

CRM-A-1605-MA-2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1605-MA-2014
Date of decision: 06.05.2015

Rajbir

.... Applicant/Appellant(s)

Versus

Norang and others

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Vivek Khatri, Advocate,
for the applicant.

PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 30.08.2014 passed by the Judicial Magistrate Ist Class, Hisar whereby complaint filed by the applicant under Sections 323/324/382/452/506/34 of the Indian Penal Code has been dismissed and respondents have been acquitted of the charges framed against them.

Brief facts of the case are that applicant filed a complaint under Sections 323/324/382/452/506/34 of the Indian Penal Code with

CRM-A-1605-MA-2014

the averments that he is serving in Oriental Bank of Commerce at Hisar and at present he is residing at House No. 1253, UE-II , Hisar along with his children. On 17.01.2009, in the evening , the brother in law (jija) of the complainant namely Dilbag Singh, sister namely Krishna, father Norang Rai, mother Bhulan Devi and one person namely Anil resident of Mahrana came to his house and forcibly entered in the house and asked him to vacate the house, otherwise they would throw the household articles out of the house. After saying this, they went away. Then he along with his wife Bedu and children went to his village Sundawas and on 18.01.2009, in the morning, at about 11.00 a.m., he and his wife Bedu went to the field where Mairiawati wife of Subhash came armed with rapri in her hand and gave rapri blow to the left arm of his wife. Then accused Norang and mother of the complainant-Bhulan Devi came there and they were having lathis in their hands and father of the complainant gave lathi blow on the waist of the wife of the complainant and mother of the complainant gave lathi blow to the thumb of left hand of Bedu. Then Subhash son of Mewa Singh came from the fields who was having Fawra in his hand and he gave a fawra blow on the left thigh and leg. Then Mewa Singh came from the fields along with gun and gave Butt blow of gun to the right hand and left side of head of the complainant but he did not fire the gun. Then Prem son of Mewa Singh came along with lathi and gave lathi blow on the right leg twice and parents of the complainant who were having lathi gave the blows on thumb and finger

CRM-A-1605-MA-2014

of right hand of the complainant. Three other persons also accompanied them whose names were not known to the complainant. During this incident, Mewa Singh snatched the mobile from the complainant and Subhash son of Mewa Singh snatched ₹5000/- from the pocket of the complainant. The complainant and his wife raised alarm on which the accused persons ran away from the spot along with their weapons and while leaving the spot, all the accused extended the threats that they would kill the complainant and his wife. The complainant and his wife got scared and they both went to Government Hospital for treatment where doctor gave them first aid and got admitted them in Hospital. The police visited there and recorded the statement of the complainant, but the police initiated the proceedings under Section 107/151Cr.P.C. only against the accused. Thereafter, the complainant kept on visiting the police post Balsamand, but no action was taken. Therefore, the complaint was filed.

On the basis of preliminary evidence, the respondents were summoned under Sections 323, 324, 382 and 506 read with Section 34 of the Indian Penal Code.

In pre-charge evidence, the complainant himself appeared into witness-box as PW 2 (wrongly written as PW 1) besides examining ASI Manohar Lal as PW 1, Dr. Devender as PW 3 (wrongly written as PW 2) and Smt. Bedo as PW 4 (wrongly written as PW 3).

On finding, a prima facie case, the respondents were charge-

CRM-A-1605-MA-2014

sheeted under Sections 323 and 506 read with Section 34 of the Indian Penal Code, to which they pleaded 'not guilty' and claimed trial.

Statements of the respondents-accused under Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondents of the charges framed against them, vide impugned judgment dated 30.08.2014. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

“ 14. In the present case, complainant has materially improved his version at every stage of the proceedings. Ex. PW1/A .i.e. The DDR entry is the first document in corroborating the version of complainant regarding the alleged incident. Perusal of the same nowhere reveals that any offence punishable under Section 506 IPC has been made out. Complainant on the other hand has mentioned in his complaint that while leaving the spot, accused persons had threatened the complainant and his wife with dire consequences. Apart from this, the complainant and his wife has reiterated the same during their evidence on oath. Now, even if it is admitted that the accused persons had committed an offence

punishable under Section 506 IPC, then also there is no evidence on the case file that the accused persons threatened to kill the complainant which raised alarm in his mind. Thus, ingredients of Section 506 IPC is not made out. The law is quite explicit that mere empty threats do not constitute the offence punishable under Section 506 only when the said threats cause alarm to the person to whom they are issued. The allegations of the complainant, as find reflection in the evidence, are only that the accused issued threats. There is no mention that the said threats caused alarm to the complainant. Hence, offence punishable u/s 506 IPC is not made out against the accused. The witnesses examined by the complainant have not deposed that any such threats caused alarm to the complainant. In the absence of any evidence or deposition with regard to the alarm to the victim in consequent to the alleged threats the offence under Section 506 IPC is not constituted. Hence , it can be said that the complainant has failed to prove the offence under section 506 of IPC against the accused persons.

15. *Now, proceeding to the medical evidence on record, it is revealed from perusal of MLRs of complainant Rajbir and Bedu his wife i.e. Ex. PW 2 /A and Ex.PW2/B that the injuries suffered by them are simple and the nature of weapon used is stated to be blunt. Perusal of complaint Ex.P1 and evidence of the complainant and his wife shows that accused Mainawati is alleged to have given a Rapari blow on the left arm of Bedu whereas accused Norang is alleged to have given a lathi blow on the waist of Bedu. Perusal of MLR of Bedu*

Ex. PW2/B nowhere reveals that any injury had been sustained by her on her waist. Further, her cross-examination reveals that Mainawati is alleged to have inflicted Rapri blow from the front side of weapon after which blood had come from her person whereas the MLR nowhere reveals that any sharp edged injuries have been caused to the victim. Perusal of evidence of PW3 Dr. Davender reveals that the complainant did not mention the names of accused person in the alleged history of assault. This also creates doubt in the case of the complainant because had he been really attacked by the the accused persons as alleged by him, then he must have told the names of assailants which he has not mentioned. Further, there is no incised wound shown at injury No.4 in the MLR of Bedu which also creates doubt in the alleged inflicting of injury on her left arm by Rapari because had the injuries being caused by the Rapari, which is the sharp edged weapon, then there must have been an incised wound on her hand.

16. *It is hard to believe that when the accused persons had come to house No, 1253 where they allegedly threatened the complainant, they left the spot without inflicting any injury on his person but chose to teach lesson to the complainant on the next day when they went to village Sundawas. Had the accused persons gone to the house on 17.01.2009 as alleged by the complainant, then they would have beaten the complainant there only and would not have waited for one day to teach him a lesson. Even if it is admitted that the accused persons went to the village Sundaws and inflicted injuries to the complainant and his wife, then also it has not been explained by the complainant that*

why he had left house No.1253 and went to the village in the same evening without even making any complaint before the police Admittedly, house no.1253 is in the name of accused Norang regarding which he had filed a civil suit for injunction on 07.06.2008 i.e. prior to institution of present complaint. The said suit was filed for seeking possession of the house in question where the alleged act of threatening the complainant has taken place. It is strange that why the accused in whose name the house is already standing would threaten the complainant after elapsing of six months from the filing of civil suit in which he has already claimed his remedy and which has been granted by the civil court in favour of him.

17. *Another important factor to be taken noted is that the complainant has stated that when he and his wife were beaten by the accused in the fields, then after raising of hue and cry by them, the accused persons ran away from the spot. This deposition of complainant is also hard to be believed because as per the the complainant, the accused persons were armed with weapons i.e. lathi, rapari and gun but why they fled gun but why they fled away from the spot after raising of hue and cry the complainant has not been explained. It has no where been mentioned in the complaint that complainant was saved due to intervention of some third person or the neighbors from adjoining fields . Even if, it is assumed that the accused persons got scared by seeing any third person, then also there is nothing on the record to corroborate this version of the complainant. This act of alleged running away from the spot by the accused person remains doubtful.*

18. *It is worthwhile to mention here that the complainant has made allegation against his parents who are admittedly more than 75 years old. The role attributed by the complainant to them from the bare perusal of the complaint is doubtful as these two accused persons are alleged who have inflicted lathi blow on the person of wife of the complainant. It is hard to believe that a person of that age will pick up a weapon and inflict an injury on the person of victim who is young and half of their age. Further, even if it is assumed that the said injury was inflicted on the waist of the victim i.e. wife of the complainant, then also there is no mentioning of the said injuries in the MLR Ex. PW2/B which makes the whole story unreliable.*

19. *One more point that is to be taken into consideration is that the complainant has stated during his cross-examination that police did not proceed against the accused persons and had not written the version as narrated by him. This plea of complainant also stands falsified because had he been aggrieved by the act of police of not recording his statement properly, then he should have complained against them before the superior authorities, however there is nothing on the record that any complaint has been moved against any police official who has alleged to refuse to record his statement . Moreover, the police has already given its finding regarding the case of the complainant being suspicious in the DDR No. 24 dated 18.01.2009 which is Ex.PW1/A.*

20. *Thus, viewed from all the angles, the complainant has inherently failed to bring home guilt against the accused beyond all reasonable doubts.*

CRM-A-1605-MA-2014

Consequently, they are hereby ordered to be acquitted of the charges framed against them by extending benefit of doubt. Their bonds stand discharged. File be consigned to the record room after due compliance.”

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr. vs. State of Karnataka*** 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and

compelling reasons.”

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State**; [AIR 1954 SC 1], **Madan Mohan Singh v. State of U.P.**; [AIR 1954 SC 637], **Atley v. State of U.P.**; [AIR 1955 SC 807], **Aher Raja Khima v. State of Saurashtra**; [AIR 1956 SC 217], **Balbir Singh v. State of Punjab**; [AIR 1957 SC 216], **M.G. Agarwal v. State of Maharashtra**; [AIR 1963 SC 200], **Noor Khan v. State of Rajasthan**; [AIR 1964 SC 286], **Khedu Mohton v. State of Bihar**; [(1970) 2 SCC 450], **Shivaji Sahabrao Bobade v. State of Maharashtra**; [(1973) 2 SCC 793], **Lekha Yadav v. State of Bihar**; [(1973) 2 SCC 424], **Khem Karan v. State of U.P.**; [(1974) 4 SCC 603], **Bishan Singh v. State of Punjab**; [(1974) 3 SCC 288], **Umedbhai Jadavbhai v. State of Gujarat**; [(1978) 1 SCC 228], **K. Gopal Reddy v. State of A.P.** ; [(1979) 1 SCC 355], **Tota Singh v. State of Punjab** [1987(2) R.C.R. (Criminal) 35: (1987) 2 SCC 529], **Ram Kumar v. State of Haryana**; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], **Madan Lal v. State of J&K**; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], **Sambasivan v. State of Kerala**; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], **Bhagwan Singh v. State of M.P.**; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], **Harijana Thirupala v. Public Prosecutor, High Court of A.P.**; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], **C. Antony v. K. G. Raghavan Nair**; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], **State of Karnataka v. K. Gopalakrishna**; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], **State of Goa v. Sanjay Thakran**; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and*

Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference

CRM-A-1605-MA-2014

by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

06.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE