

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

CRM-A-220- MA-2017(O&M)

Date of Decision: 23.11.2022

MEERA

..... Appellant

Versus

STATE OF HARYANA & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Vaishali Singla Legal Aid Counsel
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)
CRM-4262-2017

Application is for condonation of delay of 138 days in filing the appeal.

Keeping in view the averments made in the application, the application is allowed and delay is condoned.

CRM stands disposed of.

CRM-A-220- MA-2017

1. The appellant through instant appeal is seeking setting aside of judgment dated 14.07.2016 whereby JMIC, Yamuna Nagar at Jagadhri has dismissed complaint of the present appellant.

2. Shorn of unnecessary, the material facts emerging from record are that as per appellant on 13.09.2021 at 8:30 AM respondents No.2 and 5 entered into the residential house of the appellant in drunken condition and tried to use the stairs as they intended to commit theft of electricity. When the appellant attempted to stop them from using their staircase, they entered into her room and picked up a bag containing

Rs.10,000/-, silver ornaments of 10 tolas and one gold ring, which was lying in the room of the appellant. The respondents No.2 and 5 called their accomplices and respondents No.3, 4 and 6 entered into their house while armed with dandas, knife and lathi. They caught hold of the appellant from her hair and started inflicting blows with their respective weapons. The respondents No. 2 and 4 hit her on her mouth, due to which her two teeth were broken. The respondent No.3 inflicted a knife blow on her. The respondent No.5 gave lathi blow and dragged out her in the street. She started crying and inhabitants of the locality saved her from the clutches of respondents.

3. The appellant with above averments, filed a complaint under Sections 294, 323, 324, 452, 506 and 120-B IPC which came up for consideration before learned JMFC, Yamuna Nagar at Jagadhri. The appellant in support of her contention examined 4 witnesses i.e. CW-1 to CW-4. She further led documentary evidence.

4. The Trial Court framed charges under Sections 323, 324, 452, 506 and 34 of IPC. The respondents did not plead guilty and claimed the trial. The statement of accused was recorded under Section 313 Cr.P.C wherein they pleaded false implication and claimed innocence. The respondents in support of their defence tendered documents as Ex.D-1 to Ex.D-12.

5. The Trial Court after scrutinizing the record and considering the arguments of both sides came to a conclusion that complainant has failed to prove guilt of the accused, accordingly, all the respondents were acquitted from all the charges against them.

6. Learned counsel for the appellant submits that witness i.e.

CW- Rajpal, who was present at the time of alleged incident, thus, Trial Court has wrongly disbelieved his deposition. She further submitted that the alleged injuries suffered by the complainant stood corroborated by MLR and Trial Court has wrongly ignored averment of the complainant.

7. Learned Trial Court has recorded separate finding *qua* separate charge. It has been held that in the absence of any external or internal injuries on the lips, in the oral cavity, on the lower jaw and on the upper jaw, the story of complainant *qua* dislocation of two incisor teeth of the lower jaw is not believable. The complainant is 45 years old, thus, possibility of mobility of incisor due to aging is also there. It is impossible to believe that when force of such intensity was used in inflicting injury with the brickbat which caused dislocation of the front teeth in the lower jaw, no injury, whatsoever was occurred inside the oral cavity, the lips and the lower jaw.

8. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate court in dealing with an appeal against an order of acquittal has elucidated:

(i) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(iii) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not

intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(iv) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

9. The appellant is seeking special leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at whims or fancies and arbitrarily. Arbitrariness has always been held anathema to exercise of any power.

10. Allegation against the respondents was of commission of cognizable offence, however, nothing is on record disclosing the reason for the appellant to opt to file complaint. If FIR was not registered by

police, the complainant was free to seek recourse of Section 156(3) Cr.P.C. Had matter been investigated by police, actual facts would have come on record especially qua allegation of trespass and snatching of bag containing cash, silver and gold articles. Report called by trial court under Section 202 Cr.P.C. indicated that incident as alleged by complainant did not take place.

The deposition of alleged eye witnesses is not believable because in his pre-charge he claimed himself neighbour of the complainant whereas in cross examination accepted that he is not staying in the vicinity of the complainant. In cross examination, he denied the fact of snatching of bag in his presence and claimed that it was told to him by complainant. He changed his stand qua reason of his presence at the spot. The contradictions in the pre-charge and post charge deposition of the witness are writ large.

The stand of the complainant in her complainant, preliminary evidence and pre-charge evidence was contradictory. There were contradictions qua injuries caused by Narinder; presence of her husband, Vicky and eye witness-Rajpal at the time of alleged incident and at that point of time role played by them; injury caused by Sunita on the arm of the complainant with a knife; state of mind of the complainant after alleged incident. The trial court on account of various reasons has found that even allegation of complainant that her two incisor teeth dislocated was false.

11. In view of the above narrated facts, having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no

infirmity or irregularity in the impugned order whereby trial Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by trial Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and consequently, appeal is dismissed.

(JAGMOHAN BANSAL)
JUDGE

23.11.2022
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>