

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-1137-MA-2017 (O&M)

Date of Decision: 09.10.2023

Gyarsi Devi

...Applicant

Vs.

Lali and another

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sandeep Kumar Yadav, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

CRM 17349 of 2017

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 149 days in filing application for leave to appeal.

2. I have heard the learned counsel for the applicant and perused the record.

3. For the reasons mentioned in the application, the delay of 149 days in filing the application for leave to appeal is ordered to be condoned.

CRM-A-1137-MA-2017

1. The applicant 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 29.09.2016 passed by Sub

Divisional Judicial Magistrate, Kanina, District Mohindergarh whereby, the respondents were ordered to be acquitted of the charge.

2. As per the complainant, at about 09/9.30 a.m., on 16.02.2012, the applicant was sitting outside her house, when she was abused by respondents No. 1 and 2 and Phoola Devi and when she asked them not to do so, she was beaten by them. She was saved by Dhanpati wife of Ramanand and Ram Kumar son of Sita Ram. While leaving the spot, all the three named accused had threatened to kill her. She got a DDR No. 10 registered on 25.02.2012 and got herself medically examined and the MLR was prepared in Community Health Centre, Kanina. Later she came to know that the police had not acted on her complaint and lodged a false FIR No. 56 dated 13.03.2012 against her and her husband.

3. After the preliminary evidence, the respondents No. 1 and 2 were summoned to face trial under Sections 323, 324, 506 and 34 IPC and the complaint against Phoola Devi was ordered to be dismissed.

4. In pre-charge evidence, the applicant herself appeared as CW3 and also examined Dhanpati as CW1, Savita as CW2, Dr. Deepak Garg as CW4. Since, the Court found a prima facie case under Sections 323, 506 and 34 IPC against respondents No. 1 and 2, they were charge sheeted by the trial Court.

5. In post charge evidence, the applicant, herself appeared as CW3, got examined Dhanpati as CW1 and Savita as CW2. Thereafter, the learned counsel for the applicant closed the post charge evidence vide his separate statement dated 03.06.2016 after tendering documents, i.e. Mark C/B and Mark C/C.

6. Learned counsel for the applicant vehemently argued that the trial Court did not give proper weightage to the evidence led by the present applicant and the impugned judgment is based on misappreciation of evidence and law. Learned counsel further submitted that the testimony of the present applicant/CW3 was duly corroborated by the statements of CW1 Dhanpati and CW2 Savita, who had also witnessed the occurrence and had corroborated the version of the present applicant. However, the trial Court had adopted a hypertechincal approach and wrongly acquitted the respondents.

7. I have heard learned counsel for the applicant and perused the record.

8. In support of the charge, the applicant has examined three witnesses. She herself appeared as CW3 and examined Dhanpati and Savita, as CW1 and CW2, respectively, as eye witnesses of the present case. As per the applicant, on 16.02.2012, she was beaten up by Lali and Neetu, respondents No. 1 and 2 and their accomplices Phoola Devi. As per her, Phoola Devi had hit her with a brick bat on her right knee and in the lower abdomen. Neetu had hit with a brick

on her chest and Lali pushed her on the ground. On the version of the applicant, a DDR entry was made on 25.02.2012 and the medical examination was conducted on 25.02.2012. However, the medical examination clearly belies the version of the present applicant. Apart from that, she had also examined Dhanpati, who supported the applicant in her examination-in-chief, however, she was subjected to cross-examination by the defence counsel, she deposed that Neetu and Lali had not beaten her up. Similar is the case of the another material witness Savita, who stated in her cross-examination that she had not witnessed the quarrel. Thus, the evidence of both the said witnesses was contrary to the evidence of CW3, the applicant. Apart from that, the trial Court has noticed the glaring discrepancies in the evidence led by the applicant in the shape of medical evidence. The allegations levelled by the applicant had not been supported by the medical evidence. Since the medical evidence run contrary to the oral deposition of the witnesses, the trial Court had rightly recorded the judgment of acquittal. The trial Court had rightly held that a cumulative reading of the oral version of Gyarsi Devi and the medical evidence did not prove that the respondents No. 1 and 2 had caused any injury to the applicant and the evidence so led by the applicant did not prove the complicity of respondents No. 1 and 2 in the present case. Apart from that, the police had also investigated the matter and found the version of the applicant/complainant to be incorrect and

rather as per her own admission, a FIR No. 56 dated 13.03.2012 was lodged against her and her husband. Thus, it is evident that the trial Court has recorded well reasoned judgment, based on correct appreciation of evidence and law and does not warrant any interference by this Court.

9. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different

from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat*, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on

reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

10. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the trial Court.

11. Sequally, the application for leave to appeal sans merit and is accordingly ordered to be dismissed.

12. All pending applications, if any, are disposed off, accordingly.

09.10.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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