criminally trespassed into the house of the complainant and tried to outrage the modesty of the complainant by doing obscene act. Therefore, the possibility cannot be ruled out that the accused Jagdish Kumar has been falsely implicated due to some enmity as the complainant as well as eyewitness have not been able to depose anything incriminating against the accused.

28. It is cardinal principal of criminal jurisprudence that the prosecution has to prove its case beyond shadow of reasonable doubt but in this case, as already discussed above, the prosecution has failed to prove its case against the present accused beyond shadow of reasonable doubt and benefit of doubt goes to accused. Therefore, by giving benefit of doubt accused Jagdish Kumar is acquitted of the charge framed against him. His bail bonds and surety bonds stands discharged.....”

(Emphasis supplied)

9. Learned counsel for the petitioner is unable to controvert or dispute the above said findings and facts. Upon consideration and appreciation of the entire pleadings and evidence on record, the

learned Appellate Court has reiterated the above said findings of the learned trial Court. Even otherwise, perusal of above facts reveals that the sole argument raised on behalf of the petitioner that the learned Courts below have acquitted the accused only on ground of delay in lodging the FIR, is factually incorrect as, as per the petitioner, the date of alleged incident was 18.04.2013 and FIR has been registered on the same day itself i.e. on 18.04.2013.

10. In view of the above discussion, I find no ground is made out to interfere in the impugned judgments. Present petition accordingly stands **dismissed**.

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

09.10.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No