

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

**DECIDED ON : 27.06.2022
CRM-A-2470-MA-2017 (O&M)**

SUNITA

.....APPELLANT

VERSUS

HARBHAJAN SINGH AND ORS.

.....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr.Aman Pal, Advocate
for the applicant-appellant.

SANDEEP MOUDGIL, J

CRM-36813-2017

The present application filed under Section 482 Cr.P.C. seeking condonation of delay wherein, learned counsel for the applicant-appellant draws the attention of this Court to Para-2 of this application, which reads as under:-

“That the present appeal has filed within limitation on 05.11.2015. But the registry raised certain objections and returned the same on 16.11.2015 and re-filed on 21.01.2016 but the registry raised objections and return the same on 23.01.2016. Thereafter, the clerk of the undersigned counsel took the paper book from the registry but unfortunately it was misplaced in the office and could not found after long search. Now, when the clerk of the undersigned counsel arrange the files in the office it was traced out and is being filed without any further delay. Thereafter, registry again raised certain objection on 25.05.2017. Due to this the appeal has barred by limitation and now after removing the objection appellant is filing the present appeal without further delay.

Although, the delay is extra ordinary but in view of the explanation mentioned therein, this Court deems it appropriate, in the interest of justice, to condone the delay.

In view of the reasons mentioned in the application, which is also supported by an affidavit of applicant/appellant-Sunita Rani, the application is allowed and delay of 650 days in filing the appeal is condoned.

CRM-A-2470-MA-2017

The applicant-appellant seeks leave to appeal by way of this application under Section 378(4) of Cr.P.C. against the order of acquittal dated 04.09.2015, passed by learned Additional Sessions Judge, SAS Nagar, Mohali.

Mr. Aman Pal, Id. Advocate contends that the trial Court below has misread the evidence without considering the cogent and corroborating material which is available on record and therefore, committed material irregularity and illegality while passing the judgment dated 04.09.2015, acquitting the accused.

Learned counsel for the applicant-appellant vehemently argues that ignoring all witnesses in lieu of non-examination of mother-in-law, is bad in law and therefore, judgment of acquittal is liable to be set aside and the accused be sentenced in accordance with law.

It has been also pointed out that the judgment dated 04.09.2015 is not sustainable in the eyes of law in as much as the trial Court failed to appreciate the inquiry and the ocular evidence supporting and corroborating the version of Dr. Rakesh Radha, who initially declared the injuries to be grievous.

Lastly, Mr. Pal, has contended that the trial Court committed an error while passing the judgment dated 04.09.2015 acquitting the accused while giving

much value to the fact that the stair case is not shown in the map/site plan which is only an error committed inadvertently by the prosecution and on this account alone, a liberal view taken by the Court below is totally unwarranted in such a serious offence.

Heard.

Looking at the prosecution story, it can briefly be culminated into the facts that the Complainant Sunita Rani was sleeping with her children in the courtyard of her house. At around 9 P.M., Gurmeet Singh, Ajaib Singh, Jaswinder Singh, Harbhajan Singh and Bahadur Singh jumped over the gate and entered the house of complainant whereas Jasvir Kaur, Rajwant Kaur and Jaspreet Kaur came through the terrace. The mouth of complainant was gagged by Jasvir Kaur and Jaswinder Singh tried to throw acid on her face. In an attempt to save herself, the complainant raised her arm and as a result the acid fell on the abdomen instead of her face. It is further averred that Gurmeet Singh tried to drag her son Jaspreet Singh, aged about 9 years, who was sleeping in the room, somehow the complainant saved him. She also heard lalkara given by Ajaib Singh that they have come to take revenge of an earlier fight occurred on 15.11.2011 between the parties. In this regard, a case was also registered against the complainant's family. As the complainant raised alarm, all the accused ran away from the spot alongwith the bottle of acid.

Now testing the evidence on record, it is evident that Sunita Rani complainant deposed as PW2 almost on the lines of initial story of prosecution. However, Dr. Abhishek Kumar – PW-1 substantiated the medico-legal summary as Ex.P1 as per records of the hospital stating that there was redness present over the abdomen of the complainant but such injury was declared simple in nature. This

witness in the cross examination as well stated that the attending doctor, Dr.Sunaina did not make any observation in the clinical notes with regard to injury having been caused by acid. Further Dr. Dinesh Kumar – PW3 also deposed that there was no external injury at the time of examination and the complainant was referred to surgery / gyney for further examination while proving MLR as Ex.P-3 and his signatures on the same have also been testified as Ex.P4.

ASI, Gurbachan Singh – PW7, who conducted the enquiry on the basis of DDR No.38 also deposed that rough site plan was prepared by him at the instance of complainant which is Ex. PW7 / C. He further stated that the cot was also inspected on which the complainant was sleeping at that time, however, no such spot / mark was found at that cot and there was no mark / impression of acid on the floor of any nature.

A perusal of statement of accused under Section 313 Cr.P.C depicts a complete denial on the part of the accused persons who pleaded false implication with a view to pressurize them for giving up their right in the property situated within the *abadi-deh* of their village. In that regard litigation already has been initiated by the father-in-law of complainant.

The record also reveals that the incident alleged to have taken place on 12.12.2011 at about 9 pm but the statement of complainant was recorded on 14.12.2011 despite the fact that she was declared fit for making statement even on 13.12.2011 as well vide Ex.PW4/B.

The medical record do not corroborate the case of the prosecution at all and this Court has no reason to disbelieve the medical evidence with regard to injuries which were declared to be simple in nature.

We, moving forward to test the argument of Ld. Counsel on the aspect of disbelieving the testimony of other witnesses for non-examination the eye-witness mother-in-law, the complainant in her statement has categorically mentioned that mother-in-law came on the spot once she raised noise but opted not to examine her who could have been a material witness to corroborate the prosecution story atleast for establishing the presence of accused persons at the house of complainant. Surprisingly, mother-in-law of the complainant was not even in the list of witnesses which fact is sufficient to raise serious doubts in the case of the prosecution. There is no explanation put forth for not examining an important witness which makes this Court to believe and draw an inference adverse to the prosecution story.

The most reliable and trustworthy evidence has come through the medical record and testimony of doctors, Sunita Rani-PW2 and Dr. Dinesh Kumar-PW3, supported by documentary evidence, who stood firm and consistent in their examination in chief as well as during the cross examination while concluding that according to the hospital record and the medicolegal summary. Injury was declared simple in nature and as per clinical notes, no signs existed of an injury caused by acid. It is further evident in the medical evidence that there were no marks of external injury on the person of the complainant / appellant.

The accused persons have also ably counted the prosecution case showing the motive of false implication at the behest of complainant i.e a dispute with regard to the property between the families.

In view of the discussion and on perusal of the record, we, therefore, are fully convinced that there is no evidence to establish acid attack particularly keeping in view the fact that no burn injuries were noticed; there is no external

injuries seen on the person of the complainant; the material witness i.e mother-in-law of the complainant, was not examined and motive for false implication has also come to the light which are sufficient to derail the prosecution case, which has failed to prove the commission of offence alleged beyond reasonable doubts. Therefore, the trial Court below has duly and fairly considered the oral and documentary evidence and rightly acquitted the accused persons.

Hence, we do not find any reason to interfere in the findings of the judgment dated 04.09.2015 and therefore, the CRM-A-2470-MA-2017 stands dismissed and consequently appeal also fails.

Ordered accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

June 27, 2022
mamta/ps-I

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>