

CRM-A-984-MA-2016

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

CRM-A-984-MA-2016 (O & M)
Date of Decision: 02.03.2020

Bimla and another

... Applicants

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Bikram Chaudhary, Advocate,
for the applicants.

Mr. P.K.Jhanda, AAG, Haryana.

HARNARESH SINGH GILL, J.

The present application under Section 378(4) of the Code of Criminal Procedure has been preferred against the judgment dated 24.12.2015 passed by the learned Sessions Judge, Kaithal, vide which respondent No.2 was acquitted of the charges under Sections 308/34 and Section 506 IPC, however, convicted under Section 323 IPC and released on probation of good conduct for a period of six months on furnishing probation bonds in the sum of Rs.20,000/- with one surety in the like amount and to deposit a sum of Rs.1,000/- as compensation to be paid to injured-Bimla.

Respondent No.2-Rani Devi alongwith one Virender (who was later on declared juvenile and proceeded accordingly) was tried for committing the offences under Sections 308/34 IPC and Section 506 IPC.

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The allegation against respondent No.2 is that on 03.09.2014 at about 3.00 P.M., when injured-Bimla was returning her home, she was intercepted by accused-Rani Devi and hurled abuses. Accused-Rani Devi also caught hold of the injured from neck. At that time, accused-Virender (juvenile) also came there and gave brick bat blow on the face of injured-Bimla. On the basis of statement of complainant-Sonu, FIR No.118 dated 04.09.2014 was registered at Police Station Rajound, under Sections 308, 506 and 34 IPC.

Admittedly, respondent No.2 was charged for the offences under Sections 308/34 IPC and Section 506 IPC. However, the trial Court on the basis of evidence led by the parties, vide impugned judgment dated 24.12.2015, found that no offence under the aforesaid sections was made out against respondent No.2 and accordingly, acquitted her, whereas convicted and sentenced her under Section 323 IPC, as stated above.

Being dissatisfied with the impugned judgment dated 24.12.2015, the present application seeking special leave to appeal has been filed.

Learned counsel for the applicant contended that the learned trial Court fell in error of law while distinguishing the role of respondent No.2. It is further contended that once the injury had been given by accused-Virender(juvenile), who is none else but the son of respondent No.2, it could not be said that they did not share any common intention in committing the crime. Further, under such circumstances, respondent No.2 could not have been absolved of the role and common intention of not knowing that the

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injury given by her son to injured-Bimla would have resulted into the death of Bimla.

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

Indisputably, injury on the face of injured was attributed to accused-Virender. The said accused was declared a juvenile and proceeded accordingly. Hence, respondent No.2-Rani Devi was the only accused facing the trial before the trial Court. Once the trial Court on the basis of evidence on record found that no offence under Sections 308/34 IPC and Section 506 IPC was made out against respondent No.2, I do not find that there exists any material evidence on record to take any other view than the one taken by the learned trial Court. It was categorically found by the trial Court that respondent No.2 did not share any common intention with accused-Virender(juvenile). She was attributed the role of hurling abuses and having caught hold of the injured by her neck. On hearing whereupon, accused-Virender(juvenile) landed at the spot and gave injury on the face of injured-Bimla. The prosecution did not led any evidence to sustain the charges under Sections 308/34 IPC and Section 506 IPC. No doubt, the incident stood proved on record but with the findings as recorded by the learned trial Court, as referred to above. There was no evidence that respondent No.2 had committed an overt act of such nature as in the circumstances, would have caused the death of Bimla, inasmuch as there was no sign of any injury on the neck of injured in MLR (Ex.PB) so as to suggest that Rani had requisite intention or knowledge to kill the injured.

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Learned counsel appearing for the applicant could not point out any evidence on record which could establish the prevailing circumstance at the time of commission of the crime/connecting the common sharing of the mind by accused-Rani with accused-Virender(juvenile). It is settled principle that for recording conviction with the aid of Section 34 IPC, an accused is required to be found sharing the common intention with the another accused. There is plethora of judgments on the point that common intention can also arise at the spur of moment. However if the entire factual position is sifted vis-a-vis the evidence on record, it could not be established that accused-Rani had shared such common intention either at the prior point of time or at the spur of moment.

Moreover, it is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of

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the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged

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and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative and then ends of justice so require and it is essential to appease the judicial conscience.”

It could not be pointed out that the judgment of acquittal under Sections 308/34 IPC and Section 506 IPC passed by the learned trial Court is based on misreading or misinterpretation of evidence on record.

No other point has been raised during the course of the arguments.

From the above, I do not find any ground to grant special leave to appeal. Therefore, finding no merit in the present application seeking special leave to appeal, the same is dismissed. Leave to appeal is declined.

02.03.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No