

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRA-AD-40-2022

Date of Decision : May 31, 2023

ASHA

.....Appellant

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Jagjit Singh, Advocate for the appellant.
Mr. Anurag Bansal, AAG, Punjab.

SURESHWAR THAKUR. J.(Oral)

1. The instant appeal is directed against the verdict of acquittal, as becomes recorded on 28.7.2021, upon case No. SC/148/2019, thus by the learned Additional Sessions Judge, Exercising the power of Judge Special Court, Kapurthala.
2. The learned counsel appearing for the appellant has, argued that the verdict of acquittal is infirm, as it is based upon a complete mis-appreciation, and, non-appreciation of evidence germane to the charges drawn against the accused. The charges drawn against the accused were for offences punishable under Sections 376, 354 and 34 IPC.
3. However, for the reasons to be assigned hereinafter, this Court does not deem it fit and appropriate to record a finding contrary to the one, as has been recorded by the learned trial Judge. The prosecutrix is a married lady, aged about 50 years. The incident which has been testified by the prosecutrix, though is in complete tandem with the allegations, as reared by her in the complaint. Moreover, also though the

purported eye-witness to the occurrence, one Innu Singh, who stepped into the witness box as PW4, has made narrations, thus in corroboration to the one, as made by the prosecutrix in her testification.

4. Nonetheless, it appears that the defence, as reared by the accused, thus became validly accepted by the learned trial Judge concerned.

5. The reason for forming the above inference, is that, in respect of a penal incident, which occurred on 29.11.2012 at about 7.30 p.m., the same, resulted in the registration of an FIR bearing No.259 dated 30.11.2012, at the Police Station concerned. In respect of the above FIR, the learned trial Judge concerned, embarked upon, making a trial of the prosecutrix and of the other co-accused, and, on completion of trial, a verdict of conviction Ex.D1, thus became recorded against the prosecutrix, and, against the other co-accused concerned. The said verdict of conviction, has been thus, in the deposition made by by prosecutrix, and, by PW4 Innu Singh, hence accepted by both to acquire conclusivity, as the same remains unchallenged. Further-more, both the time and date of the penal incident recorded in Ex.D1, and, also the date and time, of the penal incident, as mentioned in the instant complaint rather are evidently similar.

6. The effect of the above, is that, though the prosecutrix alleges that the penal event in the instant case, took place at 10.00 p.m. on 29.11.2012, but when earlier thereto, the occurrence encapsulated in Ex.D1, did also evidently occur, but with therein, an imputation of guilt

to the prosecutrix, and, to the other co-accused, thus leading to the making(s) of a verdict of conviction (Ex. D1) against the prosecutrix, and, the other co-accused. Moreover since the said verdict of conviction has acquired finality, given the same remaining unchallenged. Therefore, the instant complaint alleging, that the instant penal occurrence occurred, on 29.11.2012 at 11.30 p.m., and, yet when the above date, and, time is almost similar to the timings and happenings of the penal incident, as becomes encapsulated in the verdict of conviction (Ex. D1), as became drawn against the prosecutrix and the other co-accused. Resultantly, it appears that the penal occurrence, as encapsulated in the instant complaint, and, which resulted in the drawing of a verdict of acquittal, is but a sheer concoction, besides is a result of reprisal, and, vendetta reared by the prosecutrix against the accused, who are the victims in Ex.D1.

7. Moreover, a perusal of medico-legal reports Ex.DX/4 and Ex.DX/5, reveals, that in pursuance to the institution of FIR, bearing No.259 dated 30.11.2012, the accused in the instant complaint and victims in the FIR (Supra), thus being inflicted injuries by the prosecutrix and the other accused concerned. Apparently, the said injured persons, who are the accused in the present case had also gone to the hospital at 11.30 p.m. on 29.11.2012. The date and time(Supra), as, becomes mentioned in medico-legal reports Ex.DX/4 and Ex. DX/5, thus have not come under any cloud of doubt, at the instance of the prosecutrix, through hers leading such cogent and convincing evidence, so as to deny the said dates, and times, as are reflected therein. Therefore, but obviously the

accused concerned, were subjected to belabourings at the instance of the prosecutrix, and, as such they were evidently led to take treatment at the medical centre concerned. The further corollary thereof, is that, the penal incident in the instant case, which is alleged by the prosecutrix to take place at 10.00 p.m., is but a completely pre-meditated incident, in-as-much as, given the incident reported in FIR No.259 dated 30.11.2012, thus resulting in a conclusive verdict of conviction (Ex.D1), becoming pronounced against the prosecutrix, thereby the penal incident which is alleged to occur also at about 10.00 p.m., thus, can not be assigned any credence, as aptly done by the learned trial Judge. The reason is that when at the relevant time rather the accused were taking treatment at the medical centre concerned. Therefore, the accused have been able to ably convass the plea of ali-bi. In consequence, as above stated, this Court finds no merit in the instant appeal, and, is constrained to dismiss it.

8. Consequently, the appeal is dismissed, and, the impugned verdict of acquittal is upheld. Personal, and, surety bonds, if any, furnished are ordered to be forthwith cancelled, and, discharged. The case property, if any, be destroyed after the expiry of the stipulated period. Records be sent down.

(SURESHWAR THAKUR)
JUDGE

May 31, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No