

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

CRM-A-1615-MA-2014

Date of decision: July 23, 2015

Daro

.....Applicant.

Versus

Sukha and others

....Respondents.

CORAM : HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Avtar Singh Khinda, Advocate, for the applicant.

S.S. Saron, J.

The complainant - Daro wife of Bhag has filed the present application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' - for short) for grant of leave to appeal against the order dated 15.03.2014 passed by the learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi ('SDJM' - for short) whereby Sukha son of Rura, Rora son of Jaggu and Pasho wife of Rora (respondents No.1 to 3) have been acquitted for the offences punishable under Section 323 read with Section 34, Section 326 read with Section 34, besides, Section 427 read with Section 34 and Section 506 read with Section 34 of the Indian Penal Code ('IPC' - for short) on the basis of protest petition that was filed by the applicant.

We have heard learned counsel appearing for the applicant and with his assistance perused the records of the learned trial Court that has been requisitioned.

Initially, case FIR No.146 dated 22.08.2008 was registered at Police Station Sultanpur Lodhi for the offences punishable under Sections 326, 324, 323, 427, 379, 148 and 149 IPC. Thereafter, a cancellation report was

filed by the SHO of Sultanpur Lodhi in the Court of the learned SDJM on 19.02.2009. Notice of the cancellation report was issued to the complainant. The complainant on 10.07.2009 stated that she did not agree with the cancellation report and the police had conducted a one sided inquiry. The learned SDJM sent the case back to the police for further investigation. Further investigation was conducted, however, it ended in a cancellation report, which was filed on 22.09.2009. Notice was again issued to the complainant and she was asked to file a protest petition.

The complainant filed a protest petition on 29.01.2010. The learned SDJM, on 14.05.2010, on perusal of the file observed that the complainant had filed a protest petition. The counsel for the complainant requested for treating the cancellation report as 'challan' (charge report). It was observed that a perusal of the file showed that in different inquiries conducted by the Police Department, the incident was found to be false. Therefore, it was deemed proper not to treat the cancellation report as a 'challan' (charge report). The protest petition was, however, treated as a complaint, which was ordered to be registered. For preliminary evidence, the case was adjourned to 07.07.2010. The cancellation report was ordered to be attached with the complaint/protest petition.

The complainant, in her protest petition/complaint, alleged that she was residing at village Kalru, Tehsil Sultanpur Lodhi, District Kapurthala. She was a housewife doing household work. In the western side of the village, there was a 'pucca' (metalled) street. From this street, a small street leads to her house, which was common street for all. It had been paved by putting bricks by the Panchayat. The drainage water of the house of the complainant

passes through the drain in the said street which leads to the village pond. The elder son of the complainant, namely, Tarsem Lal and his family reside in a 'pucca' house in the street. They had made a boundary wall around the house and had put a wooden door towards the street.

Sukha (respondent No.1) son of Rura used to stop the complainant and her family from passing through the street. About 1½ years back the door of the house of the complainant fell down due to rain. The complainant along with her son Shera, daughter-in-law Nindro wife of Tarsem Lal, Kanto wife of Sadha on 19.08.2008 after re-fitting the door that had fallen were sitting in their house. In the meantime, Sukha (respondent No.1) son of Rura armed with a 'datar', Rora (respondent No.2) son of Jangu armed with a knife for removing leather, Pasho (respondent No.3) wife of Rura armed with a 'sota', Kulwinder Kaur (accused No.4) wife of Ram Lal empty handed, Manjit (accused No.5) wife of Sukha empty handed came in front of the house of the complainant in the street and started talking. The complainant and her family members came out from their house. In the meantime, Sukha (respondent No.1) son of Rura attacked the complainant with the 'datar' that he was carrying in his hand. The complainant to ward off the blow raised her right hand and the blow hit her on the small finger of her right hand, which got cut off. Then, Rura (respondent No.2) attacked the complainant with a knife used for removing leather which hit her on the ring finger of her right hand. Pasho (respondent No.3) wife of Rura attacked the complainant with the 'sota', the blow of which hit her on the back of her right knee. Kulwinder Kaur and Manjit Kaur (accused No. 4 and 5) also boxed her and pulled her hair.

Shera, the son of the complainant and her daughter-in-law Nindro,

besides, Kanto on raising an alarm of 'mar ditta - mar ditta' by the complainant, saved her from the accused. Then the accused demolished the wall of the house of the complainant which had been raised with mud mortar. They committed theft of the wooden door and took it away after demolishing the wall. The accused while abusing the complainant and her family forcibly picking up their weapons went away from the spot. Then a nephew of the complainant, namely, Sodhi son of Dhari after arranging a vehicle took her and got her admitted in an injured condition in the Civil Hospital, Sultanpur Lodhi. The doctor treated her there.

The motive for the fight was that Sukha (respondent No.1) used to stop the complainant and her family members from passing through the street, which in fact was a public street. The complainant and her family members were using the same for the last 40-50 years. The entire occurrence was witnessed by her son Shera and daughter-in-law Nindro, besides, Kanto.

The complainant had lodged FIR No. 146 dated 22.08.2008 at Police Station Sultanpur Lodhi. However, the accused were influential persons and the police was involved with them. Therefore, it did not take any action against the accused and neither were they arrested. By wrong and illegal means, a cancellation report was prepared and filed in the Court. The accused were stopping the complainant and her family from passing through the street and were also harassing them. They were holding out threats to their lives. Therefore, the complaint was being filed. The complainant and the accused were residing within the territorial jurisdiction of the Court, therefore, the Court had the jurisdiction to entertain the complaint. It was prayed that the accused be summoned for the offences punishable under Sections 323, 324,

326, 379, 427, 430, 447, 452, 148, 149 and 506 IPC and strict action be taken and they be punished.

In pre-charge evidence, the complainant examined Niranjana son of Jagat Singh as CW1. He stated that on 17.08.2008 at about 09:30 p.m. he was present at his house. At his house, the workers repairing the house after finishing their work were having their meal. In the street outside, there was a noise. He came out of the house and saw that Sukha son of Rura, Kulwinder wife of Sukha, again said, Kulwinder Kaur wife of Ram Lal, Rura son of Jaggu, Manjit Kaur wife of Sukha, Pasho wife of Rura, residents of Kalru, had run away and entered their house. Later, he came to know that they had caused injuries to Daro (complainant). They had lifted the door of the house from the street. His statement was recorded.

Kulwant Kaur wife of Sadha son of Bhag Ram was examined as CW2 and Nindro wife of Tarsem son of Bhag Ram was examined as CW3. They deposed on the same lines as is stated in the complainant.

Dr. Kam Raj, Medical Officer, Civil Hospital, Sultanpur Lodhi (CW4) conducted medical examination of the complainant - Daro on 19.08.2008. The following injuries were found on her person:-

1. Right little finger was amputated from 3 cm from base and was attached with a tag of skin.
2. Incised wound measuring 4 cm x 0.5 cm on right ring finger on dorsal surface, longitudinally placed. X-ray was advised.
3. Patient complained of pain right shoulder joint. X-ray was advised.

The nature of injury No. 1 was declared as grievous. Injuries No.

2 and 3 were kept for x-rays. The duration of injuries was within six hours of coming to the hospital. Kind of weapon used for injuries No. 1 and 2 was mentioned as sharp and was blunt for injury No. 3. The medico-legal report prepared by him was tendered in evidence as Ex. C-4/A. The pictorial diagram showing the seats of injuries was exhibited as Ex. C-4/B. Supplementary report Ex. C-4/C was prepared after x-ray in which injury No.2 was declared grievous while injury No. 3 was found to be simple in nature. The report was sent to SHO, Police Station Sultanpur Lodhi along with original x-ray films. The x-ray report was Ex. C-4/D and the x-rays were Ex. C-4/E and Ex. C-4/F. He identified the signatures of Dr. Des Ram on the x-ray report and the same was Ex. C-4/D.

HC Paramjit Singh, Police Station Sultanpur Lodhi was examined as CW5. He brought the original FIR register. He had seen copy of FIR No. 146 dated 22.08.2008 registered at Police Station Sultanpur Lodhi for the offences punishable under Sections 326, 324, 323, 148, 149, 427 and 379 IPC. Copy of the FIR was Ex. C-5/A which was true and correct as per their record.

Balwinder Singh, Panchayat Secretary, village Kalru was examined as CW6. He deposed regarding the position of the street where the incident had occurred.

The complainant - Daro examined herself as CW7 in which she deposed on the lines of her complaint; besides, tendered in evidence photographs Ex. C-7/A to Ex. C-7/D. Her statement was recorded by the police which was Ex. C-7/E. It was thumb marked by her. The fight had occurred at 10:00 p.m. at night on 19.08.2008. The police had prepared a site plan of the place of occurrence which was Ex. C-6.

Kashmir Singh, Sarpanch of village Kalru, was examined as CW8. He had seen the disputed street which leads to the house of Daro, her son Tarsem and the house of Sukha. The street was that of the Panchayat and it had paved the street with bricks. There was a drain in the street which drained the water from the house of Daro - complainant and it fell in the village pond. Except for this passage, there was no other way to the house of Daro. Sukha used to stop Daro and others from using the street. In this regard, the Panchayat had passed one resolution No. 12 dated 28.07.2009 Ex. C5/A, which was correct. The site plan Ex. C6, it is stated, was correctly prepared as per position at the spot. In the street, there was a door of the house of Daro (complainant). The door had fallen due to rains and the fight had occurred when Daro etc. were re-fitting the door. Sukha and his family members had caused injuries to Daro. The case was rightly registered. Daro and others were using the street at the time of his deposition.

The pre-charge evidence was closed. The learned SDJM considered the same and in terms of order dated 12.02.2011 found a *prima facie* case punishable for the offences under Sections 323, 326, 427 and 506 read with Section 34 IPC to be made out against Sukha, Rura and Pasho (respondents No.1 and 3) and they were ordered to be summoned for the said offences. The accused Pasho and Rura were granted pre-arrest bail by the learned Sessions Judge, Kapurthala vide order dated 30.05.2011. Sukha was granted pre-arrest bail vide order dated 03.06.2011.

The evidence of the complainant after summoning was recorded. Dr. Kam Raj, M.O., Civil Hospital, Sultanpur Lodhi was examined as PW1. He reiterated the evidence as was deposed by him in the pre-summoning

evidence while appearing as CW4. In cross-examination, he stated that the kind of weapon used for causing the injuries might be with the use of sword, knife. It is stated as correct that if injury is caused with the weapon on the hand, then the injury was likely to be caused on all the fingers of the hand. It is stated as correct that he had mentioned in the report that the kind of weapon used for injuries No. 1 and 2 was sharp. He could not say which of the injuries was caused first to the injured out of injury No. 1 and injury No.2. He had not brought the bed head ticket of the injured. He did not know as to at what time x-ray of the injured was conducted. The same was not conducted in his presence. It is stated that it is very rare that such an injury could be caused on a person of such age by falling next to the door having sharp handle but the possibility could not be ruled out.

The other witnesses, namely, Daro - complainant (PW2), Nindro (PW3) wife of Tarsem, Sodhi (PW4) son of Dhari, Balwinder Singh, Panchayat Secretary (PW5), HC Balkar Singh No. 1193, P.S. Sultanpur Lodhi (PW6) were examined.

Notice of accusation was served on the accused (respondents No. 1 to 3) on 01.12.2012. It was alleged that they all on 19.08.2008 in the area of village Kalru, Tehsil Sultanpur Lodhi, District Kapurthala, voluntarily caused simple injury to complainant Daro wife of Bagh Singh and thereby committed an offence punishable under Section 323 read with Section 34 IPC. Secondly, on the same date, time and place, they all in furtherance of their unlawful assembly (sic. - common intention), the accused Sukha (respondent No.1) voluntarily caused grievous hurt to complainant - Daro with a 'datar' which is a sharp edged weapon and is used for cutting. Thereby they committed an

offence punishable under Section 326 IPC whereas co-accused Rura committed an offence punishable under Section 326 read with Section 34 IPC. Thirdly, on the same date, time and place, they all committed mischief by causing damages to the wall and took away the wooden door valued at more than Rs.50/- and thereby committed an offence punishable under Section 427 read with Section 34 IPC. Lastly, on the same, date, time and place, they are criminally intimidated complainant Daro and thereby committed an offence punishable under Section 506 read with Section 34 IPC. It was directed that all the accused be tried by the Court of SDJM on the above said notice of accusation. The accused heard and understood the notice of accusation and pleaded not guilty to the same and claimed trial.

The cross-examination of Daro (PW2) and Nindro (PW3) was conducted.

The statements of the accused (respondents No. 1 to 3) in terms of Section 313 Cr.P.C. were recorded. The substance of evidence appearing against them was put to them. In their defence, they stated that they were innocent and had been falsely implicated in the case. No such occurrence as alleged by the complainant took place nor had they inflicted any injury to the complainant.

The learned SDJM considered the evidence and material on record and in terms of the impugned order dated 15.03.2014, respondents No. 1 to 3 have been acquitted. Leave to appeal against the said order acquitting respondents No. 1 to 3 has been prayed for.

According to learned counsel for the applicant, the learned SDJM gravely erred in acquitting respondents No. 1 to 3. It is submitted that there is

cogent and convincing eyewitness account supported by medical evidence which clearly brings home the guilt of respondents No. 1 to 3. Therefore, leave to appeal is liable to be granted.

It may be noticed that the learned SDJM considered the facts and circumstances of the case and has acquitted respondents No. 1 to 3. The learned SDJM observed that no time of the incident was mentioned in the protest petition. Dr. Kam Raj (CW-1), who medico-legally examined Daro (complainant), in his cross-examination accepted as correct that when injuries were caused with the weapon, then the injury was likely to be caused on all the fingers of the hand. In the present case, the injury was only on the little finger of right hand. This was observed to be a classical case in which the complainant portrayed that she raised her hand and the injury was caused only on her little finger. It was observed to be not comprehensible that when a blow was given with force then the injury was caused only on the little finger. Further, only three injuries were mentioned and these were attributed one by one to each accused. This showed that one accused caused injury and stepped back. Then the other accused caused injury and he stepped back and so on and so forth. This raised doubt in the mind of the learned SDJM on the prosecution version. Besides, Daro (complainant) in her cross-examination dated 04.05.2012 stated that the incident occurred in the month of 'Bhadon' (August-September) and she did not remember any date or year of occurrence. She accepted that there was pending litigation between her and the accused party. It was observed that it was a matter of common belief that the pending litigation often acts as a motive to implicate the accused on one pretext or the other. Nindro had stepped into the witness box as PW3; however, she

accepted that she did not remember the date or month on which the incident occurred and she also accepted that there was a pending litigation in respect of land with the accused. Sodhi (PW-4) also stated that he did not remember the date or month in which the incident occurred. Nindro stated that 10-12 persons witnessed the incident, whereas Daro stated that there were only three witnesses of the incident and nobody else was present. It was observed to be not comprehensible that when the accused caused injuries to Daro (complainant), all other witnesses which included her son, daughter-in-law and nephew were left un-scratched and they did not intervene when the old lady, i.e. Daro, was being attacked. It was also not understandable that why the other witnesses who were blood relation of Daro (complainant) did not come forward to save her. From this, it was held to be clear indication that other witnesses did not complain that they were even touched by the accused/assailants. The entire evidence led on record by the prosecution, it was held, conclusively established that the prosecution had miserably failed to prove its case. The version of the prosecution was held to be doubtful for which benefit of doubt was given to the accused (respondents No. 1 to 3).

Learned counsel for the applicant submits that the incident had occurred on 19.08.2008, whereas protest petition was filed on 29.01.2010 and it was treated as a complaint on 14.05.2010 and by that time, the date and time of the incident could not be remembered and it also could not be remembered during deposition of the complainant's witnesses in the Court. A reference has also been made to the deposition of Dr. Kam Raj (CW-1) who stated that incised wound measuring 4 cm x 0.5 cm on the right ring finger on dorsal surface, longitudinally placed was grievous in nature.

It is not in dispute that the complainant and other witnesses do not remember the month, date and time when the incident in question had occurred, besides, litigation was pending between the complainant and the accused (respondents No. 1 to 3) with respect to some land. It is a matter of common belief that the pending litigation often acts as a motive and impels a complainant to implicate the accused on one pretext or the other. The observations of the learned SDJM that other witnesses, who were none-else but were the son, daughter-in-law and nephew of the complainant, did not come forward to save the old lady (complainant) when she was attacked is very sound and possibility of false implication cannot be ruled out.

Dr. Kam Raj (PW-1) in his cross-examination stated that when injuries were caused with a weapon on the hand of a person, then the injury was likely to be caused on all the fingers of the hand. This observation has been considered by the learned SDJM and it was observed that in the present case, the injury was only on the little finger of the right hand of the complainant. This was observed to be a classical case in which the complainant portrayed that she raised her right hand and the injury was caused on her little finger. Indeed, an act of cutting the small finger of one of the hands is a common practice to settle scores when litigation is pending between the parties so as to put pressure upon them to compromise.

It may also be noticed that the police had twice filed a cancellation report in the case on 19.02.2009 and then after further investigation on 22.09.2009. Besides, the learned SDJM in his order dated 14.05.2010 when a request was made for treating the cancellation report as a 'challan' (charge report) observed from the perusal of the file that in different

inquiries conducted by the Police Department, the incident was found to be false and, therefore, he did not deem it proper to treat the cancellation report as a 'challan' (charge report). The protest petition only was treated as a complaint and ordered to be registered as such. It may also be noticed that the complainant had alleged that theft of the door that was fixed on the house which opened in the street was committed and the door was taken away. However, no recovery of the door that is stated to have been taken is shown to have been effected. Although in the notice of accusation that was drawn up on 01.12.2012, there is no allegation of theft of the door of the house of the complainant; however, this allegation was made which has not been established and it points to the falsity of the allegations as made by the complainant.

The facts and circumstances of the case and the material on record has been correctly appreciated by the learned SDJM which call for no interference by this Court. Besides, in any case, the learned SDJM has taken a view which is proper and even if it is taken to be a possible view and merely because another view may be taken, would not be a ground to interfere with the order that has been passed.

In the circumstances, we find no infirmity in the order of the learned SDJM and the application seeking leave to appeal against the acquittal of respondents No.1 to 3, is declined.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

July 23, 2015
Gaurav Sorot /Ramesh