

227.

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

CRM-A-2290-MA-2017

Date of decision: 31.07.2023

Surjit Kaur

...Applicant

VS

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajan Singh Dadwal, Advocate for the applicant.

Mr. Lakshay Bector, Advocate for the respondents.

ARUN MONGA, J. (ORAL)

Present application has been filed under Section 378(4) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for grant of leave to appeal against the judgment dated 17.07.2017 passed by the learned trial Court in a criminal complaint No.106/1, dated 04.10.2012, under Sections 452, 323, 324, 294, 354, 356, 380, 427, 506, 148, 149 IPC vide which the respondents have been acquitted of the charges framed against them.

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:-

“ The brief facts of the complaint are that the complainant approached the court with the assertions that she is a peaceful and law abiding citizen. Her house is constructed in the field and a path is also made in the field. Complainant is using the said path to go to her house. The said path is shown in the Sajra Aks, copy of which has been appended with the complaint. The land of the accused and the husband of complainant is attached with this path. Accused are trying to forcibly take possession of this path, but many times, complainant has tried to stop them. But every time, accused have quarreled with family members of the complainant and also used dirty language. On 01.07.2012, at about 11:00 p.m., the complainant was watching T.V. in her house and the door was opened. Then all the above named accused persons came

on two tractors i.e. Swaraja 744 tractor and Swaraj 855 tractor and forcibly entered into her house and attacked upon her. The accused had come to kill the complainant. Accused no.1 Balwinder Singh raised a Lalkara that today, they have found Surjit Kaur, she be caught and her life be finished, as she restrains them from cultivating in the path. In the mean time, accused no.2 Harjinder Singh, caught the complainant from her hair and pulled her down and brought her outside the room by dragging her. Accused also broke her cot. Accused no.3 Joginder Singh gave a blow of his Dasti stick which hit on the third finger of left hand of the complainant. Accused no.4 Boota Singh gave a blow of his Dasti Gandasa, which hit on the finger of her left hand. Accused no.5 forcibly pulled her ear-rings and gave filthy abuses to her. Accused no.6 to no.13 brought her in the Vehra (court-yard) by dragging her and by pulling her from her hair. The above said accused, with bad intention, torn off her clothes, due to which, her half body became naked. The above accused gave leg blows and kicks to her while she was lying down. Accused no.9 hit his Dang on the wrist of the complainant, due to which, her wrist was broken. Accused no.7 and no.2 gave leg blows and fist blows and soti blows in her stomach. Accused Darshana Bai gave filthy abuses to her. Accused Singho Bai snatched the gold chain which the complainant was wearing in her neck and stole the same. The other accused also gave beatings to her. On raising hue and cry, her daughters-in-law and her daughter Baljit Kaur, wife of Davinder Singh, Simla Kaur, wife of Surjit Singh, Bimal Kaur, wife of Zora Singh, who were returning after doing work in the field, came at the spot, who tried to restrain the complainant from the accused. Accused also gave beatings to two daughters-in-law and two children. When there was very noise, the accused fled away from the spot on their tractors while giving threats to their life. Her daughters-in-law got admitted her in civil hospital, Sidhwan Bet, for treatment, after arranging a vehicle, where she was medically examined and her x-ray was also done. Complainant reported this incident to police of Sidhwan Bet and also moved applications to higher police officers, but no action has been taken. Hence, this complaint.”

3. After appreciating the evidence on record, vide impugned judgment dated 17.07.2017, learned Court below dismissed the complaint filed by the applicant-complainant.
4. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against the aforesaid impugned judgment.
5. Learned counsel for the applicant-complainant would contend that the trial Court has wrongly held that there are material contradictions in

the testimonies of CW1 and CW2 as the incident is of the year 2012 whereas their statements were recorded in the year 2016 and 2017 and, therefore, some contradictions bound to happen, which as per settled law ought to have been ignored by the learned trial Court. The trial Court had misread the statements as well as the complaint. It is further argued that merely because no independent witness was examined by the applicant-complainant, her complaint cannot be thrown out. There is sufficient evidence to prove the factum of incident and the involvement of the accused.

6. On the other hand, learned counsel appearing on behalf of the respondent would argue that the trial Court has rightly dismissed the complaint of the applicant-complainant since there were discrepancies and improvements in the statements of the CWs.

7. I have heard learned counsel for the parties and perused the case file.

8. Impugned order dated 17.07.2017 is *inter alia* premised on the following reasoning:-

“As per the version of complainant, her daughters-in-law had also received injuries from the accused, but none of the daughters-in-law of the complainant was examined by the complainant in support of her case. Their evidence could have been very material and cogent for the case of the complainant, as they had also witnessed the alleged episode and had also received the injuries and had taken the complainant to the hospital, as alleged by the complainant. As such, their non-examination by the complainant, creates a doubt qua the story of the complainant.

Moreover, the evidence of CW1 and CW2 is also not found reliable. CW2 Shimla Kaur, in her statement has stated that she had seen the incident, but the complainant in her complaint, has nowhere stated that her daughter Shimla Kaur was also present at the spot and has seen the alleged incident.

Further, CW2 Shimla Kaur in her statement has stated that her mother (complainant) was taken to hospital by Davinder Singh (brother of Shimla Kaur). Whereas the complainant has stated that she was taken to hospital by her daughters-in-law and further, complainant has specifically stated that at the time of the incident, none of her son was present in the house.

The complainant Surjit Kaur during her statement in the court has stated that one of the accused had also stolen her gold chain. Whereas, no such fact is alleged in the complaint.

The complainant has stated that the accused had also broken the iron cot (Manja) of the complainant, whereas daughter of the complainant i.e. CW2 Shimla Kaur stated in the court that the said cot was made of wood;

The complainant has stated that one of the accused was having a Gandasa in his hand at the time of the alleged incident which the said accused hit on her hand, whereas, CW2 Shimla Kaur stated that her mother had received hidden injuries.

CW1 Surjit Kaur, in her statement recorded on 09.06.2017 has stated that after the incident, neither the police has paid any heed to the complainant and in the same statement, she has stated that police recorded her statement in the hospital and that the police had arrived in the hospital at about 12:30 p.m.;

As per the statement of CW2 Shimla Kaur, 15-20 people had assembled at the spot. But the complainant has not examined any of the independent witness in support of her version;

Further, CW2 Shimla Kaur, in her statement recorded in the court on 09.06.2017 has stated that at the time of the incident, she was present at home. 15-20 people had gathered at the spot. Except the accused, she cannot tell the name of anyone present at the spot. In the next breath, she stated that she does not know the persons who came on the tractors, as she was working in her fields at a distance of one Killa.”

12. Lastly, the Ld. Counsel for the accused has submitted that the present complaint is off-shoot of the previous litigation between the parties. The complainant, during her cross-examination, has admitted that it is correct that she has filed the present complaint, after a case was filed against Zora Singh, Jagir Singh, Kashmir Singh (sons-in-law), Ram Singh,

Dara Singh and Davinder Singh (sons) and four daughters, for causing injuries to Bhupinder Singh and her wife.

13. The Ld. Counsel for the complainant has failed to explain these improvements and discrepancies in the statements of the C.W.s. All the discrepancies, as mentioned above shatters the entire case of the complainant and make the same doubtful.

14. It is the fundamental principle of the criminal jurisprudence that the guilt of the accused is to be proved beyond shadow of reasonable doubt. The benefit of any doubt and lacuna, is to be given to the accused. As a result of my above discussion, this court arrives at conclusion that complainant has not been able to prove the alleged guilt of any of the accused beyond reasonable doubt. As such the complaint stands dismissed. Accordingly, all the above named accused are hereby given benefit of doubt and stand acquitted of the charge framed against them in this case. However, bail bonds and surety bonds of accused are kept intact for another six months from the date of this judgment in compliance of provisions as laid down in Section 437-A of Cr.P.C. in order to ensure the presence of accused in Ld. Appeal or revisional court, in case accused are summoned by Ld. Appeal or revisional court within the period of six months. After the expiry of six months period, the bail and surety bonds of accused shall stand discharged automatically in absence of any order of Ld. Appeal or Revisional Court. File be consigned to the Judicial record room, after due compliance.”

9. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

10. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

11. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:

*“This Court held 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 an order of acquittal unless it comes to the conclusion that the 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. **Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.***

(emphasis supplied)

11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.’”

12. It appears that there is personal enmity between the parties owing to dispute of the property for which civil litigation was also pending.

13. Be that as it may, prosecution led its evidence and after its threadbare appreciation, the accused have been acquitted. Having seen the impugned judgment, I see no ground to interfere in the same as the same

neither suffers from any infirmity nor any illegality. Thus, no grounds for interference are made out.

- 14. Instant application seeking leave to appeal is hereby dismissed.
- 15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.07.2023

sanjeev

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