

240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1108-MA-2017 (O&M)
Date of Decision: 04.10.2023

Jasbir Kaur

...Appellant

vs.

Kulbir Singh and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. B.S Jaswal, Advocate
for the applicant.

Mr. H.S Bath, Advocate
for respondents No.1 and 2.

Ms. Doli Sharma, Advocate with
Mr. Sahil Gupta, Advocate for
Mr.Sandeep S. Majithia, Advocate
for respondents No. 3 to 6.

N.S.Shekhawat J.

CRM-17138-2017

1. The applicant/appellant has moved the instant application under Section 5 of Limitation Act for condonation of delay of 370 days in filing the present appeal.

2. For the reasons mentioned in the application, the minimal delay of 370 days in filing the present appeal is condoned.

Main case

1. The applicant/appellant has filed the present application under Section 378 (4) Cr.P.C with a prayer to grant leave to appeal against the impugned judgment dated 29.02.2016, passed by Judicial Magistrate Ist Class, Amritsar, whereby the respondents/accused were ordered to be acquitted of the

charge under Sections 148,323,295-A of IPC read with Section 149 of IPC,452,506 of IPC and 25 of Arms Act read with Section 149 of IPC.

2. The applicant/appellant/complainant had filed the present complaint by alleging that her husband Suchnam Singh was a property dealer. Kulbir Singh, Pal Singh @ Pala and Jagir Singh were aware of the profession of the husband of the applicant. Kulbir Singh, Pal Singh @ Pala, Jagir Singh and Rulda Singh were real brothers. Accused Jagir Singh was a friend of Kulbir Singh and was also an employee of Shiromani Gurudwara Prabhandhak Committee, Amritsar. Rulda Singh, Tarsem Singh, Sukhwinder Singh, Davinder Kumar and Amrik Singh were the employees of Punjab Police Department. At about 09:15 P.M on 10.09.2008, the complainant and her husband were present at home and in the meantime, Kulbir Singh, Pal Singh @ Pala and Jagir Singh forcefully entered the house of the complainant, under the influence of liquor. The applicant immediately informed her sister-in-law (Nanaan) Baljinder Kaur telephonically and she also reached the house of the applicant. The accused were well aware of the fact that a plot was sold by husband of the applicant about 3/4 days ago and they were demanding the money from the husband of the applicant. However, he replied that the sale consideration of the said plot was not with him and on this, the accused started beating her husband. Pal Singh @ Pala strangulated her husband, whereas, Kulbir Singh accused pulled the beard of her husband. Jagir Singh pulled the hair of the applicant. When the applicant came forward to rescue her husband, Kulbir Singh, accused threw the applicant against the wall of the house of the applicant and one tooth of the applicant was broken. Kulbir Singh took out Rs.12,000/- from the pocket of the husband of the applicant. With great difficulty, the applicant and her husband

ousted the said persons from their house. In the said process, Kulbir Singh and Pal Singh @ Pala caught hold of the applicant also and dragged her badly and Jagir Singh gave blows of toes on the person of husband of the applicant. The applicant, her husband and Baljinder Kaur (Nanaan) raised hue and cry to save them. Her husband was medico-legally examined. In the meantime, accused Tarsem Singh, Sukhwinder Singh, Davinder Kumar and Amrik Singh started firing indiscriminately to kill the applicant and her husband. Even, the husband of the applicant, in order to save them, also fired 4/5 times with his own rifle. However, still accused Tarsem Singh and others continuously fired at the house of the applicant. The complainant party raised noise to save them and the villagers came at the spot and rescued them. The accused were taken to the police station, but no action was taken and rather a false case was got registered against the husband of the applicant. The main reason for beating was that Kulbir Singh, Pal Singh @ Pala and Jagir Singh wanted to snatch the sale consideration of the plot sold by husband of the applicant about 3/4 days ago and on failing to do so, they inflicted injuries on the person of the husband applicant.

3. Learned counsel for the applicant vehemently argued that the Trial Court did not appreciate the evidence led by the applicant in the correct perspective. In fact, the applicant appeared as CW-1 and her testimony was duly supported by CW-2, Suchnam Singh, her husband. Even another eye-witness Baljinder Kaur was examined as CW-3, who supported their testimonies. Apart from that, Dr. Naresh Kumar had proved the MLR of Suchnam Singh as Ex. C1, which clearly shows that he had suffered several injuries on his person. However, the local police under the influence of the respondents, instead of

taking action against them, registered a false case against the husband of the applicant. Even, the evidence led by the prosecution proved that the accused had committed the offence, but the cogent and plausible evidence led by her completely brushed aside.

4. Having heard the learned counsel for the parties and perused the record, this Court is of the considered opinion that the present appeal sans merit and the findings recorded by the Trial Court are liable to be affirmed in view of the following findings:-

5. In the present case, the occurrence had allegedly taken place on 10.09.2008, whereas the complaint in the present case was instituted on 07.03.2009, after a delay of approximately five months. When a complaint is made after such an unexplained delay, the possibility of false implication of the accused can never be ruled out. In case, the applicant and her husband, who is a property dealer, had suffered injuries and were victims of such beating and firing indiscriminately, nothing prevented them from filing a criminal complaint before the Court. Even it is apparent that from Mark A and Mark B that the complaints were allegedly moved on 27.11.2008 and 05.12.2008 to IG Border Range, Amritsar and to the Chairman, Punjab Human Rights Commission. Even these complaints were moved by Baljinder Kaur after 2/3 months of the occurrence and the said delay was also not explained. Even, CW-1 Jasbir Kaur, applicant/complainant stated in her cross-examination that she had been appearing in the Court with regard to the FIR registered against the complainant side, but she did not move any complaint before the Court. Thus, the complainant was having an opportunity to move the Court well in time as she was appearing in a Court case/FIR, which was registered against her husband.

Even till the conclusion of the trial, the delay remained unexplained and the case of the applicant has been rightly rejected by Trial Court.

6. The Trial Court correctly held that there were major discrepancies in the evidence of the complainant. The Trial Court correctly held that from the perusal of the testimonies of CW-1 Jasbir Kaur, applicant/complainant and CW-3 Baljinder Kaur, it was proved that they were not present at the place of occurrence. Apart from that, CW-4 Dr. Naresh Kumar also stated that Suchnam Singh, husband of the applicant, when he was medico-legally examined, was under the influence of liquor and the possibility of the injuries caused to him due to fall on the hard surface could not be ruled out. The Trial Court correctly observed that such circumstances creates a serious doubt in the story of the complainant and the case of the applicant/complainant was correctly disbelieved by the Trial Court.

7. Apart from that, the Trial Court observed that there were major discrepancies in the case of the prosecution. Still further, the occurrence had taken place at an open place in the presence of several persons. However, only three witnesses that is the applicant herself as CW-1, her husband Suchnam Singh as CW-2 and her sister-in-law (Nanaan) Baljinder Kaur have been examined as prosecution witnesses and there is no independent corroboration of the prosecution version. Apart from that, the Trial Court had correctly observed from the testimonies of CW-1 Jasbir Kaur, applicant and CW-3 Baljinder Kaur, it was evident that their presence at the place of occurrence was doubtful. Even otherwise, I have carefully perused the findings recorded by the Trial Court and the findings do not suffer from any material irregularity, illegality or perversity and the findings recorded by the Trial Court are liable to be upheld by this

Court. Findings no merits, the present case is ordered to be dismissed.

04.10.2023
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(N.S.SHEKHAWAT)
JUDGE

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