

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

**Criminal Misc. No.A-1905-MA-2015 (O&M)
Date of Decision: 23.09.2016**

Santosh

...Applicant(s)

Versus

Meenu & 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. Gautam Kaile, Advocate for
Mr. Ashwani Kumar Antil, Advocate
for the applicant.

HARI PAL VERMA, J.

CRM-38503-2015:

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 19 days in filing the present application under Section 378(4) Cr.PC. seeking leave to appeal against the judgment of acquittal dated 28.8.2015 passed by Judicial Magistrate, Ist Class, Ganaur.

For the reasons stated in the application which is supported by an affidavit of the applicant, the present application is allowed and the

delay of 19 days in filing the present application, seeking leave to appeal, is condoned.

Criminal Misc. No.A-1905-MA of 2015:

Applicant-complainant has filed the present application under Section 378(4) of the Code of Civil Procedure for grant of leave to appeal against the judgment dated 28.8.2015 passed by Judicial Magistrate, Ist Class, Ganaur, whereby the respondents-accused were acquitted of the allegations levelled against them.

Briefly stated, on a criminal complaint filed by the applicant-complainant against the respondents-accused, the trial Court summoned the respondents-accused to face trial for offence under Section 148/149/323/452 and 506 IPC.

As per the complaint, on 20.5.2012 at about 11-00 a.m., when the complainant along with her husband Mange Ram was sitting inside her house, she saw the accused armed with *lathi*, *danda*, and iron pipe coming towards their house. The complainant bolted the doors of her house, but the accused forcibly entered into their house. Respondent no.4 Modi caught hold of her from her hair and respondents no.5 to 8 i.e. Roshni, Santro, Sripan and Bhateri gave beatings with kicks and punches. Respondents no.1 to 4 namely Meenu, Lamda, Balwan and Modi assaulted her husband Mange Ram. Respondent no.2 Lamda hit him on thigh with iron pipe whereas respondent no.3 Balwan gave *lathi* blow on his left leg and accused Meenu gave *danda* blow on his shoulder. After beating them, the accused left, but threatened the complainant of dire consequences. The respondents-accused are family members of the complainant. The husband

of the applicant was medically examined on 22.5.2012 after he produced an affidavit to the doctor mentioning the cause of injuries. On the next day, a written complaint was moved by applicant-complainant (Ex.C1) to the local police and on 12.6.2012, another complaint (Ex.C3) was given to Superintendent of Police, Sonapat, but the police did not take any action, which made the complainant to file the present criminal complaint.

In support of his case, applicant examined four witnesses. She herself appeared as CW-1, her husband Mange Ram appeared as CW-2, Surja, brother of Mange Ram appeared as CW-3 and Dr. Sarita appeared as CW-4.

Complainant as well as her husband Mange reiterated the averments made in the complaint. Injured Mange Ram (CW-2) stated on oath that accused Modi hit *danda* on his right shoulder, but he stated that it was accused Veerbhan and not Meenu who gave iron pipe blow on his thighs and accused Balwan hit him on his left leg. He further stated that accused Roshni, Bhateri, Saripan and Santro beat his wife and then they all left after giving threat to kill them. However, he stated that he did not obtain any medical assistance after the incident, despite suggested by his brother Surja. He stated that the scuffle lasted for 30-45 minutes, but no person from the neighbourhood arrived at the spot.

CW-3 Surja, who is real brother of CW-2 Mange Ram, stated that on the date of occurrence, he was not present in the village and the incident was narrated to him by his brother Mange Ram after he returned from Haridwar.

CW-4 Dr. Sarita deposed that on 22.5.2012 at about 12-30 P.M., she has examined Mange Ram and found four simple injuries including two bluish contusions on thighs, one superficial abrasion on left leg and one bluish contusion on left shoulder. She opined that such injury could be sustained by falling on hard surface.

Learned trial Court after hearing the parties and considering the evidence on record, acquitted all the accused of the charges framed against them, vide judgment dated 28.8.2015.

It is in these circumstances, the applicant has filed the present application for leave to appeal under Section 378(4) CrPC against the judgment dated 28.8.2015 passed by the trial Court.

Learned counsel for the applicant-complainant has argued that acquittal of the accused is not legally sustainable when there was enough material before the trial Court to convict them. The trial Court has committed a serious error in not appreciating the evidence adduced by the complainant which is corroborated by medical and other evidence, more particularly when the complainant has herself appeared as CW-2 and made true and reliable version of the incident.

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

Undisputedly, the complainant Santosh (CW-1), injured Mange Ram (CW-2) and Surja (CW-3) are family members. Complainant has not adduced evidence of any independent witness to support her version. Even all the accused are in relations with the complainant and previous enmity between the parties is well established. There are enough

instances of scuffles having taken place between the parties at the relevant point of time and therefore, there is hostility between the parties. CW-3 Surja has admitted that he was not present at the scene of occurrence and was not present even in the village, as he had gone to Haridwar on that day. He has stepped into the witness box to depose against the accused as if he was an eyewitness to the incident. Rather, he stated that he has deposed on the basis of narration made by his brother Mange Ram. Even as per the medical evidence i.e. MLR Ex.CW-4/B, on 22.5.2012, the day when injured Mange Ram was medically examined, he had four simple injuries caused by blunt weapon. All the injuries were superficial abrasion and bluish contusion. There was no lacerated wound. As per the complainant, the accused Meenu had hit iron pipe on the thighs of her husband Mange Ram. However, Mange Ram has attributed that injury to Veerbhan. The complainant did not attribute the other injuries to any particular accused, but injured Mange Ram stated that accused Modi had inflicted injury on his right shoulder and accused Balwant on his left leg. Thus , the complainant has not averred that accused Balwan was present at the scene of occurrence. Further, as per the MLR, there is no injury on the right shoulder of Mange Ram.

In these circumstances, when the case of the prosecution has strongly been doubted and there are enough contradictions in the statements of complainant witnesses as well as the fact that no independent witness has been examined, this Court has no hesitation to say that the complainant has failed to establish her case beyond reasonable doubt. Therefore, this Court does not find any error in the impugned order passed

by the trial Court, acquitting the accused of the charges framed against them.

Accordingly, the instant application for leave to appeal is dismissed.

September 23, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No