

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

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**CRM-A-1300-MA-2018
Date of decision: 23.02.2023**

Shakuntala Devi

.....Appellant

Versus

Nirmal Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Atul Jain, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

The instant leave to appeal has been filed by the appellant-complainant (hereinafter referred to as 'the complainant') to impugn the judgment and order of acquittal dated 23.04.2018 passed by learned Judicial Magistrate 1st Class, Naraingarh, vide which the respondent-accused (hereinafter referred to as 'the accused') was acquitted of the charges framed against him under Sections 323, 452 and 506 of the IPC in Criminal Complaint No.62-2013 titled as 'Shakuntala Devi Nirmal Singh'.

As per the allegations levelled in the complaint in question, on 04.08.2012 at about 07:30 P.M., when the complainant went to her old house in the village to give fodder to her buffaloes, the accused after forcibly entering her house indulged in abusive behaviour. Thereafter, he inflicted *Kari* (wooden log) blows on various parts of the body of the complainant. On a hue and cry raised by the complainant, her son-in-law Deepak and daughter were attracted to the spot, who then rescued her from the accused. While going away, the accused threatened the complainant with dire consequences at the very

first opportunity which he would get in future. The complainant was removed to Civil Hospital, Naraingarh by her son-in-law Deepak and daughter where she was medico legally examined. Since the police failed to take any action on her complaint against the accused, she filed the criminal complaint in question. Charges under Sections 323, 452 and 506 of the IPC were framed by the learned Trial Court against the accused. In support of her case, the complainant examined herself as CW-2 besides examining CW-1 Deepak Kumar and CW-3 Dr. Harpinder Kaur. The accused, on the other hand, examined himself as DW-4 besides examining 03 other witnesses i.e. DW-1 Tej Kaur, DW-2 Suresh Kaushik, Deputy Superintendent of Police, Ambala Cantt. and DW-3 Dr. Harpinder Kaur. On the basis of material and evidence led, the Trial Court acquitted the accused of the charges framed against him by holding that the evidence brought on record during trial was not sufficient to warrant the conviction of the accused.

Learned counsel appearing for the appellant-complainant has argued that the Trial Court had erred while recording a finding of acquittal in favour of the accused by failing to appreciate that CW-3 Dr. Harpinder Kaur in the MLR (Ex.CW2/D) had categorically stated that the patient i.e. the complainant had given a history of assault. He submitted that on a hue and cry raised by the complainant, her son-in-law Deepak Kumar along with his wife attracted to the spot, hence, if no other neighbour or independent witness was examined by the complainant to corroborate the assault carried upon her by the accused, it would not in any manner create a dent in the case of the complainant much less raise a question mark about the authenticity of her case. He

further submitted that the occurrence had taken place in a *Bara*, which was in the exclusive possession of the complainant, thus, attracting the mischief of offence under Section 452 of the IPC. However, the Court below erred in holding that the complainant had failed to lead any cogent evidence about her exclusive possession over the *Bara* in question.

I have heard learned counsel and perused the impugned judgment as well as the other material on record.

As per the allegations levelled, the complainant was inflicted multiple blows with a *Kari* (wooden log) on various parts of her body i.e. shoulder, hands and thigh, as a result of which she suffered several injuries. However, a perusal of the MLR (Ex.CW2/D) does not reveal any such injuries on her body except for a few abrasions on her left hand and thigh. Thus, it is evident that the ocular testimony does not find due corroboration with the medical evidence on record. The *Kari* is a heavy wooden log and if she had indeed been inflicted continuous blows with it and that too on various parts of the her body, as alleged, she would not have escaped with only a couple of abrasions on her left hand and thigh. In the MLR (Ex.CW2/D) only 04 injuries were recorded out of which 02 were complaints of pain and 02 were abrasions on the left hand and thigh of the complainant. Admittedly, relations between the parties, were far from cordial on account of a history of litigations between them. Therefore, the possibility of an embroidered version being put forth seems probable. Still further, strangely the occurrence took place in the month of August, 2012 at 07:30 P.M. in a *Bara* which was surrounded by many other houses,

however, it was only the son-in-law of the complainant and her daughter who were attracted to the spot, which yet again raises a big question mark about the authenticity of the allegations levelled in the complaint. Coming next to whether the commission of offence under Section 452 of the IPC was made out or not, it is the admitted case of the complainant that the *Bara* in question was being used by both the parties, though according to her, she was in exclusive possession of some specific portion of the *Bara*. However, no evidence, much less cogent, was led by the complainant to establish her exclusive possession of a specific portion of the *Bara*. Hence, in the aforesaid circumstances, the ingredients to attract the mischief of offence under Section 452 of the IPC was not made out. Moreover, the presence of the alleged eye witness CW1 Deepak appears to be doubtful. On the one hand, CW1 Deepak claimed to have witnessed the assault on the complainant by the respondent-accused, however, the complainant on the other hand stated to the contrary that CW1 had not seen her being assaulted and had arrived after the respondent had fled.

As an upshot to the above, this Court does not find it a fit case to grant leave to appeal.

Dismissed.

23.02.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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