

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

CRM-A-858-MA of 2014.
Decided on:-August 01, 2018.

Ravish Garg.

.....Applicant.

Versus

Suresh Kumar and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Devender Nirban, Advocate
 for the applicant.

HARI PAL VERMA, J.

Applicant Ravish Garg (hereinafter referred to as the 'complainant') has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 06.03.2014 passed by learned Judicial Magistrate 1st Class, Kurukshetra, whereby respondents No.1 to 7, namely, Suresh Kumar, Vinod Jindal, Dharam Pal Jindal, Bhushan Jindal, Lajja Ram, Shakuntla and Saroj Bala (hereinafter referred to as the 'accused') were acquitted of the charges levelled against them in a complaint filed by the complainant under Sections 323, 324, 325, 506, 148 and 149 IPC.

Briefly stated, it is the case of the complainant that he was married to accused No.7 Saroj Bala on 19.02.2000 and out of this wedlock, one son was born to them. Accused No.1 to 5 are the real brothers of accused

No.7, whereas accused No.6 is the mother of accused No.7. There was undue interference in the matrimonial life of the complainant by the aforesaid six accused. The accused used to threaten and quarrel with the complainant. Due to undue pressure of accused No.1 to 6, accused No.7 left her matrimonial home on 13.06.2004 leaving behind the child and the complainant. On 18.06.2004, the complainant, on the call of the accused No.7 and in order to take her back to the matrimonial home and to talk about the disturbances, had gone to the house of the accused situated at Jyoti Nagar, Kurukshetra. On seeing the complainant at their house, all the accused came out with Dandas, Sarias etc. and gave severe beatings to him. Accused No.6 and 7 gave slaps and fist blows to the complainant due to which he got injured and received multiple injuries including fractures.

Thereafter, the complainant was admitted to Lok Nayak Jay Prakash Hospital, Kurukshetra and a medico-legal report No.YK/04/135 dated 18.6.2004 was prepared. The x-ray examination was also conducted and the police Rukka was sent by the concerned doctor to the police post, but in vain. All the abovesaid documents are lying on the judicial file. This occurrence was witnessed by the neighbour of the accused, namely, Baldev Raj, who rang up the father of the complainant and narrated the whole incident and again when the complainant was hiding himself in the STD of said Baldev Raj, accused No.4 came and dragged him in the street and again gave him the beatings. After two days of the admission of the complainant in the hospital, the police came into action and recorded the statement of the complainant, but all in vain.

Thereafter, on 19.06.2004, accused No.7 Saroj Bala moved an application before the S.H.O., Police Station City Thanesar stating therein false allegations of dowry harassment etc. and all the other accused became witnesses in that and got a false case registered against the complainant and his family members. After the registration of the case, police never investigated this case in a proper manner and gave time to the accused to manoeuvre the things. Ultimately, the police in collusion with the accused persons filed a cancellation report. Hence, this protest petition was filed by the complainant.

Vide order dated 08.12.2010 passed by learned trial Court, the accused were summoned to face trial for the commission of offences punishable under Sections 323, 324, 325, 506, 148 and 149 IPC. The accused filed a revision petition against the summoning order dated 08.12.2010 and vide order dated 05.10.2013 passed by learned Additional Sessions Judge, Kurukshetra, the revision petition was partly accepted. The impugned order of summoning the revisionists to face the trial for the commission of offence under Section 324 IPC was set aside, but for rest of the offences, the summoning order was upheld.

The copies of complaint and other relevant documents were supplied to the accused free of costs as envisaged under Section 208 Cr.P.C.

In his pre-charge evidence, the complainant examined Dr. G.D. Mittal as CW1, himself as CW2, Dr. Yoginder Kumar as CW3 and Dr. Vanita Singh as CW4. Besides this, he also produced documents Ex.P1 to Ex.P30, as detailed in the impugned judgment.

Finding a *prima facie* case against the accused, they were charge sheeted under Sections 120-B, 148, 323, 324, 325 read with section 149 IPC and Section 506 IPC, to which they did not plead guilty and claimed trial. The accused suffered statement that they do not want to cross-examine the witnesses again after the framing of charge.

Statements of both the accused under Section 313 Cr.PC were recorded, wherein they were apprised with all the incriminating evidence available on record against them. The accused denied all the allegations levelled against them and pleaded that they have falsely been implicated in the case. However, the accused did not examine any witness in their defence.

After recording the evidence and hearing the arguments of both the sides, learned trial Court acquitted the accused of the charges levelled against them vide impugned judgment dated 06.03.2014.

Aggrieved against the aforesaid judgment, the complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the complainant has argued that the impugned judgment dated 06.03.2014 passed by the trial Court is wrong, illegal, and based upon the hypothetical assumptions and presumptions. The minor discrepancies in the evidence of the complainant cannot be a ground to acquit the accused. Though the police got registered an FIR against the accused, but later on, filed a cancellation report in the case. Therefore, the petitioner had filed a protest petition.

He has further argued that the doctor, who conducted x-ray examination has supported the case of the complainant. Injury No.5 on the

person of the complainant was grievous in nature, but the skiagrams and other documents were not produced by the police intentionally and deliberately on the file submitted to learned trial Court. The complainant and his family members were acquitted in the counter-blast FIR No.255 dated 19.06.2004 under Sections 406, 498-A, 323, 342 and 506 IPC vide judgment dated 09.02.2011 (Ex.P-24) and the appeal filed by accused No.7 was also dismissed by learned Additional Sessions Judge, Kurukshetra vide judgment dated 09.01.2014 (Ex.P-25), but learned trial Court has failed to appreciate these exhibited documents. Therefore, the impugned judgment dated 06.03.2014 passed by the trial Court is liable to be set aside and the accused be convicted and sentenced accordingly.

I have heard learned counsel for the complainant.

Vide impugned judgment dated 06.03.2014, learned trial Court while acquitting the accused of the charges levelled against them, has observed that in the present case, the medical evidence produced by the complainant is weak and in order to cover this weakness, no clear, cogent or trustworthy fact has been proved beyond a shadow of doubt. Since it was a protest petition, the question of examination of the investigating officer does not arise at all. Moreover, the only eye-witness i.e. Baldev Raj was not examined by the complainant. Even, the father of the complainant, to whom the aforesaid Baldev Raj made a telephonic call, was also not examined.

Learned trial Court has further observed that Dr. G.D. Mittal (PW1) conducted the X-ray and confirmed the fracture, but his report is not substantiated in light of documentary evidence. The statement given by doctor is left unexplained in the absence of x-ray and skiagrams. However, even if

the fact that police officials had not supplied these skiagrams intentionally is believed, then also at this stage his evidence is not completely reliable and needs to be perused in light of other evidence i.e. Dr. Yoginder (PW3), Dr. Vanita (PW4) and Dr. Yoginder (PW3) who stated that there are seven injuries on the accused and referred them for x-ray and dental examination, but the main point that creates an infirmity is with regard to the time of injury as it was stated as 0-24 hours. Normally in case of medico-legal reports, the time is mentioned with gap of six hours like 0-6 hours. Therefore, this discrepancy stands unexplained. However, it is just a minor discrepancy, it can be negated if other witnesses are fully supporting the version of complainant. Further, Dr. Vanita (PW4) examined the patient on the referral of Dr. Yoginder Kumar. The injuries were not completely denied by the accused as they had also given a version that the complainant received such injuries due to falling from the scooter.

So far as the plea of learned counsel for the complainant that no action was taken by the police on the FIR registered by the complainant is concerned, the same cannot be accepted as police had filed a cancellation report in the absence of any material against the accused. Though the complainant has right to file a protest petition, but it does not mean that the same is bound to be accepted in the absence of sufficient and cogent evidence. There are material discrepancies in the evidence produced by the complainant and, therefore, his version was not found to be trustworthy by learned trial Court. Accordingly, in the absence of any convincing evidence brought on record by the complainant, learned trial Court acquitted the accused of the charges levelled against them.

This Court finds that the complainant has failed to show any misreading of evidence by the learned trial Court and has not been able to point out any legal error in the judgment under challenge which may warrant interference by this Court. When there is no evidence available on record to connect the accused with the alleged crime, no case is made out for interference in the impugned judgment dated 06.03.2014 passed by learned Judicial Magistrate 1st Class, Kurukshetra.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

August 01, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No