

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

**CRM-A No.1709-MA of 2014 (O&M)  
Decided on: 07.02.2018**

Harpreet

....Appellant

Versus

Kewal Thukral and others

....Respondents

**CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**

**Present :** Ms. Seema Pasricha, Advocate  
for the appellant.

Mr. Vikram Singh, Advocate  
for respondents No.1 and 3.

**ARVIND SINGH SANGWAN, J.**

Challenge in this appeal is to the judgment dated 18.03.2014 passed by the trial Court acquitting the respondents/accused persons in criminal complaint filed by the appellant/complainant under Sections 323, 324, 325, 452, 504, 506 read with Section 34 of the Indian Penal Code (in short 'IPC').

Brief facts of the case are that the appellant filed a criminal complaint before the trial Court with the allegations that on 28.07.2008, the accused persons started dismantling a Nali (drain) in front of the house of the complainant and when the complainant opposed the action of the accused persons, they started hurling filthy abuses and gave beatings to him as per the details given in the complaint.

It may be noticed that even the respondents got an FIR No.349 dated 05.08.2008 registered against the appellant – Harpreet Kaur and three other persons namely Surinder Singh @ Bobby, Gurcharan Singh @ Gurbachan and Jaswinder Kaur wife of Gurcharan Singh under Sections 323, 325 read with Section 34 IPC with regard to the same incident and vide separate judgments dated 18.03.2014 accused in both cases were acquitted.

The appellant in preliminary evidence examined herself as CW1 and her husband – Surinder Singh appeared as CW2 and thereafter, the accused persons were summoned under Sections 323, 452 read with Section 34 IPC. Thereafter, in pre-charge evidence, the complainant herself appeared as CW1, examined her husband – Surinder Singh as CW2, one Mukhtiar Singh as CW3 and Dr. Amritpal Kaur as CW4. Thereafter, the accused persons were charge-sheeted under Sections 452, 323, 34 and 506 IPC to which they did not plead guilty and claimed trial. No fresh evidence was led in the after-charge evidence as the complainant/appellant – Harpreet Kaur made a statement that her pre-charge evidence may be read as after-charge evidence.

Thereafter, the statement of accused persons under Section 313 Cr.P.C. was recorded in which they denied the entire version of the complainant. The trial Court vide impugned judgment held the version of the complainant to be doubtful and acquitted the respondents/accused by giving them benefit of doubt.

As noticed above, in the cross FIR, case registered against the appellant and three other accused persons, the trial Court vide its

judgment dated 18.03.2014 simultaneously, acquitted the accused persons. A copy of the said judgment is attached as Annexure A3. The operative part of the finding recorded by the trial Court in the said FIR case, reads as under:-

*“12. I have heard the ld.APP for the State and ld.defence counsel and have perused the material on record very carefully.*

*13. Accused in the present case are facing charges under section 323/325/34 IPC and in order to prove these charges, prosecution has examined as many as seven witnesses. Case of the prosecution is that on 28.7.2008, at about 7:30 a.m., accused were abusing the complainant by standing in the street and when the complainant Komal came out of her house, then accused caused injuries to her. Accused Bobby struck the complainant with iron rod and in order to save herself, she took her hand towards head and injuries were caused on her hand as well as on her head. Similarly, other accused also caused injuries to the complainant. Though besides complainant PW6 her husband Kewal Krishan has also supported the contentions of the complainant yet there are many lacunae in the prosecution case.*

*14. The persual of the material on record reveals that there are many lacunas in the prsoecution case due to which the case of the prosecution is doubtful. First and foremost lacuna in the present case is that incident pertains to 28.7.2008, that too in the morning at about 7:30am whereas FIR in the present case was recorded on 5.8.2008 and the said delay in lodging the FIR has not been explained by the prosecution. Though prosecution has tried to fill up the said lacuna but prosecution is not able to fill up lacuna as injuries were caused on 28.7.2008 and on the same date, complainant was medicolegally*

*examined by PW3 Dr.Amrit Pal Kaur and three injuries were found on the person of the complainant but no injury was found on the head of the complainant whereas per the version of complainant herself she was struck with iron rod on her head and injury no.1 was swelling on the fore arm and x/ray were was advised and it is also evident from the material on record that complainant was not admitted in the hospital on that day. It is also evident from the material on the record that during this period, matter was tried to be settled by way of compromise but compromise could not be effected between the parties. But merely that talks about the compromise was going between the parties does not explain the delay in lodging the FIR. Moreover, thereafter on 1.8.2008, complainant was again taken to the hospital but on that day also, the complainant has not made any statement inspite of the fact that as per the opinion of the doctor she was fit to make a statement and the statement was recorded on 5.8.2008 and thereafter, FIR was registered. Prosecution has failed to prove that what happened during the course of these days i.e. between the period of 28.7.2008(the date of incident) till 5.8.2008( the date of lodging the FIR). Further no rukka was sent to the police station by the concerned doctor nor the complainant or any of her family member approached the police for registration of the FIR on the day of incident. Besides this, even on 1.8.2008 also,complainant had not got recorded her statement inspite of the opinion of the doctor that the complainant was fit to make the statement and Ex.PW4/A bears the testimony to this effect where doctor has opined the complainant Komal to be fit to make the statement and on that day however, the complainant has not made any statement on that day also as complainant Komal had stated that she is suffering from headache and therefore, she cannot give the statement and*

*Ex.PW4/B bears testimony to this effect. Hence, it means that the complaint was lodged and thus possibility of the complaint being lodged so as to make it in consonance with the medical evidence and after thought and manipulation cannot be ruled out.*

*15. Besides this, if we taken into account testimony of complainant Komal, then the version of the complainant is not supported by medical evidence or the MLR of the complainant Komal as PW1 has stated that accused Bobby struck at her head with iron rod and in order to save herself, she took her hand towards her head and injuries were caused to her hand as well as her head but as per MLR no head injury was sustained by the complainant. Further, she has stated that accused Gurbachan Singh has struck on her left knee and right foot and there is no injury on the left knee. Besides this, PW2 Dr.Sarita Bishnoi has conducted x/ray examination of the complainant Komal on the same day i.e. 28.7.2008 itself and if x/ray was conducted on the same day and fracture was found then there was no point of taking the complainant on that day back to her home and later on admitting her in the hospital on 1.8.2008. and this lacuna has also not been explained by the prosecution. Moreover, PW3 Dr.Amrit Pal Kaur has stated that swelling was only in the left fore arm and not in the wrist whereas complainant has stated that she sustained injury in the wrist. Hence, oral evidence of the complainant is not supported by the medical evidence.*

*16. PW4 SI Ishwar Singh has stated that he has gone to record the statement of the complainant to GH, Karnal on 1.8.2008 but the complainant has stated that she is not able to get the statement recorded. Hence, testimony of this witness is not of much relevance. PW5 SI Lalit Singh has recorded the FIR. Hence, the evidence of this witness is formal in nature.*

*17. PW6 SI Sube Singh is the IO of the case who has proved the formal steps taken during the investigation. In his cross examination, he has stated that for the first time, information was received on 1.8.2008 by SI Ishwar and even doctor has opined the complainant to be fit to make the statement but complainant had not made her statement on that day and her statement was recorded on 5.8.2008 and thereafter FIR was lodged. He has stated that when he visited the spot of occurrence, then, there was no standing water in the street though the occurrence is stated to have taken place on drainage water which is stated to have collected on the one side and IO has not investigated that towards which side the water of nali flows which is stated to be the genesis of occurrence.*

*18. PW7 Kewal Krishan is the husband of the complainant and was present on the spot when the injuries were caused to his wife by the accused and though he was present on the spot but he has not come forward till injuries were inflicted to the complainant. Further though PW7 Kewal Krishan rescued the complainant from the accused persons but he has not sustained the injuries. It seems very improbable that injuries were caused by accused only to the complainant and not to her husband even while he rescued the complainant from the accused. Though incident had taken place as cross complaint titled as Harpreet Vs. Kewal Krishan is also pending for today itself, yet due to the above infirmities, the version of the prosecution is doubtful. Though Id.APP for the State assisted by the Id.counsel for the complainant has argued that faulty investigation by the police cannot be impediment in the course of justice, but in the present case, even complainant party was not prompt in action and there are many other infirmities in the version of prosecution and it is not evident that whether complainant party was*

*the aggressor or the victim and whether the injuries were inflicted by the accused persons in self defence or otherwise. Moreover, no other person who are stated to have taken efforts to get the matter compromised between the parties has been examined as witness to prove the contentions of the complainant that infact injuries were caused in their presence to the complainant party. Hence, version of the prosecution is doubtful.*

*19. In view of the above discussion, the prosecution has not been able to prove the guilt of the accused beyond shadow of reasonable doubt. Hence, by extending the benefit of doubt, accused are acquitted of the charges levelled against them. Their bail and surety bonds are discharged. However, accused are directed to furnish bail bonds under section 437A Cr.P.C., in the sum of Rs.15,000/-each with one surety in the like amount that if any appeal is filed against this judgment, then they will appear in the Id.Appellate Court as per directions of Id. Appellate Court. Bail bonds of the accused shall remain in force for six months. File be consigned to record room, after due compliance in all respects.”*

Counsel for the appellant has argued that the trial Court has not appreciated the statement of the appellant who appeared as CW1 and has proved that the accused persons while trying to demolished the drain started abusing the appellant and her family members and have inflicted injuries upon the complainant. It is further argued that the husband of the appellant namely Surinder Singh while appearing as CW2 has duly supported the version given by the appellant. It is further submitted that an independent witness namely Mukhtiar Singh while appearing as CW3 has also supported the case of the prosecution and the injuries sustained by the appellant and her

husband are proved vide MLRs Ex.PW4/A and Ex.PW4/B as per the statement made by CW4 – Dr. Amritpal Kaur.

In reply, counsel for the respondents has submitted that firstly, the complainant has failed to prove that the accused persons were aggressor as in the cross-version i.e. the FIR case, the accused persons have also suffered injuries. It is further submitted that the presence of CW3 – Mukhtiar Singh at the spot is highly doubtful and as per the statement of CW4 – Dr. Amritpal Kaur, the injuries shown in the MLRs are about complaint of pain and there is no external mark of injury and it is further stated that injury No.2 could be caused by falling on a hard surface.

Since, the trial Court has decided the present case along with the cross-version on the same day, it would be relevant to reproduce the findings recorded by the trial Court in the present case as well, which reads as follows:-

*“7. I have heard ld.counsel for the complainant and ld. defence counsel and have perused the material on record very carefully.*

*8. Accused in the present case are facing allegations under section 323/452/34 and 506 IPC and in order to prove these allegations, complainant has examined as many as four witnesses. Complainant Harpreet Kaur herself appeared as CW1 and has reiterated the facts of the complaint in her examination in chief, almost in material particulars, which are not repeated here for the sake of brevity. In her cross-examination, she has stated that drain water of the nali of accused came in the street towards their side and on 28.7.2008 accused were trying to demolish their nali and when they stopped them from*

*demolishing nali, then accused started abusing them and entered into the house of the complainant and inflicted injuries to the complainant. It seems very absurd that drain water of the nali of the accused came towards the side of the complainant and even then accused were demolishing the nali of complainant. There was no need for the accused to demolish the nali when the water was coming towards the house of the complainant. Moreover, though incident has not been disputed as cross case is pending which is titled as State vs. Surinder etc. and the present complainant party are the accused in that case, yet, the testimony of the complainant is not sufficient to bring home the guilt of the accused.*

*9. Though CW2 Surinder Singh is husband of the complainant and has supported the version of the complainant, yet there are contradictions in the evidence of the CW1 Harprit Kaur and CW2 Surinder Singh, her husband. Further, if injuries were suffered by the complainant on 28.7.2008 in the morning, then why they have not gone to the hospital to get them medicolegally examined on the same day and kept on waiting till the next day and got themselves medico-legally examined on 29.7.2008.*

*10. CW3 Mukhtiar Singh, though supported the version of the complainant but in his cross examination, he has admitted that he has written the date and time of the incident on his hand. Hence, he seems to be the tutored witness and his version cannot be stated to be the natural version. Though MLR of the complainant Harpreet and her husband Surinder are Ex.CW4/A and Ex.CW4/B respectively yet CW4 Dr. AmritPal Kaur has stated that possibility of sustaining injury no.2 by falling on hard surface cannot be ruled out. Moreover, most of the injuries stated in the MLRs are about complaint of pain and there*

*are no external mark of injury. Hence, though incident might have taken place as the cross version of both the cases is pending, yet version of the complainant is not sustainable. Firstly, in view of the fact that incident took place on 28.7.2008 and MLR was got conducted on 29.8.2008 and on the date of incident neither the complainant party approached the police nor they approached any doctor for treatment. Further, CW3 who is stated to be the eye witness of the incident is infact uncle of the complainant, CW2 Surinder Singh is husband of the complainant and as already stated that both these witnesses are interested witness. Moreover, CW3 Mukhtiar Singh had written the dates and time of incident on his hand and thus he may be the planted witness. Thus, in view of above stated infirmities the version of the complainant does not seem sustainable.*

*11. Besides this DW1 Suresh Kumar has placed on record the copy of challan pertaining to case titled as State Vs. Surinder etc., and the complaint and her husband alongwith other persons are accused in that case. Hence, though incident had taken place as the cross case is also pending yet in view of the contradictions pointed above, version of the complainant seems to be doubtful and it is not proved that whether the complainant party was the aggressor or victim and whether the complainant party only using its right of self defence. Hence, though the incident is not disputed but its genesis is disputed. Moreover, there are infirmities and contradictions in the version of witnesses examined by the complainant and thus, version of the complainant is doubtful.*

*12. Hence, in view of above discussion the version of the complainant is doubtful and hence by extending the benefit of doubt accused are acquitted of the charges levelled against them. Their bail and surety bonds are*

*discharged. However, accused have been directed to furnish bail bonds under section 437A Cr.P.C., in the sum of Rs.15,000/-each with one surety in the like amount that if any appeal is filed against this judgment, then they will appear in the ld. Appellate Court as per directions of ld. Appellate Court. Bail bonds of the accused furnished, accepted and attested and shall remain in force for six months. File be consigned to record room, after due compliance in all respects.”*

After hearing counsel for the parties, I find no merit in the present appeal. Firstly, a perusal of the judgment in the FIR case show that the trial Court has recorded a finding that the prosecution has failed to prove the guilt of the accused persons by holding that there are many lacunas in the prosecution case which makes the same doubtful. The trial Court further held that the incident pertains to 28.07.2008, however, the FIR was registered on 05.08.2008 and the delay was not explained and the medical evidence do not corroborate the version given by the injured witness as it is stated by CW4 – Dr. Amritpal Kaur that no injury was found on the head of the complainant which were allegedly given by the accused persons. It was also noticed that in between the period from 28.07.2008 to 05.08.2008, no intimation was sent to the police regarding the said incident. The Court on appreciation of the statements of other witnesses also find that there are many lacunas in the prosecution case and thus, recorded a finding that the prosecution has not been able to prove the guilt of the accused persons and they were acquitted by giving benefit of doubt. It was also held in this judgment that from the prosecution evidence, it could not be proved whether the complainant party was the aggressor or the victim

and whether the injuries inflicted by the accused persons were in self-defence or otherwise.

Similarly, in the present case also, the trial Court has recorded a finding that on appreciation of statements of witnesses has held that CW2 – Surinder Singh, husband of the complainant is interested witnesses and CW3 who is stated to be an eye-witness is, in fact, is uncle of the complainant and during deposition has given the date and time of the incident, which he had noted on his hand and thus he seems to be a tutored witness. The trial Court further recorded a finding that the incident took place on 28.07.2008 and the MLR was got conducted on 29.07.2008 and on the date of incident or subsequently, the complainant never approached the police. While acquitting the respondents/accused persons, the trial Court has also taken notice of the fact that the FIR case against the complaint side is also pending and on the appreciation of the prosecution evidence, in this case also, it could not be proved as to which party was aggressor or victim and was exercising its right of self-defence.

On perusal of the prosecution evidence also, a copy submitted by the learned counsel for the appellant, it is apparent that the instant complaint was also filed on 18.08.2008 relating to an incident of 28.07.2008 and in the intervening period, no complaint was lodged with the police. The complainant could not gave any explanation as to why she was not medico legally examined on the same day when she suffered the injuries and CW3, the alleged eye-witness namely Mukhtiar Singh, has stated that he has written the date and time of incident on his hand while deposing before the Court and, therefore,

possibility cannot be ruled out that this witness is a tutored witness. Moreover, this witness has admitted that he is uncle of the complainant and, therefore, he is an interested witness.

From a perusal of both the judgments i.e. the judgment passed in FIR case (Annexure A3) as well as the impugned judgment, the trial Court has rightly recorded a finding that though, the incident has taken place on 28.07.2008, however, its genesis is disputed. There are many infirmities and contradictions in the statement of witnesses and, therefore, the trial Court has rightly held that it could not be proved as to which party was aggressor or the victim which acted in self-defence. The incident took place with regard to a Naali (waste water outlet) and both the parties being neighbours seems to have taken up a fight on sudden provocation.

Counsel for the appellant as well as counsel for the respondents has further stated that subsequent to this incident dated 28.07.2008, no further incident has taken place between the parties and for the last about 11 years, they are living peacefully. This is yet another fact to be noticed that the incident has taken place due to sudden provocation and, thereafter, the parties being neighbours, are residing peacefully.

In view of above, I find that the trial Court has rightly recorded a finding that in the version as well as in the cross-version, the complainants could not prove as to which party was aggressor or the victim which acted in self-defence, therefore, finding no merit/infirmity in the same, the appeal is dismissed.

Since, the main appeal is dismissed, the application

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seeking condonation of delay of 44 days in filing the appeal also stands dismissed.

07.02.2018  
*yakub*

(ARVIND SINGH SANGWAN)  
JUDGE

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