

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM 25498 of 2013 in/and
CRM-A No.256-MA of 2013
Date of Decision: 04.08.2015

Malkiat Kaur

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Akshay Jain, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

CRM-A No.256-MA of 2013 is an application preferred under Section 378 (4) of the Code of Criminal Procedure (Cr.P.C. 'for short') seeking leave to file an appeal against the judgment of acquittal dated 28.10.2011 passed by the learned Sub Divisional Judicial Magistrate, Dabwali.

The applicant herein/complainant Malkiat Kaur filed a complaint against the private respondents herein on the allegations that on 07.03.2006 she had been assaulted and had been caused injuries. For the sake of brevity and to avoid repetition, it would be appropriate to refer to the facts noted by the trial Court in Paras 1 and 2 of the judgment dated 28.10.2011 and the same read as under:-

1. *“Malkiat Kaur (hereinafter referred to as “Complainant”) has filed the present complaint against Balbir Singh etc. (hereinafter referred to as “accused persons”) with the allegations that on 07.03.2006 at about 7.00 a.m., when she*

out of the toilet after answering the call of nature, she heard a noise in the street. She was her nephew Gurprit Singh son of Bachan Singh entering into the house of Bant Singh, & her brother-in-law (Jeth), Balbir Singh, her brother-in-law (Devar) and Kulvinder Singh son of Balbir Singh, were following said Gurprit Singh. When she asked them about the matter, then accused No.3 and 4 said that they would teach her a lesson before Gurprit Singh. Due to fear, she entered in her house and the accused-persons also followed her in her house. Accused Balbir Singh gave brick blow which hit on her right hand. Accused Kulvinder Singh gave brick blow, which hit on her left hand. Accused Rajprit Kaur gave brick blow which hit on her left elbow. Whereupon, she raised hue and cry, which attracted her husband Mukand Singh, her daughter-in-law Rajprit Kaur and her brother-in-law who came at the spot and rescued her from the clutches of the accused. Accused Sukhpal and Rajprit Kaur gave fist blows on her person. The accused while leaving her house threatened her with dire consequences. Thereafter, she was shifted to PHC Goriwala by her husband.

2. *On the next day, the police came in the hospital and recorded her statement at their own and did not read over and explain the same to her. On the basis of her statement, a rapat No.13 dated 08.03.2006 was entered in the Police Post Goriwala. After 4/5 days, she along with her husband and Bant Singh, her brother-in-law went to police post, Goriwala and requested to take action against the accused persons for*

causing injuries to her but the police instead of taking any action against the accused, registered a false case bearing FIR No.54 dated 10.03.2006, under Section 323, 325, 34 IPC in the Police Station, Sadar Dabwali against her husband, her brother-in-law and her nephew. Hence, this complaint.”

Complainant led preliminary evidence and the trial Court vide order dated 18.10.2007 summoned the accused/private respondents herein to face trial for commission of offence punishable under Sections 323, 506 and 504 read with Section 34 IPC. In the pre-charge evidence complainant examined herself as PW-1, Raspreet Kaur as PW-2, Lalit Kumar Juneja as PW-3 and ASI Suresh Kumar as PW-4. Vide order dated 03.05.2009, the accused/private respondents were charge-sheeted for commission of offence punishable under Sections 323, 504 and 506 read with Section 34 IPC. The accused pleaded not guilty and claimed trial. After framing of charge, accused opted to examine Malkiat Kaur complainant PW-1, Raspreet Kaur eye-witness PW-2 and Lalit Kumar Juneja PW-3. The after-charge evidence was closed by counsel for the complainant vide statement recorded on 20.08.2011 and after tendering copy of Rapat Roznamcha No.13 dated 18.03.2006 as mark 'A'. After closure of after-charge evidence, statement of the accused under Section 313 Cr.P.C. were recorded wherein they denied the allegations and pleaded innocence. No defence evidence was led by the accused.

After having heard both the parties and having evaluated the evidence adduced on record, the trial Court vide judgment dated 28.10.2011 has acquitted the accused/private respondents herein of the charges levelled against them. It is against such brief factual backdrop that the instant

application seeking leave to appeal has been filed.

Learned counsel has argued that the trial Court has committed a patent illegality in not appreciating the testimony of PW-1 i.e. a complainant herself who had completely corroborated the version as given out by her in the complaint. It is submitted that the medical evidence brought on record was in conformity with the ocular evidence and deposition of the complainant. It has been argued that conviction can be based only upon the solitary evidence of the injured/complainant if her testimony is found to be trustworthy. Counsel contends that the trial Court has overlooked the aspect that the incident had taken place on 07.03.2006 and the eye-witness to the occurrence, namely, Raspreet Kaur PW-2 had been cross-examined in the year 2011 i.e. almost after a gap of five years and as such some discrepancies were bound to occur in the testimony of even the most truthful witnesses and any such discrepancy cannot be made the basis of brushing aside the consistent stand taken by the complainant (PW-1).

Having heard counsel for the applicant at length and having perused the pleadings on record, this Court is of the considered opinion that it is not a fit case for granting leave to file appeal against the impugned judgment of acquittal.

As per version of the complainant herself, on the date of alleged occurrence i.e. 07.03.2006, her husband Mukand Singh, her sons Rajinder and Kuldeep, her Jeth Bant Singh and her daughter Satbir Kaur were present. It is not in dispute that the afore-noticed alleged eye-witnesses have not even been examined. The trial Court as such has rightfully taken a view that the complainant has withheld the best material

evidence. That apart, the deposition of eye-witness Raspreet Kaur PW-2 in cross-examination is to the effect that when incident took place she was not even present and was not aware as to whether Mukand Singh i.e. husband of the complainant and other close blood relations were present at the spot of occurrence. This is at complete variance to the stand of the complainant. It has also weighed with the trial Court that the complainant as also her family members were facing criminal trial for having inflicted injuries on the persons of the accused party and that there was a series of litigation pertaining to a land dispute and as such there was a strong possibility that the complaint had been lodged just to falsely implicate the accused/private respondents herein and to settle scores.

The judgment of acquittal is based on cogent and sound reasoning. No case for interference has been made out.

Even otherwise, it is a settled proposition of law that whenever two views are possible, the view which favours the accused has to be followed by the Court. A reference in this regard may be made to the judgment of the Apex Court in ***Ghurey Lal Vs. State of Uttar Pradesh (2008) 10 SCC 450.***

In 'Mrinal Das & others, V. The State of Tripura', (2011 (6) Law Herald (SC) 4149): 2011 (9) SCC 479, decided on September 5, 2011, the Hon'ble Supreme Court, after referring to many earlier judgments, has laid down the parameters for interference against a judgment of acquittal, by observing as under:-

“An order of acquittal is to be interfered with only when there are 'compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for

interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate Court is competent to reverse the decision of the trial Court depending on the materials placed.”

Considering the totality of facts and circumstances of the case noted above and keeping in view the dictum laid down by the Apex Court in ***Ghurey Lal's case and Mrinal Das's case (supra)***, this Court would have no hesitation to conclude that neither any patent illegality nor perversity has been pointed out in the impugned judgment of acquittal.

CRM No. 25498 of 2013 is an application filed under Section 5 of the Limitation Act seeking condonation of delay of 435 days in filing the appeal.

The contents of the application do not bring out any valid basis or justification for condonation of inordinate delay of 435 days.

Resultantly, the application seeking leave to appeal against the judgment of acquittal dated 28.10.2011 is declined both on merits as well as on the ground of delay.

Application dismissed.

04.08.2015

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No