

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

Criminal Misc.-A No. 734-MA of 2016(O&M)

Date of Decision: May 10 , 2017.

Nirmal Kaur APPELLANT (s)

Versus

Chana and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Deepak Arora, Advocate
for the applicant/appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Applicant/appellant is aggrieved of the acquittal of the respondents of the charges under Sections 354/506 IPC by the learned Judicial Magistrate First Class, Amritsar vide order dated 24.02.2016.

Brief facts of the case are that, the applicant/appellant filed a complaint against the respondents on 09.11.2009 alleging the commission of offences punishable under Sections 354/506/120B IPC. As per the averments in the complaint, the complainant proceeded to her agricultural land on 22.10.2009 at about 9.00 a.m. for the purpose of sowing seeds. Suddenly both the respondents came to the spot. Respondent No.1 was armed with a pistol and

respondent No.2 was holding a stick. Both of them started thrashing the complainant. They tore her clothes, specifically the clothes upon her upper body. The accused persons threatened her that they had earlier thrashed her husband and had thrown him at a railway line but he somehow escaped but now they would kill her as well as all her family members in case they did not relinquish their rights in the property of the brothers of Dilbagh Singh (husband of the complainant), namely, Bhan Singh and Bakshish Singh. While the respondents were thrashing and molesting the complainant, her husband came at the spot. They ran away on seeing him. It is averred that both the respondents have an evil eye on the property of two real brothers of the complainant's husband, namely, Bhan Singh and Bakshish Singh, who died intestate leaving behind her husband as the sole successor of their property. Respondents are the cousin brothers of the complainant's husband. It is further averred that a complaint regarding the incident was lodged before the Chowki Incharge on the same day but no action was taken. Thereafter, an application bearing No.1877-PP dated 24.10.2009 was submitted before the Senior Superintendent of Police, Amritsar but no action had been taken. Therefore, the present complaint was filed.

In order to prove her case, the complainant examined herself as CW1 and her husband Dilbagh Singh as CW2. Respondents were summoned to face trial for the offences punishable under Sections 354/506 IPC. Charge under Section 354/506 IPC was framed. The respondents pleaded not guilty and claimed trial. Thereafter, the complainant examined herself as CW2 and one Prem as CW1. Evidence was thereafter closed.

The respondents in their statements under Section 313 Cr.P.C. while

denying the incriminating evidence put to them, pleaded innocence and false implication. As per their specific case, the complaint was filed only with a view to harass and pressurize them to relinquish their rights in the property falling to their share. Civil litigation was stated to be pending between the parties. A copy of the judgment and decree dated 14.10.2014 titled 'Dharam Singh and others v. Nirmal Kaur and others' was placed on record by the defence. The suit land was partly decreed by the said judgment and decree.

The learned trial court after taking into consideration the entire facts and circumstances of the case concluded that the complainant had failed to prove her case beyond reasonable doubt. Therefore affording the benefit of doubt, the respondents were acquitted of the charges against them. Aggrieved therefrom, the applicant seeks leave to appeal against the said judgment.

Learned counsel for the applicant/appellant vehemently argues that the learned trial court has grossly erred in acquitting the respondents of the charges against them in the wake of clear and cogent evidence on record. An independent witness has been duly examined to prove the case of the complainant. Furthermore, the complainant herself has given the details of the incident as it unfolded. Her testimony should be accepted without even any corroboration thereof. The delay in the filing of the complaint is duly explained. Reference is made to Ex.C1 i.e., representation dated 24.10.2009 to the Senior Superintendent of Police, Amritsar wherein it is alleged that no action is being taken by the police on the allegations raised by the complainant.

I have heard learned counsel for the applicant/appellant and have gone through the available file/record of the case with his able assistance.

It is not in dispute that the complainant in her complaint dated 09.11.2009 stated that she proceeded to her agricultural land for the purpose of sowing seeds on 22.10.2009 at about 9.00 a.m. The respondents arrived at the spot and allegedly thrashed her. They tore her clothes and outraged her modesty. Her husband Dilbagh Singh thereafter came to the spot. The respondents ran away on seeing him. However, in the complaint dated 24.10.2009 allegedly submitted before the Senior Superintendent of Police, Amritsar (Ex.C1), it is stated that her husband had gone to the fields on 22.10.2009 at 9.00 a.m. for sowing of seeds. She subsequently went to the fields taking meals for her husband. Thereafter, the accused persons armed with a pistol and stick came to their fields. They outraged her modesty and tore her clothes. They threatened to kill her husband as well. The accused persons physically abused her and caused injuries.

It is to be noted that the complainant's husband Dilbagh Singh appeared before the learned trial court as CW2 for preliminary evidence before the respondents were summoned. However for reasons best known to the complainant, Dilbagh Singh was not examined thereby clearly denying the opportunity to the respondents-accused to cross-examine him. In fact, for reasons again best known to the complainant, one Prem was examined as CW1. He is stated to be an independent witness of the incident in question. Surprisingly he does not find mention either in the present complaint or in the representation (Ex.C1). It is a mystery as to how and why CW1 Prem has been introduced in this case. Contention of learned counsel for the applicant/appellant that the complainant's husband was not examined at a later stage only with a view to avoid

duplicity, is fallacious and hence, rejected.

Furthermore, the complaint (Ex.C1) is not proved to be submitted before the Senior Superintendent of Police, Amritsar in accordance with law. Mere placing of documents on record without examining any police official or requisitioning any record to show the submission of the same, is of no avail to the complainant.

It is further not denied that there is no medical evidence on record to prove infliction of any injury by the respondents. Yet again the explanation put forth by the complainant that the police did not provide her any docket therefore the medical examination was not conducted, does not cut much ice.

Another argument raised by learned counsel for the applicant/appellant that the production of torn clothes (Ex.C3) and hair (Ex.C4) proves the commission of the offence by the respondents, is noticed only to be rejected. Though pulling out of the long hair of the complainant is not mentioned in the complaint, she has so stated before the learned trial court. The hair Ex.C4 are not proved to be that of the complainant or the respondents. There is no forensic examination of the same. Therefore, to raise any presumption in this regard qua the accused respondents, is not justified in the facts and circumstances of the case. Pendency of civil litigation between the parties is not denied. The respondents are cousin brothers of the complainant's husband.

Keeping in view the facts and circumstances of the case as well as the discrepant statements of the complainant herself, it would not be safe to rely solely upon her testimony to convict the respondents under Sections 354/506 IPC.

Learned counsel for the applicant/appellant is unable to point out any

substantial or compelling reasons which may warrant interference with the impugned judgment. Acquittal of an accused is not to be interfered with lightly and merely because another view may be possible.

The Hon'ble Supreme Court in Mahamad Khan Nathekhan v. State of Gujarat (2014) 14 SCC 589 while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused as it stands reinforced, reaffirmed and strengthened by acquittal of the accused, by the trial court.

There is, thus, no perversity, infirmity or illegality in the impugned judgment dated 24.02.2016 passed by the learned Judicial Magistrate First Class, Amritsar which calls for any interference by this Court. Accordingly, leave to appeal is declined.

May 10 , 2017.
'om'

(**LISA GILL**)
JUDGE

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