

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of order: 15.03.2024

CRR-3846-2017(O&M)

Neelam Insa

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Mukul Goyal, Advocate
for the petitioner (through VC).

Ms. Aakanksha Gupta, AAG Punjab.

None for respondent No.2.

Nidhi Gupta, J.

Challenge in the present petition is to judgment dated 09.09.2016 passed by learned Sub-Divisional Judicial Magistrate, Nihal Singh Wala whereby accused/respondent No.2 herein has been acquitted in case FIR No.101 dated 13.07.2014 registered under Section 354 IPC at Police Station Nihal Singh Wala; and judgment dated 09.05.2017 passed by learned Additional Sessions Judge, Moga whereby appeal filed by the petitioner against the aforesaid judgment dated 09.09.2016 has been dismissed.

2. Brief facts of the case as set out by the petitioner side are that on 13.07.2014, ASI Sukhdev Singh along with lady ASI Harjit, HC Tarsem Singh and HC Krishan Gopal in connection with nakabandi were on a private vehicle and were present at Bus Stand Khai, where present

petitioner (complainant) Neelam Insa along with her husband Hardeep Singh met ASI Harjit Kaur and got her statement recorded to the effect that she is the owner of Insa General Store. Petitioner and her husband are working in the said store. On 10.07.2014 petitioner was alone in her shop and respondent no 2 namely Jiwan Singh Photographer, whose shop is located opposite to that of the petitioner's shop, came to her shop and demanded a pack of whisper pads and Mehendi. She sold him Mehendi only as whisper pads were out of stock. Thereafter, at about 1.00 PM, respondent no 2 again came to her shop and started reading a newspaper and then started doing indecent acts with her by holding her arm and also tried to kiss her. When the petitioner raised alarm, respondent no 2 fled away from the spot. Satish Kumar son of Balvir Singh and Jagraj Singh son of Ram Lal, residents of village Raunta had also seen the accused fleeing away. On the basis of her statement, the present case against the accused/respondent No.2 herein was registered.

3. Learned counsel for the petitioner inter alia submits that in view of the above, learned Courts below have erred in acquitting respondent No.2 and have failed to consider and appreciate the documentary as well as oral evidence produced by the prosecution. When respondent No.2 behaved with the petitioner in this fashion she had raised *rolla* as a result of which neighbourers had gathered near the petitioner's shop. It is submitted that the said witnesses were duly examined. However, even their testimonies have been ignored by the learned courts below.

4. It is submitted that the learned Courts below have also failed to appreciate that respondent No.2 had made slanderous statements

against the petitioner before the learned trial court inasmuch as he had stated that he *“saw complainant in compromise position with some unidentified person, when she was in her shop. She got lodged the present false FIR after consulting the matter with her husband against him.”* It is submitted that main grievance of the petitioner in the present petition is that respondent No.2 made such slanderous insinuations against the petitioner and yet no action has been taken against him.

5. Per contra, it is pointed out by learned State counsel that there were only two prosecution witnesses in the present case the same being PW2 who is the husband of the petitioner and PW3 who was a neighbour of the petitioner. It is submitted that however admittedly they were not eyewitness to the incident and therefore, any evidence adduced by the aforesaid prosecution witnesses is merely hearsay.

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

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

8. Perusal of the order sheets shows that although present petition is of the year 2017, it has been adjourned at request of learned counsel for the petitioner on 20.04.2018, 25.03.2019 and 12.02.2020; and none had appeared on behalf of the petitioner on 30.08.2018 and 25.09.2023. Even today, a request for adjournment has been made on behalf of the petitioner, however, the matter being of the year 2017, this Court is not inclined to accede to the said request.

9. Perusal of record of the case shows that the learned Courts below have acquitted respondent No.2 primarily on the ground that the alleged incident is stated to have taken place on 10.07.2014. However, FIR has been registered three days thereafter, on 13.07.2014. There is no explanation whatsoever on record as to why there was delay in lodging of FIR. On a direct Court query as to why FIR was not registered in time, learned counsel for the petitioner had submitted that the petitioner could have filed complaint only after taking her husband's permission, and he was not present on that day of occurrence. However, the said contention on behalf of the petitioner is borne out to be patently false as in Para 19 of the judgment dated 09.05.2017 passed by learned Additional Sessions Judge, Moga, it has been recorded as under:-

"19. The burden was upon the prosecution to prove its case by examining solid witnesses. Moreover, in the cross examination, complainant Neelam Insa has categorically admitted that she got recorded her statement after consultation with her husband. From the cross examination of the complainant, this fact is very much clear that she did not report the matter to the police for about three days and thereafter, she has got recorded her statement to the police after consultation with her husband. Moreover, her husband had returned after some time on that very day and even though, no efforts were made by complainant and her husband to report the matter to the police. As such, the prosecution has failed to explain the delay of three days in lodging the FIR."

10. It has further been pleaded on behalf of the petitioner that a number of neighbours had gathered at the spot after the incident hearing the hue and cry raised by the petitioner. However, admittedly only

PW2-husband of the petitioner and PW3-neighbour of the petitioner have been produced as the prosecution witnesses, who were not even eyewitnesses to the incident. In this regard findings as contained in Para 17 of the impugned judgment dated 09.09.2016 passed by learned trial Court are relevant and are reproduced hereinbelow:-

“17. The Ld.APP for the State failed to give any satisfactory answer as to the delay in lodging of the FIR in question. Counsel for the accused had rightly pointed out that there was no occasion for the delay, had the version of the complainant been true. Her husband had returned after some time on that very day and as per complainant he was completely briefed by her, yet they never reported the matter to the police promptly nor they reported the same to the concerned MC or other respectable members of the locality. The authenticity of the claim of the complainant lost its value in view of the statement of the complainant, who herself admitted that she consulted with her husband and thereafter only she got lodged this FIR after three days. This non- explanation of three days, coupled with the active consultation of her husband and the evidence brought on record by the accused Jiwan Singh that her husband is quarrelsome nature and he used to quarrel with villager on petty issues and the fact that the complainant and her husband were compelled him to depose against Iqbal Singh, Gold Smith and on his refusal to do so, they have implicated the present accused. It is highly strange that the shop where the alleged occurrence had taken place is located in thickly populated area and in the thoroughfare street with number of adjoining shops, yet none from the locality saw the occurrence. The onus was upon the prosecution to satisfactorily explained the delay in lodging of the FIR, which it has miserably failed to do so.”

11. From the above it is clear that; a) there is unexplained delay of three days in registration of the FIR; b) no independent witness has been examined by the prosecution and; c) prosecution case is primarily based on hearsay evidence. It is established position in law that unexplained delay is fatal to the case of the prosecution.

12. As regards hearsay evidence, reference may be made to judgment of Hon'ble Supreme Court in **"Kalyan Kumar Gogoi vs. Ashutosh Agnihotri and another"** Law Finder DOC ID #241873, wherein it has been held as under:-

"21. Here comes the rule of appreciation of hearsay evidence. Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination. The phrase "hearsay evidence" is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible. A statement, oral or written, made otherwise than a witness in giving evidence and a statement contained or recorded in any book, document or record whatever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. That this species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to

protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of a Judge about the existence of a fact, and the fraud which may be practiced with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.”

13. Learned counsel for the petitioner is unable to dispute the above said factual and legal position.
14. As regards contention of learned counsel for the petitioner that the impugned orders deserve to be set aside as respondent No.2 had made insinulative statements against the petitioner, it is not the case of the petitioner that the said ground was raised before the learned Sessions Court at Moga. Definitely, the said ground has not been taken/pleaded in the present revision petition.
15. In view of the above, I find no ground is made out to interfere in the judgment dated 09.09.2016 passed by learned Sub-Divisional Judicial Magistrate, Nihal Singh Wala; and judgment dated 09.05.2017 passed by learned Additional Sessions Judge, Moga. Present petition accordingly stands **dismissed**.
16. Pending application(s) if any also stand(s) disposed of.

15.03.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No