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

CRM No.A-802-MA of 2015 (O&M)
Date of decision: August 23, 2018

Rajwanti

...Applicant

Versus

Mehar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mani Ram Verma, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.29312 of 2018

The application is allowed, subject to all just exceptions. The interim orders passed by learned SDJM, Gohana, are taken on record.

CRM No.A-802-MA of 2015

Applicant-Rajwanti has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against Mehar Singh and other respondents, challenging the impugned judgment dated 12.02.2015 passed by learned Sub Divisional Judicial Magistrate, Gohana, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Rajwanti filed a complaint

against accused Mehar Singh, Jai Kishan, Rajbir, Ramesh, Parminder and Babli under Sections 323, 447, 504 and 506 IPC. The brief averments of the complaint as noted by down in the judgment passed by learned SDJM, Gohana, are as under:-

“2. The complainant has come with the averments that on 5.2.2006 at about 10.00 AM when she went to her plot, she saw that the accused were fencing her plot. When she objected to this and asked the accused not to do illegally encroach upon her plot, the accused started abusing her and asked her to leave the spot otherwise they would kill her and they would definitely encroached upon her plot. The complainant again asked them not to do so. On this accused Ramesh gave iron rod blow on her back. Mehar Singh, Jai Kishan and Rajbir were armed with lathies. Jai Kishan gave lathi blow on her left hand, Ramesh gave lathi blow on her right hand, Rajbir gave lathi blow on her left thigh and accused Parminder and Babli gave fist blows and slaps on her back. She shouted for help. On which her brother-in-law (Jeth) Balbir son of Jug Lal and Kuldeep son of Bhim Singh came at the spot and rescued her from the clutches of the accused. The accused had illegally encroached her plot by fencing the same. Thereafter, Kuldeep took her to her house. Her husband took her to the hospital for treatment. She moved an application before the police, but the police only challan the accused under Section 107/151 Cr.P.C. and did not take any action against them. She kept on approaching the police to take action against the accused, but the police did not take any action and on 11.8.2006 refused to take any action against the accused. So, the necessity arose of filing the present complaint.”

The accused were summoned under Sections 323, 447, 504 and 506 IPC. In pre-charge evidence, complainant examined herself as CW-1 and CW-2 Dr.B.S.Kadian and pre-charge evidence was closed on 08.12.2012. On 08.07.2013, the accused were charge-sheeted under Sections 323, 447, 504 and 506 IPC, to which they pleaded not guilty and claimed trial.

Complainant Rajwanti was further cross-examined by the accused in after-charge evidence. CW-2 Dr.B.S.Kadyan failed to appear for

further cross-examination and the evidence of the complainant was closed by order on 22.09.2014. Statements of the accused under Section 313 Cr.P.C. were recorded, wherein they pleaded false implication and claimed innocence. In defence, accused examined DW-1 Ved Ram, Kanoongo, DW-2 Ashok Kumar, LDC, DW-3 Balbir Singh, Ahlmad, DW-4 Rakesh Kumar, LDC, DW-5 Vijay Kumar, LDC and DW-6 Balbir.

Learned SDJM, Gohana, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 12.02.2015.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the findings given by learned Court below shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

At the time of arguments, learned counsel for the applicant only argued that proper opportunities were not granted to the complainant and the complainant could not produce the evidence i.e. doctor in this case. Learned counsel for the applicant argued that earlier the evidence was

05.02.2014, the complainant was allowed to be cross-examined in after-charge evidence. I have gone through the order dated 05.02.2014. The Court has passed the order on 05.02.2014 on the application under Section 311 Cr.P.C. and the complainant was allowed to be cross-examined and she was cross-examined accordingly. The Court below declined further adjournment as the evidence of the complainant was already closed vide order dated 28.01.2014. No petition has been filed to challenge the order dated 28.01.2014 by the complainant and the complainant could not produce other evidence after her cross-examination as the Court below has called the complainant for cross-examination on the application under Section 311 Cr.P.C., after closing the evidence. As there is only statement of complainant, therefore, without corroboration, a reasonable doubt exists in the prosecution version.

Furthermore, learned trial Court has discussed the defence evidence also. There is delay of about six months in filing the complaint and this fact is also noted by learned trial Court. It is further held that there are material contradictions and discrepancies in the earlier version of the complainant given to the police immediately after the alleged occurrence and the version given by the complainant in the present complaint, which has been filed after six months after the alleged occurrence and her deposition given before the court regarding genesis of the occurrence, number of accused persons etc.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 12.02.2015 passed by learned SDJM, Gohana, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 23, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No