

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-A No.1070-MA of 2014 (O&M)

Date of decision: 19.03.2015

Swinder Kaur

-----Applicant (s)

V/s

State of Punjab & others

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Amit Arora, Advocate
for the applicant(s).

HARI PAL VERMA, J.

The instant application has been filed by complainant Swinder Kaur under Section 378 (4) of the Code of Criminal Procedure, 1973 for grant of special leave to appeal against the judgment of acquittal dated 15.5.2013 passed by the Judicial Magistrate Ist Class, Tarn Taran, whereby the complaint filed by the applicant-complainant against accused-respondents No.2 to 5 has been dismissed and they have been acquitted of the charges framed against them by giving them the benefit of doubt.

Briefly stated, the facts of the case are that the applicant-complainant filed complaint dated 10.11.2013 before Judicial Magistrate Ist Class, Tarn Taran and submitted that the complainant and the respondent-accused have common ancestors. On 11.11.1965, Teja Singh, Karnail Singh and Angrej

Singh, who were three brothers, had partitioned their joint property i.e. agricultural land as well as residential house. However, the accused persons were having a grudge against the complainant, as they were accusing her to be in illegal possession of one marla of land. On 27.9.2003, when Sukhwinder Kaur @ Sukhi wife of Swinder Singh was repairing the compound wall of her house, the accused Sukhwinder Kaur armed with *dattar*, Balwinder Kaur armed with *dat*, Manjit Kaur empty handed and Jagtar Singh armed with a *dang* came there and threatened the complainant as to why she was getting the wall repaired. Swinder Kaur and Sukhwinder Kaur told them that it was their house and they could do the way they like. On hearing it, the accused Manjit Kaur raised *lalkara* and all the accused persons gave blows with the respective weapons on the person of the complainant Swinder Kaur and Sukhwinder Kaur @ Sukhi.

In her preliminary evidence, the applicant-complainant stepped into the witness box as CW1 whereas Sukhwinder Kaur appeared as CW2 and Dr. Kashmir Singh appeared as CW3.

On the basis of preliminary evidence, learned Magistrate vide order dated 13.3.2009, summoned the accused to face trial under Sections 323/324 read with Section 34 IPC.

The complainant Swinder Kaur while appearing as CW1 reiterated the contents of the complaint whereas the eyewitness CW2 Sukhwinder Kaur also supported the complainant's case. CW3 Dr. Kashmir Singh proved the MLR of

Sukhwinder Kaur as Mark-A while the MLR of Swinder Kaur was proved as Mark-B. On the basis of evidence so recorded, charges were framed against the accused under Sections 452/324/323 /34 IPC on 10.1.2013. After cross-examination of the witnesses, the evidence of the complainant was closed. However, the accused-respondents, in their statement under Section 313 CrPC, denied the allegations and pleaded innocent.

On the basis of the aforesaid available evidence, the trial Court acquitted the accused of the charges vide order dated 15.5.2013. The relevant part of the order passed by trial Court reads thus:-

“11. From the rival contentions of the Ld. Counsel for the parties, I am of the considered view that case of the complainant that she was caused injuries by Sukhwinder Kaur and others at 10:00 a.m. on 27.9.03 seems to be doubtful, as it is not supported by the independent witness Harjinder Singh @ Tota, who has been cited by the complainant as a witness to the occurrence. Moreover, as per the State case registered against the complainant and her family members, Sukhwinder Kaur who have been alleged an active role in the present case was already grievously injured in the occurrence, which took place at 8:00 a.m. in the morning. That this Sukhwinder Kaur was admitted in hospital at 11:00 a.m. and was medico legally examined. Therefore, the contentions of the complainant that Sukhwinder Kaur caused injuries upon her person, when she had earlier suffered grievous injuries seems to be doubtful. Moreover, this contention of the complainant has not

been supported by any independent witness. Secondly, the compromise deed Mark-A brought on record by the complainant mentions the injuries on the person of the accused Sukhwinder Kaur only and does not mention any injury on the person of complainant Swinder Kaur. Therefore, the present complaint seems to be an afterthought and has been filed as counter-blast to the State case filed against the complainant and her family members. Therefore, I am of the considered view that there is enough evidence on record to hold the accused as guilty in the present complaint. Therefore, all the accused are acquitted of the charges framed against them giving benefit of doubt. File be consigned to record room."

Though against the aforesaid order dated 15.5.2013, the applicant-complainant preferred an appeal before Additional Sessions Judge, Tarn Taran, however, the same was withdrawn in order to file an appeal before this Court.

Learned counsel for the applicant-complainant has stated that though charges were framed against the accused-respondents under Sections 452/324/323/34 IPC before the trial Court, however, the trial Court has wrongly acquitted them of all the charges by giving the benefit of doubt without taking into consideration the evidence led by the applicant-complainant in its correct perspective. Learned counsel further argued that the trial Court has dismissed the complaint on the ground that applicant-complainant has failed to examine Harjinder Singh, who has been

cited as an independent witness, and has wrongly disbelieved the independent evidence of eyewitness.

After hearing the learned counsel for the applicant-complainant, going through the record and after considering the entire matter, I find that there is no merit in the present application for grant of leave to appeal, as the observations of the learned trial Court are based on correct appreciation of the evidence and well settled principles of law. The trial Court has clearly observed that the version of the complainant that injuries were caused to the complainant by Sukhwinder Kaur and others at 10 AM on 27.9.2003 seems to be quite doubtful, as the same is not supported by independent witness namely Harjinder Singh @ Tota, who was cited by the complainant as a witness to the occurrence. Moreover, as per the State case registered against the complainant and her family members, Sukhwinder Kaur, who has been alleged an active role in the present case was already grievously injured in that occurrence, which took place at 8 am in the morning and she was admitted in the hospital at 11 am and was also medico-legally examined. Therefore, case of the applicant-complainant that Sukhwinder caused injuries on her has correctly been doubted by the trial Court. It has further been held that the present complaint seems to be an afterthought and the same has been filed as counter-blast to the State case filed against the complainant. There is no explanation to the same.

It may be added here that the jurisdiction of appellate Court in case of acquittal was determined by the Hon'ble Apex Court in a celebrated judgment of **Ghurey Lal v. State of U.P.** 2008(10) SCC 450, wherein having considered the scope of Sections 378, 386 Cr.PC and various judgments on the point, it was ruled as under (Para 75):-

"75. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to along with 10 connected matters 4 overrule or otherwise disturb the trial court's acquittal: 1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;*
- ii) The trial court's decision was based on an erroneous view of law;*
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice;*
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- v) The trial court's judgment was manifestly unjust and unreasonable;*
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material*

documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.”

No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

Having regard to the above legal position and evidence on record, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the present application under Section 378 (4) Cr.P.C. for special leave to appeal is declined. The application is dismissed.

Since the application for leave to appeal has been declined, no further orders are required to be passed in the application under section 5 of the Limitation Act for condonation of delay of 358 days in filing the appeal.

March 19, 2015
ak

(HARI PAL VERMA)
JUDGE