

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

(212)

**CRA-D-1027-DB-2015(O&M)
Decided on: December 07, 2017.**

Aruna Bhatti

.... Appellant

Versus

Sharda Devi and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Lalit Pathak, Advocate, for the applicant/appellant.

M.M.S. BEDI, J (ORAL)

CRM-21355-2015

Heard.

For the reasons given in the application, the delay in filing the present appeal, in the interest of justice, is condoned.

CRA-D-1027-DB-2015

Appellant-Aruna Bhatti had filed a complaint against respondents and one another (since deceased) on the allegations that on 07.09.2006 the respondents trespassed in her house and attacked her and on 12.09.2006 also forcibly attacked her and gave a datt and dang blow. Respondent No.1-Sharda Devi allegedly gave slaps and raised lalkara,

respondent No.2-Surinder Pal allegedly gave a daat blow on the right arm of the appellant, respondent No.3-Pupo gave a dang blow on the back of the appellant, respondent No.4-Hinda allegedly gave datt blow on the fore-head of the appellant and respondent No.5-Soma gave fist and slaps. The trial court below after considering the evidence of the family members of the complainant and her evidence convicted the respondents under Sections 323, 324 read with Section 34 IPC except respondent No.3 and 5 who were acquitted.

Aggrieved by the acquittal of respondents No. 3 and 5, the present appeal has been filed under Section 378 Cr.P.C. along with an application under Section 378(4) Cr.P.C. for grant of special leave to appeal, because so far as conviction of respondents No. 1, 2 and 4 is concerned, the appellant-complainant is aggrieved by the lesser punishment awarded for offences under Sections 323, 324 read with Section 34 IPC.

The grievance of the appellant is that the punishment awarded for the offences, which were established has been on lower side. The appellant seeks enhancement of sentence of imprisonment and compensation besides conviction of respondents No. 3 and 5 also.

We have considered the facts and circumstances of the case and are of the opinion that as per proviso of Section 372 Cr.P.C., which reads as follows:-

“372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court”;

the victim has got remedy to file an appeal against the order of conviction of the accused for lesser offence or against the order imposing inadequate compensation. The said appeal would lie to a Court to which an appeal originally lies against the order of conviction of such Court. The appellant victim could have challenged the conviction for lesser offence or imposition of inadequate compensation against the respondents No. 1, 2 and 4. So far as the respondents No. 3 and 5 are concerned, it appears that she has not filed any appeal under the proviso of Section 372 Cr.P.C. The appellant can file an appeal along with an application for leave to appeal as per the judgment of Supreme Court in **Satya Pal Singh vs State Of M.P. And Ors.**, 2015(4) RCR (Criminal) 705.

In view of an application under Section 374(8) Cr.P.C. having been filed by the appellant, we have entertained the present appeal despite the fact that the appellant had an alternative remedy to file an appeal under proviso of Section 372 Cr.P.C.

Considering the role attributed to respondent Nos. 3 and 5, we find that as per the allegation of the complainant, respondent No.3-Pupo gave a dang blow on the back of the appellant, respondent No.5-Soma gave fist and slaps and the injuries attributed to both these ladies have not been

established by medical evidence or the independent corroboration of the witnesses. The trial court acquitted respondents No. 3 & 5 after taking into consideration the role attributed to them and we do not find any ground to interfere in the order of acquittal passed by the trial court and as such leave to appeal against acquittal of respondents No. 3 and 5 is declined and the application to that extent is dismissed.

At this stage, learned counsel for the appellant seeks permission to challenge the inadequacy of the compensation and punishment for lesser offence so far as respondents No. 1, 2 & 4 are concerned before the appropriate court, and to withdraw the appeal qua them.

Ordered accordingly.

It will be open to the appellant to file an appeal under the above said proviso of Section 372 Cr.P.C before the appropriate Court i.e. Sessions Court, Hoshiarpur against inadequacy of the compensation or conviction for lesser offences against respondents No. 1, 2 and 4 as the appellant is aggrieved by the acquittal of these respondents in other offences mentioned in the complaint.

The appeal is dismissed qua respondents No. 3 and 5 and against respondents No. 1, 2 and 4, permission is granted to withdraw the appeal and approach the Court of competent jurisdiction. It will also be open to the appellant to seek the condonation of delay in filing appeal by explaining the circumstances before the appropriate court.

We have considered the right of the victim-complainant in context to the law laid down in M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. & Ors., 2013(2) RCR (Criminal) 1005 and are of the opinion

that the appellant-victim has got right to file an appeal under the proviso of Section 372 Cr.P.C. without seeking leave to appeal from any court as contemplated under Section 378(3) Cr.P.C.

(M.M.S. BEDI)
JUDGE

December 07, 2017.
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No