

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-33-MA of 2015

.....

Date of decision:28.03.2019

Bhuro Devi

...Applicant

v.

State of Haryana and others

...Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. Vinod Bhardwaj, Advocate for the applicant.

Mr. Sharad Kumar Yadav, Deputy Advocate General, Haryana  
for the respondent-State.

Mr. Suresh Kumar Kaushik, Advocate for respondents  
No.2 to 5.

.....

**Inderjit Singh, J.**

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 19.8.2014 passed by learned Judicial Magistrate Ist Class, Kaithal, whereby the complaint filed under Sections 323, 325, 452, 506 and 34 IPC has been dismissed and the accused-respondents have been acquitted of the charges as framed against them.

It has been mainly stated in the application that accompanying appeal is being filed against the judgment dated 19.8.2014 passed by learned Judicial Magistrate Ist Class, Kaithal, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned trial Court

wrongly and illegally acquitted respondents No.2 to 5 from the charges levelled against them hence the leave to appeal is liable to be granted by this Hon'ble Court. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Bhuro Devi-complainant filed complaint against Jai Narayan, Sanju, Ved Pal and Neeraj for the offences under Sections 323, 325, 452, 506 and 34 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Kaithal, in his judgment dated 19.8.2014 are as under:-

“The present complaint has been filed by the complainant Bhuro Devi against the accused with the allegations that accused No.1 is the brother-in-law of the complainant and accused No.2 and 3 are nephews of the complainant and accused No.2 and 3 are nephews of the complainant, however the accused No.4 is the maternal grand son of accused No.1 namely, Jai Narayan and all the aforesaid accused are residing jointly at Village Bandrana, Tehsil and Distt. Kaithal. On 18.08.2008, at about 8.00 a.m. when the complainant and her brother-in-law Des Raj were present in their bara plot at the same time all the aforesaid accused came there with common intention and with a sense of hate and started to beat the brother-in-law of the complainant namely, Des Raj with slaps, punches, kicks and danda blows meanwhile the son of the complainant namely, Gurdayal Singh intervened between the quarrel and tried to stop the accused persons, upon which all

the accused persons became more violent and started to beat the son of the complainant namely Gurdayal with slaps, punches, kicks and danda blows. Thereafter, the complainant came forward to save his son and brother-in-law and interfered to stop that quarrel but in rivalry way accused No.2 Sanju gave a punch blow over the face of the complainant and broken out one tooth of the complainant and she also sustained injuries on the lips and all other accused also attacked to the complainant and beaten her mercilessly with kicks, danda blows and caught hold her from hair and put down her on the ground and beaten her. During this quarrel wearing clothes of the complainant were torn and a left golden ear ring was also lost there. Thereafter, complainant raised noise and cried and after hearing that noise Purshotam alongwith neighbors and other respectable came there and saved the complainant and her family members from the clutches of the accused and seeing the public at large all the accused ran away from the spot alongwith their weapons and while running they have threatened the complainant that today you have been saved but whenever they got any chance they will kill them. Thereafter, complainant, her son Gurdayal and brother-in-law Desraj approached to CHC Dhand for medical examination from where they have been referred to CHC Kaul where they were medically examined at about 4.15 p.m. and again they were referred to civil hospital, Kaithal for further examination and for the report of dentist. And all the

three injured persons remained admitted there for two days and thereafter on dated 20.08.2008 Dr. Suresh Kumar Saini Dentist examined the complainant and concluded that the complainant was having grievous injury caused by blunt weapon. Thereafter, the complainant time and again visited P.S. Dhand and requested to proceed against the accused and investigate the matter but police authorities refused to take any action against the accused and also denied to bring the medical reports of the complainant and others from Civil Hospital, Kaithal and pressurized the complainant and other injured to compromise with the accused and threatened that in case of refusing from compromise they have to face dire consequences of false case. Hence this complaint.”

The complainant examined herself as CW-1, CW-2 Desh Raj, CW-3 Gurdayal and CW-4 Purshotam.

At the close of complainant's evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and they were confronted with the evidence against them, but they denied the correctness of the same and pleaded themselves as innocent.

On finding a *prima facie* case, charges against accused were framed for the offences under Sections 323, 325, 452, 506 and 34 IPC, to which they pleaded not guilty and claimed trial.

After appreciating the evidence, the accused were acquitted by the learned Judicial Magistrate Ist Class, Kaithal, vide judgment dated 19.8.2014. Aggrieved from this judgment of acquittal, the present appeal

along with application seeking leave to appeal has been filed by the complainant.

Notice of motion was issued in this case.

Mr. Sharad Kumar Yadav, learned Deputy Advocate General, Haryana has appeared on behalf of the respondent-State and Mr. Suresh Kumar Kaushik, learned Advocate has appeared for respondents No.2 to 5 and contested this application.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

I have perused the findings given by the learned trial Court, these are correct as per evidence and law. The evidence has been appreciated in right and proper perspective. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below.

In the present case, the occurrence is stated to be of 18.8.2008 but the complaint was filed on 2.9.2008 i.e. after the delay of about 15 days which has not been explained. Further as per the defence version, the accused have also received injuries but no evidence has been produced to explain the injuries on the person of the accused. Further the complainant received the injuries on 18.8.2008 at about 8.00 a.m., but they got them medico-legally examined at 3.15 p.m. after the delay of 7 hours and there is no explanation as to why they waited for 7 hours to get themselves medico-legally examined, if the complainant etc. have received injuries. Further it is stated that Bhuro Devi in the judgment has admitted in her cross-

examination that the 'Bara' in dispute belongs to her father-in-law and she also admitted that her residential house is approximately at a distance of one and half killa from the 'Bara' in dispute, which shows that the complainant is not residing at the 'Bara' in dispute which is joint between the parties for which a civil case is pending between the parties in the civil Court. The complainant also admitted in her cross-examination that Jai Narain is an old aged person of 80 years. Therefore, the Court below held that it looks unnatural that a person of 80 years will give injuries as alleged. There is no corresponding injury on the lips etc. If the fist blow would have been given, then there might be corresponding injuries over the lips. Dr. Suresh Kumar Saini admitted in his cross-examination that there was no corresponding injury over the lips of Bhuro Devi. It is also clear from the record that injury received by Desh Raj is of pain and one contusion reddish and injuries received by Bhuro Devi are complaint of pain, loose of teeth from lower jaw, one lacerated wound 0.3 cm x 0.2 cm and one contusion and abrasion. The injuries are simple in nature and these can be self-created injuries as stated by Dr. Satvinder Singh in his cross-examination.

Keeping in view the above facts, I find that a reasonable doubt exists in the prosecution case and the learned Judicial Magistrate Ist Class, Kaithal, has rightly acquitted the accused-respondents No.2 to 5 by giving benefit of doubt. The learned trial Court held that the place of occurrence is 'Bara' which is joint between the parties and a civil litigation is also pending between the parties qua the same. As per both the parties, they were present at the 'Bara' at the time of alleged occurrence and the other party came there and started fight and it is not clear from the evidence, that which party came

[7]

on the spot and which party was already present on the spot.

Therefore, a reasonable doubt exists in the present complaint and the benefit of doubt always goes to the accused and the learned trial Court after appreciating the evidence in correct and right perspective have rightly acquitted the accused-respondents No.2 to 5. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

March 28, 2019.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

|              |                            |     |
|--------------|----------------------------|-----|
| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |