

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1348-MA-2015
Date of Decision: 10.04.2019

Bohti Devi @ Bholi

.....Applicant

Versus

Vikram and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Parminder Singh, Advocate, for the applicant.

Mr. Tapan Kumar Yadav, Advocate,
for respondent Nos. 1 to 5.

Mr. S.S. Pannu, DAG, Haryana, for respondent No.6.

Harnaresh Singh Gill, J.

The applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 05.02.2015 passed by the learned Judicial Magistrate, Ist Class, Karnal.

Vide impugned judgment, the trial Court has acquitted respondent Nos. 1 to 5 of the charges under Sections 148/149/323/324/326/506 read with Section 34 IPC.

Respondents-accused stood summoned for the aforesaid offences, in a complaint case filed by complainant-Bohti Devi @ Bholi, alleging that on 30.9.2009 at about 5.00 p.m., she was going to answer the call of nature and when she reached the street in front of the house of Prithi Singh, she had found accused Santosh daughter of Ram Kumar, Vikram and

Rakshit standing there. Accused Santosh was empty handed, whereas accused Vikram was armed with a knife and Rakshit with a *danda*. Accused Santosh caught hold of the complainant and accused Vikram gave a knife blow on the right hand of the complainant, which landed on her fingers and also above her right wrist. Accused Rakshit gave a *danda* blow to the complainant which landed on her right hand fingers. Accused Sunita and Rekha, who also came to the place of occurrence in the meantime, had also given kick and fist blows to the complainant. Upon the complainant having raised an alarm to save her, Sunder Singh and Gian Singh came there, whereupon the accused had fled from the spot. But, while leaving they had threatened to eliminate the complainant. The complainant was taken to CHC Nilokheri for treatment by her husband Sunder Singh and one Randhir Singh. The Doctor found fracture in the right hand of the complainant.

After the preliminary evidence was led, finding a prima facie case, the Court had summoned the accused for the aforesaid offences. On the basis of the pre-charge evidence, charges were framed against the accused under Sections 323, 324, 326, 506 IPC read with Section 34 IPC. Thereafter, the pre-charge evidence was treated as after-charge evidence on the statement made by the complainant.

Statement of the accused under Section 313 Cr.P.C. were recorded in which they pleaded innocence and alleged false implication. In defence, they had examined two witnesses.

As noticed above, vide judgment dated 5.2.2015, the learned trial Court acquitted respondent Nos. 1 to 5 of the charges under Sections 148/149/323/324/326/506 read with Section 34 IPC.

We have heard learned counsel for the parties, but we do not find any merit in the present application seeking leave to appeal.

The learned trial Court, while passing the impugned judgment of acquittal has taken into consideration that the case set up by the complainant is doubtful and that the complainant had failed to prove the case against the accused beyond reasonable doubt. While recording such finding, the factors which weighed in the mind of the Court were that as per the complainant, the reason for the incident was an altercation that had taken place a day prior to 30.9.2009 between the complainant and one Kamla, but she denied the same in her cross-examination. Thus, once this fact was denied by the complainant, the learned trial Court found that there was apparently no motive for the crime and that no other reason(s) had been mentioned as to injuries caused to the complainant on 30.9.2009. Besides, material contradictions were noticed by the learned trial Court in the testimonies of the witnesses examined by the complainant. It was further found that CW2-Dr. Vandana Aggarwal, who had medico legally examined the complainant on 30.9.2009, deposed that the duration of the injuries on the person of the complainant was 12 hours. While analyzing the evidence of the said witness, it was found that the incident was

alleged to have occurred at 5.00 p.m. and the MLR had been conducted at 5.30 p.m. Thus, when the time gap between the causing of injuries and the conducting of the MLR was merely half an hour, there was no reason for the Doctor to give an opinion that the injuries were caused within the duration of 12 hours. It was, thus, found that the injuries shown in the MLR did not match with those stated by the witnesses in their testimonies. It was further found that it did not appeal to the common prudence that the accused who were allegedly armed with knife and danda would cause simple injuries to the complainant and that too on her arm and leg only and that there being no injury on any vital part of the person of the complainant, the story put forth by the complainant became doubtful. It was further found that as regards the same very incident which is subject matter of the present proceedings, the complainant had earlier lodged FIR No. 334 dated 2.10.2009, but during the investigation, the investigating authorities had submitted a cancellation report in the said FIR, which was proved on record as Ex.D2. In the said report, the police had reached the conclusion that as a matter of fact no such incident had ever taken place and that the said FIR was a counterblast to FIR No. 330 dated 1.10.2009 lodged against the complainant. Still further, it was found that though the occurrence was alleged to have taken place at a public place i.e. street, yet no eyewitness to the occurrence had been examined by the complainant.

As noticed above, the learned trial Court has, while passing the impugned judgment of acquittal, discussed the entire evidence threadbare and came to the conclusion that the case set up by the complainant is doubtful and no conviction on the basis thereof can be recorded. While doing so, much emphasis has been laid on the testimony of the complainant herself, on the basis whereof, no motive was found to have been proved for the occurrence. Rather, what has been proved is that the cancellation report submitted in the FIR lodged by the complainant regarding the same very occurrence i.e. the subject matter of the present proceedings. Yet further, it was also found that at an earlier point of time, an FIR had been registered against the complainant and the present proceedings are nothing, but a counterblast to the said FIR.

Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment of acquittal. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

10.04.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No