

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

CRM No.A-1022-MA of 2015 (O&M)

Date of decision: September 21, 2017

Tara Devi

...Applicant

Versus

Jyoti Masih and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bhavnik Mehta, Advocate
for the applicant.

Mr.S.S.Nara, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Tara Devi has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Jyoti Masih and other respondents, challenging the judgment dated 27.03.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby the complaint filed by the applicant-complainant was dismissed and 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 if the leave to present the appeal is not granted, it would defeat the ends of justice as per the peculiar facts of the case. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Tara Devi filed a complaint against Jyoti Masih and other accused under Sections 148, 149, 323 and 325 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Yamuna Nagar at Jagadhri, are as under:-

“The present complaint has been filed by the complainant Tara Devi against the accused named above with the allegations that on 18.05.2009, while her husband was away from the house and she was alone, accused persons came into her house. She alleged that accused no.3 was armed with an axe whereas other accused were having dandas and iron rods in their hands. Accused persons gave a lalkara to caught hold of her and thereafter accused no.3 gave a blow on her left hand from its reverse side and other accused gave danda blows on the arm and other parts of her body. She further alleged that accused no.1, 2, 4 and 5 and their companions also gave beatings to her while she was lying down on the ground. She pleaded that on hue and cry being caused by her, Balbiri Devi reached at the spot and while she was trying to rescue her from the accused persons, accused Deepa Ram gave a lathi blow on her left hand as well. In the meantime Som, Rishi Pal and Sohan Lal reached at the spot and rescued her and Balbiri Devi from the accused persons and thereafter they both were taken to Civil Hospital, Jagadhri where they were medico legally examined. She further submitted that matter was reported to the police, but the police continued to put off the matter on one pretext or the other and during this process the police also obtained her thumb impressions on various papers on the pretext of taking action and completing formalities against the accused persons, but after putting off the matter on one pretext or to other and in collusion with the accused persons, the police did not take any action against the accused. Hence, the present complaint has been filed.”

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 27.03.2015.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned counsel for the

respondents appeared and contested the application.

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

The perusal of the record shows that neither X-ray films nor X-ray reports have been proved on the record, therefore, learned trial Court has rightly held that offence under Section 325 IPC has not been proved. Now, learned counsel for the complainant has also filed an application under Section 391 Cr.P.C. for leading additional evidence to prove X-ray films and reports but no cogent explanation has been given as to why this record has not been got summoned from the Civil Hospital and why the documents as well as the witnesses have not been examined before the trial Court. Now, the complainant wants fill up the lacunae. These X-ray films and reports were in the knowledge of the complainant. Though the complaint remained pending for 4-5 years before the trial court but the complainant did not make any attempt to produce these documents.

Secondly, I find that occurrence took place on 18.05.2009 and the DDR is stated to have been got recorded on 20.05.2009 but the complaint has been filed on 21.05.2010 i.e. after delay of one year and this delay has not been explained by the complainant.

Furthermore, learned trial Magistrate has discussed the

statements of complainant and witnesses and found that there are so many material discrepancies regarding the weapons carried by the accused and injuries caused on the person of complainant. As per averments of the complaint, so many injuries have been given to the complainant as well as Balbiri Devi. I have gone through the statement of CW-4 Dr. Deepika Gupta, Medical Officer. As per her evidence, she found small multiple abrasions on left forearm lower and swelling on the person of the complainant and the second injury was stated to be complaint of pain in right forearm and O/E swelling was present. No other injury was found on the person of Tara Devi. Similarly, on the person of Balbiri Devi, only one injury, stated to be small abrasion on left forearm lower, O/E swelling was found. No dimensions of any injury has been mentioned. Even number of abrasions have not been mentioned. The complainant has stated that so many injuries have been given with *dangs* and from the reverse side of Axe. If five persons have caused the injuries to the complainant with *dangs* and reverse side of Axe, then the injuries found by the doctor would not have been caused and they might have caused some serious injuries and not small abrasions only.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 27.03.2015 passed by learned JMIC, Yamuna Nagar at Jagadhri, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to

appeal and therefore, the present application stands dismissed.

September 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No