

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-668-MA-2015

Date of Decision: 29.10.2018

Raghubir Kaur

.....Petitioner

Versus

Ram Dayal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Gahlawat, Advocate
for the applicant.

Mr. Kanwaljeet Singh Dera Bassi, Advocate
for the respondent.

ANITA CHAUDHRY, J

The applicant is aggrieved by the acquittal recorded by the
Judicial Magistrate Ist Class, Dera Bassi.

It would be necessary to give the brief facts.

The complainant and the accused live in the same
neighbourhood. The house of the accused adjoins the house of the
complainant. A rain water drain passes in front of the houses. The water
passes in front of the house of the accused. The complainant was aggrieved
as the accused obstructed the water leading it to overflow upon which an
altercation took place. The allegations are that the accused abused the
complainant and one Balwinder Kaur and threatened to kill them. The
allegations further were that the accused called names relating to their caste.
The main occurrence is said to have occurred on 7.5.2010 at 8.30 P.M.
There is a dispute as to whether the incident had occurred on

3.5.2010 or 7.5.2010. In the complaint the date was mentioned as 7.5.2010. The allegations are that the accused entered the house of the complainant and started abusing in a loud voice. On hearing the loud voice, Balwinder Kaur reached the spot. The allegations are that the accused pushed the complainant and Balwinder Kaur and touched her chest and tried to hold her upon which the complainant and Balwinder Kaur raised alarm and the husband of the complainant Chetan Singh came to the spot. The allegations are that had the husband not arrived, the accused would have caused serious injuries to them. It was further averred in the complaint that the matter was reported on telephone to the police but they did not come and the matter was brought to the notice of the police in writing the next day i.e. 4.5.2010 but no action was taken. The complainant then filed an application before the SDM, Dera Bassi and gave a complaint to the SSP, SAS Nagar on 17.6.2010 which was sent through registered post. It was averred that the accused was in the police department.

Preliminary evidence was recorded and the accused was summoned.

At the trial, the complainant examined herself, Balwinder Kaur and her husband besides introducing the complaints given to the SSP and SDM.

The accused denied the accusations and stated that the complaint had been filed to extract money and the allegations were false and the wife of the accused had asked the complainant to clean the drain regularly on which this complaint had been filed.

The trial Court acquitted the accused under all the Sections noticing the discrepancy firstly on the date of occurrence. It noted that the

complainant had failed to produce copy of the complaint given to the police on the next day. It also found number of discrepancies in the oral testimony of the complainant and Balwinder Kaur. It also found that husband of Balwinder Kaur had also reached the spot along with Chetan Singh husband of the complainant who was not examined. A contradiction was also noted as Chetan Singh in the cross-examination had stated that Balwinder Kaur had sustained injuries on her head which was not the case of the complainant or Balwinder Kaur and had found that the witnesses had indulged in exaggerations and the dispute in fact was with respect to the cleaning of the drain.

Records were summoned.

I have heard both the sides.

On the previous hearing, the applicant had sought time to produce some documents which were not produced. Last opportunity had been granted for today. Counsel for the applicant submits that they do not have to file any document.

The complainant's version is that the incident had occurred in the evening and on the same evening they had made a call to the police. It is also their case that on the next day a written complaint was given but the complainant did not summon any record to show that any call was made to the police or that any written complaint was given on the next day. A perusal of the complaint Ex. CW3/1 shows that the complainant was called to the police station and her statement was taken and she had signed the statement but the allegations were that the Munshi namely Mewa Singh had on his own made up a different story as he was mixed up with the accused.

I find that the complaint filed in the Court does not refer to this fact and the

complainant had concealed this fact that the matter had been investigated by the police and it had been filed. Had the complainant revealed this fact, the Magistrate would have summoned the report from the police.

The incident is said to have occurred in an area which is not isolated. I find that there are contradictions with respect to number of people who were present. The husband of Balwinder Kaur was also present and this fact is mentioned in para 5 of the complaint Ex. CW3/1 but his presence is not mentioned in the complaint filed in the Court or by any of the witnesses. The complainant was asked to produce the documents to show the first statement given to the police but even after last opportunity, the same was not filed. The police had investigated into the complaint and had filed it and had found that the dispute was only with respect to the cleaning of the drain.

The husband of the complainant had alleged that injuries were caused to Balwinder Kaur but there was no MLR. The complaint had been filed with delay. The trial Court had dealt with the discrepancies which had cropped up in the evidence and had rightly held that the evidence could not be acted upon. I find no infirmity in the order.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 29, 2018

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No