

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Misc.-A No. 391-MA of 2015(O&M)

Date of Decision: October 09 , 2017.

Harinder Kaur

..... APPLICANT/APPELLANT

Versus

Gurmit Singh and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.S.Budhwar, 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.

The applicant/complainant is aggrieved of judgment dated 17.01.2015 passed by the learned Judicial Magistrate First Class, Kuruskshetra whereby the respondents accused have been acquitted of the charges under Sections 323/452/354/341/504/506 read with Section 34 IPC in a complaint filed by the applicant.

Brief facts of the case are that, a complaint under Sections 323/452/354/341/504/506 read with Section 34 IPC was filed by the applicant against the respondents. The parties are admittedly related to each other. Respondent No.1

– Gurmit Singh is the real brother of the applicant's husband. Respondents No.2 and 3 are nephews of the applicant's husband (being sons of respondent No.1) and respondent No.4 is the brother-in-law (Nandoi) of the applicant's husband. As per the allegations in the complaint, the applicant's husband is differently abled being unable to walk and move around properly. Civil litigation between respondent No.1 and applicant's husband are pending in regard to a house. It is stated that all the four accused persons tried to dig a foundation in the land belonging to the applicant's husband in a forcible and illegal manner on 28.10.2009 at about 9.00 a.m. When objection was raised, all the respondents manhandled the applicant's husband and Hindsarover Singh i.e., their son. Some villagers intervened and saved them but the accused persons threatened the applicant and her husband to teach them a lesson. At about 3.00 p.m. on the same day, the complainant alongwith her husband were present at their house. All the accused persons, after hatching a conspiracy duly armed with Lathis (sticks) trespassed into their house. Respondent No.4 – Bhupinder Singh kicked open the door of their room. He caught hold of the complainant from her arms and twisted her arms. Respondent No.1 – Gurmit Singh caught hold of the applicant/complainant from both her legs. Respondents No.2 – Sarabjeet Singh and No.3 – Karamjit Singh caught hold of her arms and with an intention to outrage her modesty tore her shirt and misbehaved with her. Upon hearing the hue and cry, her crippled husband came there. Respondent No.1 – Gurmit Singh pushed him to the floor. Respondent No.2 – Sarabjeet Singh and respondent No.3 – Karamjit Singh inflicted lathi blows upon the complainant's husband. The complainant raised a hue and cry upon which all the accused persons pushed

the complainant on the floor. Respondent No.4 – Bhupinder Singh gave a kick blow on her stomach and the other accused persons inflicted blows upon her with their sticks . The complainant alongwith her husband raised hue and cry on which Ami Lal son of Tej Pal, Vikas and Roshan came to the spot and rescued them from the clutches of the respondents. The complainant approached the police station, Sadar Thanesar but to no avail. An application was thereafter submitted before the Superintendent of Police, Kurukshetra which was forwarded to the Police Station, Sadar Thanesar but no action was taken thereon, thereby compelling the complainant to file the present complaint.

Preliminary evidence was led. Complainant herself stepped into the witness box as CW1. Ami Lal was examined as CW2 and Gurjit Singh (husband of the complainant) as CW3. The respondents were summoned vide order dated 14.01.2011 for the offences punishable under Sections 452/323/354/506 read with Section 34 IPC. CW1 (the complainant), CW2 and CW3 were examined in the pre-charge evidence. Pre-charge evidence was closed on 25.08.2014. Prima facie offences punishable under Sections 323/452/354/506 read with Section 34 IPC were found to be made out against the accused. Charge was accordingly framed for commission of the said offences against all the respondents. CW1 (the complainant) and CW3 her husband were recalled for further cross-examination. In their statements under Section 313 Cr.P.C., the accused-respondents denied the incriminating evidence put to them. They pleaded innocence and false implication. Three witnesses were examined in defence.

The learned trial court on considering the facts and circumstances of the case concluded that the complainant has miserably failed to prove the guilt of

the accused beyond the shadow of reasonable doubt, thereby acquitting respondents No.1 to 4 of the charges against them and consequently dismissed the complaint preferred by the applicant/complainant. Aggrieved therefrom, the present application has been filed seeking leave to appeal against the impugned judgment dated 17.01.2015.

Learned counsel for the applicant/complainant argues that the learned trial court has wrongly acquitted the respondents/accused from the charges against them in view of the specific and cogent evidence against them. The complainant, it is submitted, has clearly spelt out the events as they unfolded which clearly reveals the commission of the offences by the said respondents as alleged. Mere absence of medical record cannot detract from the oral testimony of the complainant. It is stated that the testimony of CW3 has been wrongly ignored as not being credible. Similarly, non-examination of the independent witnesses Vikas and Roshan cannot be a circumstance to doubt the complainant's version. Moreover, the learned trial court has wrongly relied upon the defence evidence. It is thus prayed that leave to appeal against the impugned judgment be afforded to the applicant.

I have heard learned counsel for the applicant/complainant and have gone through the file with his able assistance.

It is not in dispute that the applicant/complainant and the respondents are closely related. Similarly, pendency of litigation between the parties is not disputed. Ex.D11 to D19 reflect the said position. Ex.D17 is the copy of judgment passed in civil litigation initiated by the applicant's husband against respondent No.1 and others. It is a matter of record that there is no medical evidence on record to corroborate the version put forth by the

complainant. It is highly improbable that in case injuries as alleged were inflicted by respondents No.1 to 4, the applicant and her husband would not have sought medical aid. In the facts and circumstances of the present case, it would be rash and improper to convict the respondents solely on the said ocular version without any corroboration thereof. The learned trial court has rightly held that the oral evidence led by the complainant regarding attribution of injuries by the accused persons differs from the version as set forth in the complaint.

CW2 Ami Lal stated that none was present at the complainant's home at the time of incident which is in complete contradiction to the testimony of the complainant. It is proved on record that respondent No.1 had got demarcated the land on which Ami Lal's father was found to be in illegal possession. Demarcation Report (Ex.D9) is available on the record of the case. The said Demarcation Report reflects Tej Pal, father of CW2 Ami Lal to be in illegal possession of the part of the passage (Phirni) of the village. It is thus rightly held by the learned trial court that CW2 Ami Lal may be an interested witness. In this situation, non-examination of two persons i.e. Vikas and Roshan who were alleged to have arrived at the spot, creates a vital dent in the complainant's case. Moreover, DW1 Jaspal Singh, Principal of Guru Nanak High School produced the Attendance Register (Ex.D2 and D3) reflecting respondent No.2 – Sarabjeet Singh to be present in school wherein he is working as a Punjabi Teacher, on the day of the alleged incident.

The matter was admittedly investigated by the police authorities. As per the police report dated 13.11.2009 (Ex.D22), it was found that no offence was made out against the respondents. The complainant's husband and

respondent No.1 had duly compromised the matter and appended their respective signatures on the compromise Mark 'E'. In respect to the said signatures, CW3 Gurjit Singh has denied his signatures thereon whereas, the complainant CW1 stated that the signatures have been obtained in a forcible manner.

The complainant has indeed failed to prove her case beyond the shadow of reasonable doubt against the respondents who have been rightly acquitted by the learned trial court. Acquittal of an accused is not to be interfered with lightly and merely because another view may be possible. There have to be substantial or compelling reasons to reverse a finding of acquittal. Learned counsel for the applicant/complainant is unable to point out any substantial or compelling reasons which may warrant interference with the impugned judgment.

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.

Learned counsel for the applicant/complainant is unable to point out any perversity, infirmity or illegality in the impugned judgment dated 17.01.2015 passed by the learned Judicial Magistrate First Class, Kurukshetra which calls for any interference by this Court. Accordingly, leave to appeal is declined.

October 9, 2017.
'om'

(LISA GILL)
JUDGE

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