

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

CRM-A-1784-MA-2014.
Decided on:-05.08.2016.

Baksho.

.....Applicant-Appellant.

Versus

Balabir Chand and others

.....Respondents.

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

Present:- Mr. Malhar Singh Dhami, Advocate
for the applicant-appellant.

HARI PAL VERMA, J.

This application has been moved under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 17.9.2014 passed by learned Chief Judicial Magistrate, S.B.S. Nagar.

Briefly stated, the applicant-complainant has filed a complaint under Sections 452, 354, 323, 324, 447, 504 and 506 read with Section 34 IPC against the respondents-accused. As per the allegations levelled in the complaint, accused No.1 is Jeth (elder brother of husband) of the complainant whereas accused No.2 is her Jethani (wife of accused No.1). Accused No.3 to 5 are daughters of accused No.1 and 2 and accused No.6 and 7 are the real uncle and aunt of accused No.1. All the respondents-accused used to keep evil eye on the house of the applicant-complainant and were pressurizing her to transfer the house in their names. Despite there being a status-quo order passed in a civil suit filed by the applicant, the

respondents were trying to take forcible possession of the said house.

It is further alleged by the applicant-complainant that on 25.5.2007 at about 8.30 a.m., when the applicant was sitting in the house, all the accused criminally trespassed into her house. Accused No.1 raised a Lalkara whereas the other accused being armed with Danda inflicted injuries upon her. Accused No.2 and 4 to 7 gave fist blows and kicks to the applicant. Accused No.2 and 7 also pulled her from her hair. The accused persons even torn her clothes and outraged her modesty. When she raised alarm, her brothers, namely, Raj Kumar and Joga Singh rescued her and took her to the hospital. The matter was reported to the police, but no action was taken. Hence, the complaint.

After recording the preliminary evidence produced by the complainant, the trial Court summoned all the respondents-accused to face trial under Sections 452, 354, 323, 324 and 504 read with Section 34 IPC.

In her pre-charge evidence, the complainant examined herself as CW2, Raj Kumar as CW1, Jagga Singh as CW3 and Dr. Naranjan Ram as CW4. Accordingly, finding a prima-facie case against the accused under Sections 452, 354, 323, 324 and 504 read with Section 34 IPC, all the accused were charge-sheeted for the said offences to which they did not plead guilty and claimed trial.

In the post-charge evidence, only Jagga Singh was examined, as learned counsel for the accused had made a statement that cross-examination of the complainant's witnesses examined in pre-charge evidence except cross-examination of Jagga Singh be read as such.

Statements of the accused as provided under Section 313 Cr.PC were recorded wherein all the incriminating evidence was put to them to which they denied and pleaded false implication. However, no evidence in defence was led by the accused.

The trial Court vide impugned judgment dated 17.9.2014 acquitted all the respondents-accused of the charge levelled against them.

Learned counsel for the applicant-complainant has argued that the trial Court has acquitted the respondents-accused merely on the basis of minor contradictions in the statements of witnesses of the complainant by completely ignoring the documentary evidence proved on record. He has further contended that the trial Court has failed to take into consideration that the applicant-complainant has proved the case from all angles, but even then, the respondents-accused were acquitted by the trial Court.

Learned counsel for the applicant-complainant has further argued that the version of the applicant-complaint is supported by two independent witnesses, namely, Raj Kumar (CW1) and Jagga Singh (CW3). The injuries sustained by her have duly been proved by Dr. Naranjan Ram (CW4). Though the respondents-accused have not led any evidence in their defence, but learned trial Court extended the benefit of doubt to the respondents-accused. As such, the impugned judgment is perverse to the settled law of land and is based on conjectures and surmises. He has prayed for setting aside of the impugned judgment and conviction and sentence of the accused-respondents.

I have heard learned counsel for the applicant-complainant and

perused the paper book.

The complainant has alleged in her complaint that on 25.5.2007 at about 8.30 a.m., when she was sitting in the house, all the respondents-accused criminally trespassed into her house and inflicted injuries upon her. They even torn her clothes and outraged her modesty. However, the evidence led by the applicant-complainant does not inspire confidence that the alleged occurrence had actually taken place as there are certain material discrepancies going to the root of the case.

The applicant-complainant in her cross-examination has stated that Raj Kumar and Jagga Singh were called telephonically, but in her examination-in-chief, she has stated otherwise. Both the witnesses, i.e. Raj Kumar and Jagga Singh have stated in their examination that they had reached the spot after the occurrence, but the applicant had not deposed as such. Moreover, Raj Kumar and Jagga Singh have stated that they had deposed as being told to them by the complainant and they had not witnessed the entire occurrence. They even stated that they had seen the accused outside the house of the complainant. As such, evidence of both these witnesses is hearsay one and is insufficient to bring home guilt to the accused.

The complainant in her evidence has also stated that the occurrence was also witnessed by Gian Singh and Kashmiri, but both of them were not examined by her despite the fact that they were cited as witnesses. The medical evidence produced by the complainant has also weakened her case as Dr. Naranjan Ram (CW4) has deposed that the injuries suffered by the complainant could be self-inflicted.

Jagga Singh (CW3) in his evidence has stated that the dispute was regarding a house, which is jointly owned and possessed by the complainant and the accused persons. Admittedly, a civil suit qua the said house has been decided against the complainant. In case the house in dispute is joint in ownership and possession, the question of criminal trespass does not arise at all. As such, the evidence produced by the complainant in support of her version causes serious doubt about her case. Therefore, the respondents-accused have rightly been acquitted by learned trial Court as the complainant has failed to prove her case against them beyond reasonable doubt.

In view of the above, this Court finds no merit in the present application as there is no illegality in the impugned judgment dated 17.9.2014 passed by learned Chief Judicial Magistrate, S.B.S. Nagar. Accordingly, the impugned judgment is upheld and the present application is dismissed.

(HARI PAL VERMA)
JUDGE

August 05, 2016
Yag Dutt

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No