

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

**CRM-A-1730-MA-2014
Date of decision:-8.2.2018**

Smt.Barji Devi

...Applicant

Versus

Rakesh Devi and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.H.S. Randhawa, Advocate
for the applicant.

Mr.Vivek Khatri, Advocate
for the respondents.

H.S. MADAAN, J.

Applicant – Barji Devi has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Smt.Barji Devi had brought a criminal complaint under Sections 323, 325, 452, 427, 506, 34 IPC against accused Rakesh Devi, Navinder alias Kala, Dharmender and Surender alias Sunder on the allegations that on 13.9.2008 at about 9:45 a.m. while the complainant was doing domestic work in her house, suddenly all the accused having lathies came there and while abusing her, started breaking the *khori*, ignoring her objections in that regard; that Navinder @ Kala gave a lathi blow to complainant hitting her on the head, Rakesh Devi gave a lathi blow hitting the complainant on her left shoulder, resultantly the complainant fell down and started crying; that all the accused caused injuries to her

and she lost two teeth besides receiving grievous injuries; that in the meanwhile, her grandson Umesh, his wife Meena and son of complainant Ram Bhagat came there; that they were also beaten up by the accused; that the neighbours arrived at the spot and rescued the complainant and his family members from the clutches of the accused; that while leaving the accused extended threats to kill the complainant and his family members in future. The motive for the incident was that the complainant had tethered her buffalo in her plot, which is adjoining to the house of accused Rakesh Devi and she (Rakesh Devi) used to put wastage in their plot and when the complainant asked her not to do so then Rakesh Devi threatened to teach a lesson to them and she had called her real brother and planned to kill the complainant and her family members.

After the incident, the complainant/injured was taken to Civil Hospital, Satrod where she remained admitted from 13.9.2008 to 15.9.2008, however, due to grievous injury in her mouth, she was referred to Government Hospital, Hisar. The police had recorded her statement but the same was not read over to her. The police had also got signatures of her son Ram Bhagat on that statement giving an assurance that legal action would be taken but then only security proceedings under Sections 107/151/107/150 Cr.P.C. were initiated. As such, the complainant filed a complaint in the Court of law.

After recording of preliminary evidence, the accused had been summoned to face trial, who put in appearance and were admitted to bail. Accused Dharamender was declared a proclaimed offender vide order dated 27.2.2013. The complainant led pre charge evidence.

Thereafter, charge for the offences under Sections 323, 325, 452, 506 and 427 read with Section 34 IPC was framed against accused Rakesh Devi, Navinder @ Kala and Surender @ Sunder, to which, they pleaded not guilty and claimed trial. Accused made a statement that they wanted to further cross-examine complainant Barji Devi and Ram Bhagat, that request was accordingly allowed. Vide order dated 2.4.2014, accused Surender was declared juvenile.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely implicated in the case.

In defence evidence, accused examined Dr.Subhash, MO PHC Satrod as DW1 and Krishan Lal son of Phul Singh a DW2.

With that the defence evidence stood closed.

After hearing arguments, learned trial Magistrate dismissed the complaint and acquitted the accused of the charge framed against him, which left the complainant aggrieved and she had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal, notice of which was given to respondents – accused, who put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned trial Magistrate while dismissing the complaint and acquitting the accused has given reasoning for arriving at the

conclusion, which is contained in paras No.13 to 16 of the judgment.

The said paras are being reproduced as under:

Firstly, the alleged date of occurrence is 13.9.2009.

The present complaint was filed on 3.10.2008. There is a delay of approximately 20 days in filing the present complaint. No plausible explanation has been put forward by the complainant for this unexplained and inordinate delay. The delay could be used to cook-up a false and concocted story.

Secondly, PW2 Barji injured/complainant in the present case in her examination-in-chief has made a generalize statement with regard to the fact of causing injury to her. She made a statement that accused present in the Court caused injury to her and had broken her tooth. She had not specifically stated as to which accused had caused which injury. Similarly, PW4 Rohtash had also stated that when they reached at the spot accused were giving danda blows and they stopped them. Further which accused had caused which injury is unexplained on the court file.

Thirdly, accused had taken the defence that one of the accused Navinder @ Narender was on duty on the day of alleged occurrence. A certificate issued by the Military Authority has been placed on record. This certificate goes to show that on the alleged date of occurrence he was on duty in his Unit. When his presence was in the unit, he

could not be physically present on the alleged place of occurrence. Therefore, the plea that accused Navinder alongwith other co-accused came at the spot to cause injury to complainant also gets falsified. Further Krishan Lal who was a neighbor had been examined as DW2. This witness had stated that a case of SC&ST Act was filed by his wife against the sons and daughter-in-law of Barji Devi. The Navinder one of the accused in the present case was a witness in that case and he deposed against the Barji Devi. There is a possibility of false implication in this case as a counter blast could not be ruled out.

For the reasons recorded above, I am of the considered opinion that the complainant has failed to prove its case beyond the shadow of reasonable doubts. In these circumstances, the accused are entitled to the benefit of doubt. Therefore, after extending the benefit of doubt, I acquit the accused from the charges levelled against them.

The reasoning is quite detailed and deserves to be accepted.

Thus, I do not find any illegality or infirmity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law. Therefore, no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

(H.S.MADAAN)
JUDGE

8.2.2018

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No