

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

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CRM-A-335-MA-2015 (O&M)
Date of Decision: 07.02.2023

PAWAN SHER SINGH

... Appellant

VERSUS

BRIJ CHANDRIKA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Grover, Advocate for
Mr. Sarju Puri, Advocate
for the applicant/appellant.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Ashish Gupta, Advocate
for respondents No.3 to 5 and 7 to 9.

SANDEEP MOUDGIL, J

CRM-6026-2015

This is an application for condonation of delay in filing the present appeal.

In view of averments made in the present application the same is allowed and delay of 1061 days in filing the appeal is condoned.

CRM-A-335-MA-2015 (O&M)

The instant appeal has been preferred against the judgment dated 24.01.2012 passed by the Additional Chief Judicial Magistrate, Gurgaon, whereby, the respondents have been acquitted of the charges framed against them under Sections 452, 323, 380/34 and 506 of IPC.

The crux of the allegations levelled against the respondents are that the complainant is owner in possession of 51 kanals 12 marlas of agriculture land vide registered sale deed dated 10.04.1975. A residential house has also been constructed by the complainant on the said land and a watchman namely Ram Pukar son of Ram Deen Rai had also been appointed by the complaint to safeguard the house and premises in question. On 08.01.2000, the complainant had gone out of station in connection with some personal work. On the same day at about 11.00 AM, the accused persons armed with lathis and dandas forcibly entered the premises of the complainant in his absence and committed theft of household articles. Upon resistance by the Watchman Ram Pukar, they tied him up and gave him severe beating. While leaving they threatened to kill the Watchman, if he dared to disclose anyone about the incident.

In the evening, when the complainant came back, the Watchman narrated the entire incident to the complainant. The complainant then moved a complaint before the police on the same day, however, no action was taken thereupon, which compelled the complainant to file the present complaint.

On the basis of pre-charge evidence, the respondents-accused persons were charged sheeted under Sections 323, 380, 452, 506 read with Section 34 of the I.P.C.

The accused had appeared and granted bail.

In after charge evidence, the complainant examined himself as PW-1 and his Watchman Ram Pukar as PW-2.

Upon considering the evidence led by both sides, the accused persons were acquitted of the charges framed against them. Hence, this appeal.

Learned counsel for the appellant-complainant has vehemently argued that the learned trial Court has committed grave error while acquitting

the respondents-accused persons. He further argued that the respondents-accused persons have committed criminal offences by forcibly entering the house of the complainant in his absence and causing physical hurt to his Watchman namely Ram Pukar. The complainant had moved an application before the police but no action was taken thereupon. Even the trial Court also did not appreciate the evidence led by the complainant and acquitted the accused persons without any basis, whereas the case of the complainant was fully proved with cogent and clinching evidence.

On the other hand, learned counsel for the respondents-accused persons vehemently opposed the arguments raised by the learned counsel for the complainant and further submitted that the impugned judgment is well founded and there is no infirmity or impropriety in the said judgment. Hence, the same is liable to be upheld.

I have heard the learned counsel for the respective parties at length and have gone through the material available on record with their able assistance.

Before proceeding further, this Court would like to point out that the accused persons were charge sheeted under Sections 323, 380, 452, 506 read with Section 34 of the IPC. Section 323 of the IPC is attracted when there is simple injury with blunt weapon. However, there is no medico-legal report on the case file, which could show that there was any sort of injury on the person of injured. Further section 380 of the IPC is attracted when there is theft after sunset; Section 452 of the IPC is attracted when there is criminal house trespass with intention to cause harm/hurt and Section 506 of IPC denotes criminal intimidation. However, the complainant has made a specific statement in his deposition as PW-1 that the theft was not committed in his presence. Moreover,

PW-1 Ram Pukar also failed to identify the accused persons except one namely Udey Sher Singh. He has further deposed that he could not identify the remaining accused person as the incident is very old. He further deposed that there is civil litigation pending between the complainant and his mother Brij Chandrika. Meaning thereby, the dispute is mainly amongst the family members. Furthermore, the version of the complainant is based upon the story narrated by Ram Kumar to the complainant. Meaning thereby, the version of the complainant is based upon hearsay evidence, which is not supported by any cogent and convincing evidence. Even the Watchman- Ram Pukar also failed to identify the accused persons, which further has further caused a serious dent in the case of the complainant. Further, as far as Section 506 of IPC is concerned, it is well settled law that empty threats do not constitute any crime. In view of the above discussion, it can safely be assumed that there is no illegality or perversity in the judgment passed by the trial Court. Even otherwise, it has specifically come on record that there is a civil litigation pending between the complainant and his mother (accused) Brij Chandrika. The original lease deed pertaining to the land in question was in favour of said Brij Chandrika, however, the same was not registered. That being so, the possibility of the complaint case being instituted as a counter blast of the civil suit and to put pressure upon the accused persons can also not be ruled out. While summing up, this Court is of the opinion that in the absence of any medical evidence and any other independent witness, the case of the complainant could not be said to be proved beyond shadow of reasonable doubt. Hence, the judgment passed by the trial Court is well founded and is same is hereby upheld.

The appeal stands dismissed, accordingly.

Since the main appeal has been dismissed, therefore, pending criminal misc. application, if any, also stands disposed off.

07.02.2023
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(SANDEEP MOUDGIL)
JUDGE

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