

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. A-1116-MA of 2015

Date of Decision : September 14, 2017

Roshni Devi

....Applicant

VERSUS

Sushil Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. P.S. Guliani, Advocate
for the applicant.

T.P.S. MANN, J.

Complainant Roshni Devi has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 6.2.2015 passed by learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh whereby the accused, who are respondents No.1 to 13, stood acquitted of the charges under Sections 147, 148, 448, 452, 394, 354, 149 and 506 IPC.

According to the prosecution, the complainant alongwith her husband, two daughters and one son was residing in House No.48, village Burail, U.T., Chandigarh for the last more than 15 years and in possession of 2/3rd share of the plot in question, whereas respondents No.1 to 7 were in possession of remaining 1/3rd share. The said accused wanted to forcibly dispossess the complainant and her family members from the house. On 5.8.2006 at about 8.00 a.m., the complainant, alongwith her two

daughters and one son, was present in her house whereas her husband was away to his place of work. Yashoda, sister of the complainant had come from Kajheri to meet her. All the accused while accompanied by 20/25 unknown persons, including 3/4 ladies and armed with dandas, lathies, iron rods and brick bats forcibly entered the house of the complainant and inflicted injuries to her as well as to her sister Yashoda and son Johny. The accused also dismantled the main gate and demolished three rooms of the complainant. They also took the shuttering material, bricks, main gate and other household articles of the complainant valuing from Rs.2 lacs to Rs. 4 lacs. They also started raising boundary wall on the land of the complainant. The accused also physically assaulted and used force against her, her sister Yashoda and her daughters in order to outrage their modesty. The complainant and her family members were rescued from the clutches of the accused by Hardish Singh, who witnessed the entire occurrence. The complainant reported the matter to her husband Parmal Singh, who informed the Police Control Room on 5.8.2006 at about 8.30 a.m. but the police did not reach the spot for about 2/3 hours. In the meanwhile, the accused raised the wall over the land of the complainant to a large extent. A written complaint was submitted by the complainant in this respect to the SHO, Police Station Sector 34, Chandigarh but no action was taken by the police. The complainant and her other family members were made to sit in Police Post Burail for number of hours and, thereafter, taken to GMCH, Sector 32, Chandigarh where they were medically examined. Despite the same, the police did not take any action against the accused. A written complaint was also made to the Senior Superintendent of Police but in vain. The accused had

been threatening the complainant and her family members with dire consequences. Left with no other option, she filed a criminal complaint in the Court of Judicial Magistrate 1st Class, Chandigarh. After recording the preliminary evidence, the Judicial Magistrate 1st Class, Chandigarh summoned the accused to face trial for the aforementioned offences. The complaint was, thereafter, committed to the Court of Sessions where the accused/respondents were charge-sheeted for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 complainant-Roshni; PW2 Johny, son of the complainant; PW3 Ram Singh; PW4 Yashoda, sister of the complainant; PW5 Parmal Singh, husband of the complainant and PW6 Dr. Dasari Harish.

When examined under Section 313 Cr.P.C., the accused pleaded that they were innocent. A false complaint had been filed against them by the complainant and her husband in order to grab the land of Naresh Kumar and Sushil Kumar, which they had purchased from Ravinder Singh. Naresh Kumar and Sushil Kumar had started raising construction on their own land after getting the land demarcated by the Tehsildar and the Kanungo. The husband of the complainant had also filed a civil suit against Naresh Kumar and Sushil Kumar which was dismissed by the Court of Civil Judge (Junior Division), Chandigarh and the said order was upheld by the first Appellate Court. The husband of the complainant also filed contempt proceedings against Naresh Kumar and Sushil Kumar, which was also dismissed and order of dismissal upheld by the Appellate Court. The complainant and her husband nursed grudge against the accused. A

report under Section 202 Cr.P.C. was also submitted in the Court of the Ilqa Magistrate which showed that only a minor altercation between the parties had taken place and they were shown to be at the spot while constructing the boundary wall on their own plot.

In their defence, the accused examined DW1 Dr. A.K. Attri.

After hearing learned counsel for the parties and on going through the evidence brought on the record, learned trial Court dismissed the complaint and acquitted the accused of the charges framed against them.

This Court has heard learned counsel for the complainant/applicant and also perused the record which stands requisitioned.

It is apparent from the record that the husband of the complainant had filed a civil suit for mandatory injunction against Sushil Kumar and others, which was dismissed. Even the appeal filed by the husband of the complainant was dismissed. However, the complainant as well as her husband Parmal Singh denied the factum of filing of the civil suit, its dismissal and also the dismissal of the first appeal. Further, from the statements of the prosecution witnesses, it is not established that the accused formed an unlawful assembly while armed with deadly weapons and they forcibly entered the house of the complainant with an intention to outrage her modesty or with an intention to harm them or to commit the offence of robbery. The photographs Ex.P5 to Ex.P13 placed on record by the complainant do not corroborate the prosecution case. Not even a

single photograph showed the demolition of the three rooms of the house of the complainant. The complainant deposed that the accused had caused injuries to her, her sister Yashoda and her son Johny but at the same time, she did not explain the injuries on the person of the accused. From the testimony of DW1 Dr. A.K. Attri, it is made out that Sham Lal and Happy were brought to Emergency of GMCH on 5.6.2006 at 11.45 a.m. with alleged history of assault at 10.45 a.m. on the same day. While Sham Lal was found to have received a lacerated wound on back of his head on the right side, Happy had also received a lacerated wound on the right side of the back of his head. From the testimonies of PW1 Roshni Devi, PW2 Johny, PW3 Ram Singh, PW4 Yashoda and PW5 Parmal Singh, it is made out that no overt act had been attributed to the accused despite the fact that the accused/respondents were accompanied by 20/25 persons, who had forced their entry in the house and attacked them. Thus, it cannot be said that the accused used criminal force by assaulting the complainant and her family members. In her cross-examination PW1 Roshni Devi denied the conclusion of the report given by the police under Section 202 Cr.P.C. that only one person from the complainant side received injuries while 4 persons from opposite side received injuries.

During their examination under Section 313 CR.P.C., the accused stated that Roshni Devi and her husband Parmal Singh had filed a false complaint in order to grab the land of Naresh Kumar and Sushil Kumar, which they had purchased from Ravinder Singh. Both Naresh Kumar and Sushil Kumar had started construction on their own land after proper demarcation by the Tehsildar and the Kanungo. The husband of

the complainant also filed a civil suit against Naresh Kumar and Sushil Kumar by filing a false site plan and the suit was dismissed. The dismissal of the suit was upheld by the first Appellate Court. The husband of the complainant also initiated contempt proceedings against Naresh Kumar and Sushil Kumar but no relief was granted to the complainant party. The order of dismissal of contempt proceedings was also upheld by the Appellate Court. A report under Section 202 Cr.P.C. was also submitted in the Court of Ilaka Magistrate which showed that only a minor altercation had taken place between the parties and DDR No.22 dated 5.8.2006 was recorded at Police Post Burail. Under these circumstances, it can safely be concluded that the complainant had filed the present complaint against the accused in order to falsely implicate them. The complainant has failed to bring home the guilt of the accused beyond any reasonable doubt.

In view of the above, no fault can be found with the findings arrived at by the learned trial Court while acquitting the accused/respondents of the charges against them.

The application is without any merit and, therefore, dismissed.
Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

September 14, 2017
satish

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO