

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

246

CRR-1731-2018

Date of decision: 11.10.2023

Mangal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Parveen Kaushik, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is impugning the order dated 21.02.2018 passed by learned Additional Sessions Judge, Jhajjar vide which appeal filed by him was modified to the extent that only respondents No.2- Rajesh and Sunil were convicted under Sections 452 and 323 of the IPC whereas respondents No.4 and 5 were acquitted of all the charges framed against them. The petitioner is also impugning the judgment dated 17.08.2017 and order of sentence dated 19.08.2017 passed by learned Judicial Magistrate 1st Class, Jhajjar whereby respondents No.2 and 3 were convicted under Section 323 of the IPC and respondents No.4 and 5 and another accused were acquitted of all the charges framed against them.

2. The case of the prosecution can be summarized as follows:-

2.1 On 08.12.2013, around 10:00 PM, a dispute arose regarding the delivery of "Bhaat", leading to a confrontation at the house of the complainant. The nephews of the complainant Rajesh and

Sunil @ Sonu along with their wives, Geeta and Gayatri and complainant's niece Babita, thereafter entered his house and had a physical altercation with him. The complainant was eventually rescued by his neighbours and taken to the hospital. Subsequently, he gave a statement to the police which resulted in the registration of the FIR in question. Criminal proceedings were then initiated against all the accused. However, respondents No.2 and 3 were convicted under Sections 323 read with Section 34 of the IPC by the Trial Court but were acquitted for offences under Section 452 and 506 of the IPC. Accused Babita Geeta (respondent No.4) and Gayatri (respondent No.5) were acquitted of all the charges framed against them by the Trial Court. The complainant impugned the judgment of the Trial Court before the learned Additional Sessions Judge, Jhajjar, who while maintaining the conviction of respondents No.2 and 3 under Section 323 of the IPC, further convicted them under Section 452 of the IPC. The Lower Appellate Court, however, upheld the acquittal of respondents No.4 and 5 of all the charges framed against them.

3. The complainant is now before this Court to challenge the acquittal of respondents No.4 and 5 under Sections 323, 452 and 506 of the IPC and acquittal of respondents No.2 and 3 under Section 506 of the IPC.

4. Learned counsel appearing for the complainant has argued that the Lower Appellate Court erred by not appreciating the material on record as well as the evidence led while acquitting the respondents accused under Section 506 of the IPC. Learned counsel has submitted that ample cogent evidence had been led before Lower Appellate Court

to prove the offence under Section 506 of the IPC, including testimony of the complainant, medical records as well as the deposition of PW2 Nand Lal, who was an eye witness and who had fully supported the case of the prosecution. It has been further contended that on the one hand, the Lower Appellate Court relied upon the testimony of PW2 Nand Lal to convict respondents-accused under Sections 323 and 452 of the IPC and strangely on the other hand, recorded a finding of acquittal under Section 506 of the IPC qua the respondents-accused by ignoring the deposition of PW2 Nand Lal. Learned counsel has asserted that once it was established that the respondents-accused had caused harm and also trespassed into the house of the complainant, it was clear that there was indeed a threat to the life of the complainant, justifying the charge under Section 506 of the IPC.

5. In addition, learned counsel has argued that the Court below had acquitted respondents No.4 and 5, solely based on surmises and conjectures. From the outset, even while lodging the FIR, the complainant had specifically named respondents No.4 and 5. The complainant while stepping into the witness box as PW3 as well as Nand Lal while stepping into the witness box as PW2, had provided detailed account of the roles played by both respondents No.4 and 5, in causing injuries to the complainant. Furthermore, learned counsel has claimed that there was no evidence to the contrary, to dispute the presence of respondents No.4 and 5 at the place of occurrence. Hence, in the above facts and circumstances, respondents No.4 and 5 should have been convicted by the Lower Courts.

6. I have heard learned counsel and perused the relevant

material on record.

7. In the first limb of the arguments addressed, learned counsel for the complainant has vehemently argued that the accused are liable to be convicted under Section 506 of the IPC. Consequently, this Court needs to ascertain whether the prosecution has been successful to establish the commission of an offence under Section 506 of the IPC against the complainant by the accused.

8. It must be borne in mind that the offence under Section 506 of the IPC is a distinct and separate offence in itself and not a corollary to the other charges levelled against the respondents-accused. The mere fact that respondents No.2 and 3 have been found guilty of offences under Sections 323 and 452 of the IPC does not automatically imply the establishment of an offence under Section 506 of the IPC against them. A perusal of the case record reveals no mention of any threats being extended by the accused to the complainant. Furthermore, the testimony of the complainant merely alludes to the accused criminally threatening his brother while they were fleeing away from the spot. However, a perusal of the testimony of PW2 Nand Lal which would have served as the most compelling evidence to substantiate the commission of an offence under Section 506, as the alleged threat had been directed towards PW2 Nand Lal himself, reveals that he remained completely silent during his testimony before the Trial Court, qua the alleged threats extended to him. There, thus, exists no remotely compelling evidence on record, except for a vague allegation levelled by the complainant during his deposition, to support the commission of an offence under Section 506 of the IPC.

9. Coming to the next limb of the arguments of the learned counsel pertaining to the involvement of respondents No.4 and 5, a perusal of the record reveals that the complainant has not ascribed specific role or even the use of any weapon to respondents No.4 and 5 either while lodging the FIR or even during his testimony as PW3. Furthermore, it has been established, as admitted by the complainant himself, that on the night of the occurrence in question, a part of the marriage ceremony of accused Babita had already been solemnized. Given the societal context, it is highly improbable that accused Babita would have participated in a confrontation/brawl during her marriage ceremony. Furthermore, it is also a matter of record that respondent No.4 had given birth to a child just three weeks prior to the date of occurrence whereas respondent No.5 had given birth to a child, two months prior thereto. In the totality of circumstances, it appears that respondents No.4 and 5 had been arrayed in the instant case only being the family members of the accused respondents No.2 and 3.

10. As a sequel to the above, this Court does not find any merit in the instant revision petition which stands dismissed accordingly.

11.10.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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