

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

CRM-A-454-MA-2015 (O&M)

Date of decision : 22.05.2017

Mishri Devi

...Applicant-Appellant

Versus

Partap Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Mukesh Yadav, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 20.09.2014 passed by learned Sub Divisional Judicial Magistrate, Kalka, whereby the accused-respondents were acquitted of the charges framed against them under Sections 323, 324, 452, 307, 511, 506 and 148 IPC read with Section 149 IPC.

It is contended that the learned trial Court erred in passing the impugned judgment of acquittal in the face of specific allegation the respondents on 24.05.2008 caused injuries to the applicant-appellant after forcible entry in the house. The factum of suffering injuries by the applicant-appellant is duly established from her statement and statement of eye-witnesses, Deepak Yadav and Narender, son and her brother-in-law,

respectively.

I have heard the learned counsel and perused the entire record on file.

As per the case of the applicant-appellant, construction of wall on 24.05.2008 was objected to by respondent No.1. The respondents along with 4/5 persons had forcibly entered the house of the applicant-appellant and gave fist blows to her. Whereas, respondents also registered an FIR No.72 dated 26.05.2008 under Sections 323, 325 read with Section 34 IPC at P.S. Pinjore against the applicant-appellant, her son and brother-in-law with regard to same occurrence. This is also admitted on record that a civil litigation is pending between the parties with regard to the common wall in question. As per the record, the applicant-appellant got herself medically examined on 26.05.2008, after two days of the occurrence, whereas the incident had occurred on 24.05.2008. There is no explanation for the inordinate delay of two days in getting herself medically examined. The examination carried out as an outdoor patient (Mark DB), does not record any major or grievous injuries on the person of the applicant-appellant. In the face of the allegations that applicant-appellant was given beating by 4/5 persons and on consideration of the medical evidence, the Court feels that the story putforth by the applicant-appellant with regard to assault appears to be highly improbable. Considering the fact that the dispute with regard to common wall is pending between the parties, therefore, the possibility of false implication or exaggeration on the part of the applicant-appellant

cannot be ruled out.

In Chandrappa and Ors. v. State of Karnataka, 2007 (4)

SCC 415, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

“(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons," "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

Keeping in view the above, the finding of acquittal recorded

by the trial Court cannot be said to be perverse or contrary to the material on record. In fact, there is no infirmity in the reasoning assigned by the trial Court in acquitting the respondents. This Court feels that the learned Sub Divisional Judicial Magistrate, Kalka has passed the impugned judgment dated 20.09.2014 after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly, the present special leave to appeal is hereby declined.

The special leave to appeal also suffers from inordinate delay of 34 days in filing the present special leave to appeal. The Court feels that the explanation rendered for the delay is not convincing and accordingly, the delay application i.e. CRM-9346-2015 is hereby dismissed and the instant special leave to appeal is dismissed on that score also.

Dismissed on merits as well as being time barred.

22.05.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No