

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

205

CRM-A-741-MA-2017(O&M)

Date of order: 18.04.2024

Sunita Rani

.....Applicant(s)

Vs.

Mahi Pal & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arshad Ali, Advocate for
Mr. G.C. Shahpuri, Advocate
for the applicant.

Mr. Surinder Kumar Dagar, DAG Haryana.

Nidhi Gupta, J.

This is an application under Section 378(4) Cr.P.C. for grant of special leave to file appeal against impugned order of acquittal dated 25.01.2017 passed by learned Sub-Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar whereby accused/respondents No.1 to 5 herein have been acquitted in complaint case No.1030 of 2006 under Sections 148, 149, 323, 325, 354 and 506 IPC.

2. Brief facts of the case as set up by the applicant/complainant are that a criminal case was filed by father of the complainant against Pyare Lal, Mahi Pal and Satish etc., due to which the respondents were having a grudge against them. Respondents also threatened the complainant and her family members that if her father will not withdraw the case, they will face dire consequences, but her father did not withdraw the case, causing the respondents to become furious. It has

been averred that on 10.8.2006 at about 7.00 a.m., the complainant was coming back to her home from the fields and when she was at a distance of about one acre from the village, respondents Darshani, Surjeeto, Sukhvinder etc. stopped her in the way and compelled her to withdraw the case but she refused. They caught hold of her and respondent No.3/Darshani called the other respondents. The other respondents came armed with danda and attacked the complainant. Respondent No.4/Sukhvinder caught the complainant from her hair and respondent No.2/Satish caught her breast upon which respondent No.1/Mahipal made a fist blow on her mouth as a result of which her teeth broke. Respondents also gave beatings to the complainant by fist, leg and danda blows on her back, legs and other parts of her body. In the meantime, one Ramji Lal and Vinod Kumar came at the spot and they informed her father. Later on, her father came at the spot and saved her from the clutches of the respondents. The complainant sustained multiple and grievous injuries. Thereafter, she was shifted to community health centre, Sadhaura and she was medico-legally examined. The complainant made a written complaint to the police, but since no action was taken by the police, thereafter the instant complaint was filed.

3. Learned counsel for the applicant inter alia submits that the impugned judgment dated 25.01.2017 is illegal and perverse, being contrary to the evidence on record. It is contended that cogent evidence was led by the applicant/complainant establishing the guilt of the accused/respondents beyond shadow of reasonable doubt. However, the same has not been judicially appreciated by the learned trial Court while

acquitting the respondents of the charges framed against them. As such, the impugned judgment is based on conjectures and surmises.

4. It is further submitted that the learned trial Court failed to appreciate that six injuries were found on the person of the applicant as also depicted in the MLR (Ex.CW3/A). To prove the injuries, the applicant had also examined CW3 Dr. Amrish, who had prepared the MLR. Furthermore, in respect of the injury on her teeth, i.e. injury No.5, the applicant was referred to Government Hospital, Yamuna Nagar in respect of which the referred slip was duly placed on record as Ex.C2. Even the X-ray examination slip was placed on record before the learned trial Court. However, the learned Magistrate has failed to appreciate this cogent evidence on record and wrongly acquitted the accused vide the impugned judgment.

5. It is further contended that the learned Magistrate has wrongly come to the conclusion that there are no allegations qua the offence under Section 354 IPC. It is submitted that the said conclusion is contrary to the complaint and the evidence on record.

6. No other argument is made on behalf of the applicant.

7. I have heard learned counsel for the applicant and perused the case file in detail.

8. Record shows that this application is of the year 2017. However, notice has not yet been issued in the matter. It may be pointed out that there were six accused named by the applicant in her present complaint. However, accused No.6 Pyara Lal, son of Antu Ram had died

during pendency of trial. Therefore, there are only five accused/respondents in the present case.

9. Perusal of record of the case shows that there are material discrepancies in the case put forth/statements made by the applicant from time to time. In her present complaint filed before the Id. Trial Court, the applicant had stated that after the incident on 10.08.2006, she had moved an application Ex.CW2/D to the Police Station, Sadhaura. Thereafter, during her cross-examination at the post charge evidence, the applicant had admitted moving the above said application Ex.CW2/D, and that the same does not bear her thumb impression. In Para 5 of the said application it has been alleged by the applicant that on 10.08.2006 at about 7 AM, the accused females had accosted her and had caused injuries to her. However, it has nowhere been alleged that respondent No.2/Satish had outraged her modesty. In contradiction of that material improvement upon her previous application Ex.CW2/D, the applicant in para 5 of the present complaint has alleged that Satish had outraged her modesty by catching her breast. Again during her pre-charge evidence at the time of recording her examination-in-chief as CW2, the applicant made no allegations of outraging her modesty against Satish. It was due to these contradictions that the learned trial court had held that there was no offence under section 354 IPC.

10. Even the allegation made by the applicant regarding infliction of six injuries upon her by the accused was found to be incorrect by the learned trial court. Relevant findings in this regard are as under:-

“11. In the present case the allegations against the accused are qua the commission of offences punishable under Sections 323, 325, 354, 506/34 IPC. The present case is a complaint case and in her complaint it has been averred by the complainant that she had moved an application to Police Station Sadhaura in which she had narrated whole of the story. Application moved by the complainant has been placed on record as Ex. CW2/D and the complainant at page No. 7 of her cross-examination recorded at the stage of post charge evidence has specifically deposed that she had moved the application Ex. CW2/D and it does not bear her thumb impression. The perusal of the application Ex. CW2/D shows that in para No.5 of the application it had been averred by the complainant that on 10.8.2006 at about 7.00 AM she was stopped by the accused Darshani, Surjeeto and Sukhvinder on her way to her home and had called her names and had asked to withdraw the criminal case which was filed by her (complainant's) father against Pyara Lal etc. When the complainant denied to do so they called other accused and they had caused injuries to her. In para No.5 of the application Ex. CW2/D the complainant had not made any statement qua the factum of outraging her modesty by the accused Satish. However in the complaint filed before this court it has been averred by the complainant in para No.5 of the complaint that accused Satish had outraged her modesty by catching her breast and it is observed that qua the facts of outrage of the modesty there is improvement in the complaint filed before the court. The complainant has been examined as CW2 and in her examination-in-chief at pre-charge evidence stage she had not levelled any allegations of outraging of her modesty at the hands of accused Satish and it is observed that the stand of the complainant qua the commission of offence under Section 354 IPC by the accused is flip flop in nature.

At page No.3 of her cross-examination at pre-charge stage and at page No.2 of her cross-examination at post charge stage CW2 complainant has deposed about the pendency of various litigations between her family and the family of accused. It has been averred by the complainant that the accused Sukhvinder had caught her hairs and Mahi Pal had given a fist blow due to which her tooth was broken. To prove the injuries suffered by her the complainant has relied upon the deposition of CW3 Dr. Amirsh who has deposed on 10.8.2016 he had examined the complainant and had prepared the MLR Ex.CW3/A. The perusal of the MLR Ex. CW3/A shows that at the time of medicolegal examination of the complainant total six injuries were allegedly present on her person and out of those six injuries injuries No.2 to 6 were only the complain of pain and injury No.1 was a poorly localized bruise on left calf porteno laterally tenderness present able to walk and breath. At injury No.5 there was a complain of missing of tooth but no fresh bleeding or clot was present. At page No.5 of her cross-examination at pre-charge evidence stage it has been deposed by CW2 Sunita/complainant that when she was medicolegally examined by the doctor blood was coming out of the tooth and it had stopped only when doctor had given her the medicines. But this deposition of CW2 Sunita Rani is in contradiction to the fact mentioned in the MLR qua injury No.5. Even CW3 Dr. Amrish in his cross-examination has deposed that there was no active bleeding and the deposition of the complainant becomes in contradiction with the deposition of CW3 Dr. Amrish.

It has been further deposed by CW3 Dr. Amrish that he do not remember that whether patient had ever shown him final dental opinion of surgeon. In the present case the dental surgeon has also not been examined by the complainant and she has not placed on record any X-ray report showing the fracture in her tooth despite the fact that at page No.6 of her

cross-examination at pre charge evidence stage CW2 Sunita Rani had deposed that she had taken the X-ray report and the non examination of the dental surgeon has created a lacuna in the case of the complainant and in absence of the examination of the dental surgeon it can not be said beyond all reasonable doubts that the accused had caused her injury due to which her tooth was broken.

As far as the injuries wherein the complaint of pain was present are concerned CW3 Dr. Amrish at his post charge evidence stage has specifically deposed that the complain of pains as mentioned in the MLR are subjective only and it is possible that they may be false. Any person can make the complaint of pain in any part of his body and when corresponding injury mark is not present it is not safe to hold that the injury was caused by the assailants and in the present case as the corresponding mark of injury was not present in the injuries mentioned at Sr. No.2 to 6 in the MLR it is observed that it can not be said beyond all reasonable doubts that in fact these injuries were caused by the accused to the complainant.”

11. It has further come on record that as per the applicant, the incident had taken place at 7-7:30 a.m. In her cross-examination during post-charge evidence, the applicant had stated that after the incident, she had reached the hospital at 10 a.m. in Ambala. However, perusal of MLR (Ex.C4) shows the date and time of arrival of the applicant as 3:10 p.m.

12. Furthermore, it was also the case of the applicant that the incident in question was witnessed by two persons namely Ramji Lal and Vinod Kumar. However, admittedly, the said witnesses, Ramji Lal and Vinod Kumar have not been examined by the applicant before the learned trial Court. It had further been deposed by the applicant that the said Ramji

Lal and Vinod Kumar had informed brother and father of the applicant, who had come on the spot and taken the applicant to the hospital. However, the applicant had not even examined her brother and father and therefore, her deposition remained uncorroborated.

13. Thus, it was in view of the above facts that the learned trial Court had acquitted the accused persons. Ld. Counsel for the applicant is unable to show anything to this Court to controvert or dispute the above said findings.

14. In view of the above, I find no ground is made out to interfere in the impugned judgment. Present application accordingly, stands **dismissed**.

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

18.04.2024

Sunena

(Nidhi Gupta)

Judge

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