

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRM-A-1945-MA of 2014

Date of Decision: January 15, 2018

Satyabir Singh

.....Applicant

Versus

Jagdev and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J. P. Sharma, Advocate for the applicant

ARVIND SINGH SANGWAN, J.

The respondents had faced trial in criminal complaint No. 175 of 2010 under Sections 323, 325 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Kanina, District Mahendergarh. The trial Court, vide judgment dated 14.10.2014 ordered the acquittal of the respondents-Jagdev, Leela Ram, Rattan Singh and Bhim Singh of the charges framed against them. Hence, the present application for grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed by the applicant-complainant.

Brief facts of the case are that the applicant-complainant filed the complaint with the allegation that on 5.8.2009 at about 8.00 a.m., mother of the complainant-Bhuri Devi, when went to adjacent room then accused-Jagdev, Leela Ram, Rattan Singh, Bhagmal stopped her and Ragbir, having a stick in his hand, along with Bhim Singh also came

there. Bhagmal gave a fist blow on her rib and Jagdev twisted her hand and pushed her out from the house and threatened her to death. On raising alarm, Shri Naryan alongwith other persons of the village gathered there. On being unconscious, Bhuri Devi was admitted to Hospital and, on medico legal examination, a fracture was found in her hand and FIR No.203 dated 18.9.2009 was registered but since in connivance with the accused, the investigation agencies cancelled the FIR, the present complaint was filed.

In the preliminary evidence, the complainant has examined Constable Guljari Lal as CW1 and Ram Chander Sharma as CW2, Bhuri Devi as CW3, Shri Narayan as CW4 and Satyabir Singh, CW5-complainant. Thereafter, the accused were summoned to face the trial for commission of offence punishable under Sections 323/325/506/34 IPC.

In pre-charge evidence, the complainant has examined HC Sanjay Singh as CW1, Shri Narayan as CW2, Bhuri Devi as CW3, Dr. Kanwar Singh as CW4, CW5-Sataybir Singh, complainant. Thereafter, the accused was charge-sheeted for the aforesaid offences to which accused did not plead guilty and claimed trial. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. in which they denied the allegation and pleaded that they have been falsely implicated. However, no defence evidence was led. The trial Court, thereafter, acquitted the respondents-accused. Operative part of the order of the trial Court is as under:-

“After hearing the learned counsel for both the parties, it comes to the considered opinion of this Court that as complainant has succeeded to prove the guilt of the accused namely Ragbir and Bhagmal beyond reasonable

doubt but failed to prove the guilt of the remaining accused namely Jagdev Leela Ram, Rattan and Bhim beyond reasonable doubt because in the complaint it is specifically mentioned that on 5.8.2009 at around 8.00 am when the injured Bhuri Devi was present at her adjacent home then Ragbir gave a blow of stick on her left knee and Bhagmal gave her a fist blow on her left rib as these injuries have proved by Dr, Kanwar Singh as CW4 through his affidavit Ex.CW4/A in which he stated that Bhuri Devi sustained two injuries one on her left knee and other on her chest and a fracture was found on her chest. Even the cancellation of FIR No 203 dated 18.9.2009 attached with the protest petition shows the original MLR as well as X-Ray films and X-ray report which corroborated the testimonies of the complainant as well of the injured version as CW3 Bhuri Devi. Even certified copy of MLR is Ex.CW2/A and X-ray report is Ex.CW2/B and FIR as Ex.CW1/A proves the same. It is pertinent to mention here that in the complaint it is mentioned that Shri Narayan being the neighbour of Bhuri Devi also reached on the spot who witnessed the whole incident. Similarly CW3 Bhuri Devi in a very categorical manner stated the same version. CW2 Shri Narayan the eye witness also stated that Bhagmal gave a fist blow on her left rib and Ragbir gave a blow of lathi

on her left knee. It is pertinent to mention her that if there was any conspiracy among Shri Narayan, Bhuri Devi and the complainant Satyabir then in the complaint it could be mentioned that Shri Narayan saved Bhuri Devi from the clutches of assailants but here it did not happen but they only deposed the fact that Shiv Narayan only witnessed the incident. Moreover it is not necessary that the complainant who is at age of 75 years old file the complaint in the court because at the age of 75 years old file the complaint in the court because at the age of 75 years it is not possible for an injured to appear on each and every date in the court. However, there is no problem if the son i.e. Sataybir filed the present complaint on behalf his mother. Hence, the testimonies of eye witnesses i.e. Shri Narayan CW2 and of injured CW3 Bhuri Devi and CW4 Dr. Kanwar Singh proves the authenticity of injuries. In fact here the bone contention is a civil litigation pending between the parties. So due to the anger of civil litigation the accused inflicted the injuries to Smt. Bhuri Devi. Moreover there is not even a single discrepancy in the statements of any of the complainant witnesses qua the guilt of the accused namely Ragbir and Bhagmal. However, the version regarding threatening to death of Bhuri Devi is not proved by any of the witnesses and this version is also

not mentioned in the FIR. So considering the same accused namely Jagdev, Leela Ram, Bhim Singh and Rattan Lal are hereby acquitted from the charges punishable under Sections 323/325/506/34 IPC but the accused namely Ragbir and Bhagmal are hereby held guilty for the offences punishable under Section 323/325/34 IPC. On request, let the convicts Ragbir and Bhagmal be heard on question of quantum of sentence after lunch.”

Learned counsel for the applicant has argued that from the testimonies of eye witnesses, it is proved that the respondents-accused had caused injuries to the complainant. It is also submitted that the complainant has also fully supported his case and the injuries sustained by Bhuri Devi are proved from the statement of CW3 Bhuri Devi and CW2 Shri Narayan and it is, thus, submitted that the guilt of the accused is proved. The original MLR as well as X-Ray films and X-ray report corroborated the testimonies of the complainant as well of the injured's version as CW3 Bhuri Devi. It is also submitted that in the complaint it is mentioned that Shri Narayan being the neighbour of Bhuri Devi also reached on the spot who witnessed the whole incident and appeared as CW2.

After hearing the learned counsel for the applicant and going through the record carefully, I find no merit in the present application.

The occurrence has taken place on 5.8.2009, whereas, the FIR was registered on 18.9.2009 and later was cancelled which has not

been explained. Even there is no explanation that after cancellation of FIR, why complaint was filed on 16.7.2010 after a long delay. Though the complainant witnesses has deposed qua the guilt of the accused namely Ragbir and Bhagmal, therefore, the version regarding threatening to death of Bhuri Devi is not proved by any of the witnesses and this version is also not mentioned in the FIR. CW2 Shri Narayan the eye witness also stated that Bhagmal gave a fist blow on her left rib and Ragbir gave a blow of lathi on her left knee. The complainant could not prove that the respondent accused except Bhagmal or Ragbir were present at the spot especially in view of the fact that CW2 has not attributed anything towards them. The trial Court, on appreciation of evidence, had rightly held that the complainant has failed to bring home the guilt of the accused-respondents beyond doubt.

It has been held by a Division Bench of this Court in **Anil Kumar v. State of Punjab and others, CRA-D-531-DB of 2015**, while dealing with an appeal against acquittal, that order of acquittal interfered with only when there are compelling and substantial reasons for doing so i.e. when the order was clearly unreasonable. There is no compelling and substantial reasons to interfere with the findings recorded by the trial Court and the trial Court has rightly taken into consideration all the material brought on record.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial

reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

In the facts and circumstances, the reasons recorded by the learned trial Court in acquitting the accused are just and proper and there is no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

January 15, 2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No