

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-613-MA of 2016 (O&M)

Date of decision: May 18, 2016

Rupinder Kaur

...Applicant

Versus

Kharak Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Manaise, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Rupinder Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Kharak Singh and other respondents, challenging the impugned judgment dated 02.01.2016 passed by learned Sub Divisional Judicial Magistrate, Batala, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that findings of acquittal qua accused respondents recorded by learned trial Court are perverse and not based upon correct appreciation of evidence available on record. It is, therefore, prayed that leave to appeal be granted.

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

As per the record, the complainant Rupinder Kaur filed a complaint against Kharak Singh and other accused under Sections 326, 323, 387, 506, 148 and 149 IPC. The brief facts of the case as noted down in the judgment passed by learned SDJM, Batala, are as under:-

“Complainant has filed the present complaint under sections 326, 323, 387, 506, 148, 149 IPC against the accused Kharak Singh etc., on the allegations that on 29.10.2009, at about 12.30 p.m., when the complainant was preparing lunch for her husband and her husband Mangal Singh arrived at the spot from Bus-stand Batala for taking his lunch. When her husband was passing in front of the house of the accused, the public street was blocked by the accused by stocking lathe machines etc. There is no other way or passage to approach to his house. The complainant and her husband made complaint to the accused not to block the public street by stocking the lathe machine etc. Upon this, accused became angry and accused Kharak Singh and Prem Singh raised Lalkara to teach a lesson to the complainant and her husband for making such complaints. On this, accused Nishan Singh who was armed with Kirpan, gave Kirpan blow to the complainant Rupinder Kaur, which hit on her left arm near the joint. The accused Bittu and Bitta gave kick blows in the abdomen of the complainant. Both the accused also snatched the ear rings belonging to the complainant. The complainant and her husband raised alarm “Mar Ditta, Mar Ditta” and the accused ran away from the spot and while going, they gave threat to kill the complainant, if the matter be reported to the police. Thereafter, Mangal Singh arranged the conveyance and got admitted the complainant in Civil Hospital, Batala, where she was medically examined. The matter was reported to the police, but the police did not register the case against the accused. Mangal Singh, the husband of the complainant has also filed a civil suit for permanent injunction against Kharak Singh etc., which is pending in the Court of learned Civil Judge, Batala. Then prayed that action be taken against the accused.”

On the basis of pre-charge evidence, accused-respondents were charge-sheeted under Sections 148, 323 read with

149 and 506 IPC.

Learned SDJM, Batala, after appreciating the evidence, acquitted the accused-respondents.

I have gone through the impugned judgment passed by learned SDJM, Batala. The findings given by learned Magistrate in the impugned judgment dated 02.01.2016 are correct, as per evidence and law. Learned Magistrate has appreciated the evidence in right perspective. In no way, the findings can be held as perverse i.e. against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below.

The occurrence took place on 29.10.2009 and the complaint was filed on 05.10.2010 i.e. after about one year. There is no explanation for such a long delay in filing the complaint. There is nothing on the record that the complainant filed any application or got registered the DDR with the police. There is nothing that any application was filed to the higher authorities against the police for not taking action. So, the delay of about one year, in the facts and circumstances of the present case, creates reasonable doubt.

Further, the Court held that complainant admitted one compromise dated 22.09.2010 mark DA in her cross-examination. The Court further held that in this compromise, which was before filing of the present complaint, there is no mention regarding the present occurrence, which further creates doubt in the prosecution version.

CW-3 Dr.Aman Deep also admitted that possibility cannot be ruled out

that the injuries mentioned in the MLR of complainant Rupinder Kaur can be caused with friendly hands. There are only two witnesses i.e. CW-1 Rupinder Kaur complainant and her husband CW-2 Mangal Singh. Admittedly, Mangal Singh was not present at the time of occurrence.

In view of the above discussion, I find that the findings have been given by learned SDJM, Batala, while appreciating the evidence in right perspective. In view of the above discussion, I find that the impugned judgment dated 02.01.2016 passed by learned SDJM, Batala, is correct, as per law and evidence and does not require any interference from this Court.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

May 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE