

243**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-A-2811-2019 (O&M)****Date of decision: 09.08.2023**

Bimla

....Appellant/Applicant

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr.Sushil Sheoran, Advocate for applicant-appellant

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**ARUN MONGA, J. (ORAL)****CRM-38758-2019**

Instant is an application under Section 14 read with Section 5 of the Limitation Act, 1963 for condonation of delay of 323 days in filing the application seeking leave to appeal.

2. It is pleaded in the application that learned trial Court passed the impugned order dated 21.11.2018 and the applicant instead of filing application seeking leave to file appeal under Section 378(4) Cr.P.C., wrongly filed an appeal before learned Sessions Judge on 18.12.2018. It is further asserted that during course of arguments before learned Sessions Court, it transpired that appeal was not maintainable before learned Sessions Judge against acquittal in complaint case. Learned Sessions Judge permitted the appeal to be withdrawn in view of the statement made by learned counsel. It is further pleaded that it was a *bona fide* mistake on behalf of applicant resulting in the instant application being filed after a delay of 323 days.

3. For the reasons mentioned in application, same is allowed and delay of 323 days in filing application seeking leave to appeal, is hereby condoned, subject to all just exceptions.

**Main case**

Learned counsel for applicant, at the outset, submits that he has no instructions to argue the case and seeks to withdraw his power of attorney. May do so.

2. File perused.
3. Application herein has been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking leave to appeal against judgment dated 21.11.2018 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Tohana, whereby respondents no.2 to 5 have been acquitted, in a complaint filed by him under Sections 323,452,427,506 and 380 of the IPC.
4. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

*"2. Brief facts of the present complaint are that the complainant is permanent resident of House no. 678, Railway Colony, New Basti, Jakhal, Tehsil Tohana, District Fatehabad and she is an old lady, and she is having three children. That on 14.02.2013, marriage of son of the complainant was solemnised with accused no. 1 and the nature of accused no. 1 was very irritative and she used to quarrel with them on petty matters and compelled her husband to live separately from his parents. They started living separately in a rental accommodation after one month of the marriage. That on 05.05.2013, husband of the complainant had gone to Delhi for 'Anusthan' and she was alone at her house. At about 12:00 noon, when the complainant was resting in her room, accused facing trial entered in her room and Rekha as well as her mother started abusing the complainant. After that, Rekha pushed the complainant on the ground by holding her hair and Sunny @ Lalit Kumar gave fist blows on the stomach and back of the complainant. They had broken the TV and glass of table, which were lying in the room and Vijay asked Rekha that they had caught hold the complaint and asked them to take all the articles from the Almirah and accused Rekha started opening Almirah. After hearing the noise, Bimla Sharma, Sunita, Mewa Devi and many other persons gathered on the spot and they stopped the accused from lifting the luggage but they did not stop. Accused Rekha took away the articles from Almirah i.e. gold necklace of 68 gms, two gold bangles of 38 gms, two gold rings of her husband weighing 13 gms, one gold chain weighing 15 gms, one pair of gold ear-rings weighing 10 gms, one tikka of gold weighing 5 gms, one silver tagri weighing 100 gms, one pair of pajeb weighing 45 gms, 4 chutki silver, 1 ring silver, 1 mangal sutra and Rs. 25,000/- cash with her and after leaving the spot, the accused persons threatened the complainant if she told this incident to anyone, then they would kill her. After knowing about the occurrence, Chetan (complainant's son) came at the spot and got the complainant admitted in G.H.Jakhal, where she was medico legally examined. Thereafter, the complainant had reported the matter to police station, Jakhal, but to no avail. Thereafter, the complainant's husband alongwith Lal Chand resident of Jhajjar had gone to accused's place, where the accused admitted their mistake and requested for not initiating any action against them and further assured that when accused no. 1 would come to Bahadurgarh, then all the articles would be returned back on the occasion of Karwa Chauth, but several days before Karwa Chauth, accused nos. 2 & 3 instigated accused no. 1 and she dialled 100; that on 21.09.2013, accused nos. 2 & 3 came to Jakhal and took back accused no. 1 with them; that thereafter, complainant's husband alongwith his*

*relatives went to Bahadurgarh and talked with accused persons, to which, accused persons again assured that on the occasion of Karwa Chauth, Rekha's father alongwith Rekha and articles would come to Jakhal, but they did not bring the articles on Karwa Chauth. Hence, necessity arose to file the present complaint."*

5. After appreciating the evidence on record, vide impugned judgment dated 21.11.2018, learned Court below acquitted respondents no.2 to 5 of the charges levelled against them.

6. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

7. It is asserted in the application that learned Trial Court has not taken into consideration the age of the complainant and ignored the fact that memory fades by the passage of time of occurrence and recording of the evidence and also due to the age factor of the person concerned and it is not possible to precisely explain each and every fact, date and time. Learned trial Court should have taken overall view of the incident. It is further pleaded that there is not even a single suggestion to any of the witnesses that occurrence in the complaint case has never occurred nor the defence counsel has brought out any infirmity or falsehood in the cross-examination of any of the witnesses.

7.1. It is further averred that learned trial Court has taken a wrong view that the MLR of the complainant, which was a photocopy on the file could not have been exhibited and not proved as per law, the defence counsel has not suggested witness concerned doctor that the MLR is manipulated or interpolated and is false. Mere suggesting that the injuries may be caused by falling on the hard surface is of no use as cause of injuries and the injuries on the person/victim are such that it can't be caused by falling of the person on hard surface.

7.2. It is further claimed that learned trial Court had totally ignored the main point and documentary evidence on record. The findings given by learned trial court are based on irrelevant minor contradictions. It has totally ignored MLR Ex.P1 which was duly proved by the doctor, but the same was ignored on the ground that it is a photocopy on the record. The doctor, who had medically examined the applicant specifically stated

that he had original record with him and there was no suggestion by the respondent regarding the original and fabrication. Thus, the findings are totally illegal and erroneous.

8. Impugned order dated 21.11.2018 is, *inter alia*, premised on the following reasoning:

"12. It has been averred in the complaint that accused no. 1 Rekha was a lady under depression. The complainant has specifically deposed that the treatment for the depression had been started, but it was of no benefit because Rekha did not take medicines on time. The complainant has also deposed that the treatment was administered from one Jyoti doctor from Jakhal. However, the husband of Rekha namely Chetan, who is complainant's son, has specifically deposed that no treatment for depression was administered, and same deposition has come up in the evidence of complainant's husband Devi Dutt. The witnesses have given evidence which is contradictory to each other. The complainant could have called the said doctor in the witness box to establish her version, however, no such efforts were made, which creates a doubt regarding the veracity of the complainant's testimony.

13. Further, regarding the alleged incident dated 05/05/2013, i has been mentioned that the accused party had caused damaged to the television as well as to the tables glass. However, no such photographs of the damaged household articles have been placed on record. Only hald statements have been made in this regard and nothing has been established by cogent evidence, while in the considered opinion of this court, same could have been established very easily by the complainant, especially when the complainant can place on record some photographs wherein she is shown to be sitting outside are locked the door, which do not establish anything.

14. Further, in the complaint, it has been mentioned that the accused persons had inflicted injuries to the complainant at about 12:00 noon. When the complainant got examined herself then she has improvised her version by deposing that blood coagulations were formed in her body. Further, she has nowhere deposed that she had lost her consciousness, while other complainant's witnesses namely Devi Dutt & Chetan have deposed that the complainant had lost her consciousness. Still further, Chetan has deposed that he had applied crêpe bandage and had given painkillers, but when at about 9:30 PM, the condition of her mother worsened then she was taken to CHC Jakhal. However, the alleged another eyewitness Sarita has deposed that Chetan had taken the complainant to hospital immediately. The another alleged eyewitness Mewa Devi has deposed that she cannot state as to for how much hours the complainant had remained unconscious. The complainant's evidence is not consistent.

15. Further, the complainant has not deposed anything about ozing of blood from her alleged injuries, however, Sarita has deposed that the complainant was bleeding profusely. It is pertinent to mention here that Dr. Roobal Bhan has tendered MLR Ex. P-1 of the complainant. however, same cannot be taken into consideration as it is a mere photocopy and in this regard, it is held that the objection qua mode of proof of alleged photocopy MLR raised by defence counsel sustains. Further, the said photocopy MLR is not that much legible either. Further, in chief examination, Dr. Roobal has not given any description of alleged two Injuries allegedly appeared on the person of complainant, however, he has deposed that in the MLR, it has been mentioned that fresh bleeding is present in both the injuries. It has been argued by the learned defence counsel that the said MLR has been falsely prepared by Dr. Roobal Bhan, in collusion with his colleague Dr.

*Manjit (posted at Jakhal) and complainant party. Though Dr. Roobal has admitted that he personally knows his colleague Dr. Manjit, however, he has denied the said suggestion put up by the learned defence counsel. In this regard, it is pertinent to mention here that the time of inflicting alleged injuries is mentioned as 12:00 noon and the time of medico-legally examination at CHC Jakhal is 10:00 PM, hence, in the considered opinion of this court, even if it is assumed that the complainant had bled, still it seems to be highly improbable that the would have continued till 10 PM. Further, the alleged testimony of applying crêpe bandage to complainant by his son Chetan also seems to support the said opinion of this court. It comes up that the complainant is hiding real facts which is fatal to her case.*

16. *Further, the evidence of complainant's husband is hearsay evidence, as he was not present on the day of alleged assault i.e. 05/05/2013, hence, same cannot be considered in the eyes of law. However, the complainant could have got some corroboration regarding alleged admitting of mistake by the accused persons in the presence of Lal Chand, however, though the name of Lal Chand is appearing in the list of witnesses, but he was not brought in the witness box to tender his evidence, for the reasons best known to the complainant.*

17. *Further, it has been mentioned in the complaint that on 21/09/2013, the accused No. 2 & 3 came to Jakhal and took back accused No. 1 with them. However, in the evidence, the complainant's husband Devi Dutt has contradicted his version that the parents of Rekha had taken away her on 20/09/2013 from police station. Still further, Devi Dutt has improvised his stand by deposing that the accused persons had come at his home and gave a SIM card to Rekha and got called the police by dialing 100; while the complainant Bimla has deposed that the accused persons had instigated Rekha to dial 100 after going to home. The complainant has further deposed that on 15th, Sanghi & her friend came to Jakhal and gave a SIM card to Rekha. The complainant's evidence is contradictory to each other as well as to the version of complainant. Still further, the complainant has deposed that on 21/09/2013, a panchayat was convened and in that panchayat, the accused persons had admitted their mistake, however, as per the complaint's version, no such panchayat had been convened because on 21/09/2013, the accused persons had come to Jakhal and took back Rekha alongwith them..*

18. *Still further, are some other observations also as evident from the complainant's evidence which need to be highlighted. The complainant & her son had given their evidence in this court on the same day i.e. 21/08/2017, and the complainant had admitted in her evidence that she has come to the court on motorcycle with Chetan, however, when Chetan was asked this question, then he has deposed that he has come separately from her mother. Further, when Sarita was asked whether she has ever given her evidence in any court, then she answered in negative, however, when she was confronted with this question about giving her testimony at Bahadurgarh court, then she replied in affirmative. Still further, when the complainant brought Mewa Devi in complainant's after charge evidence and the chief examination of Mewa Devi had just started then the complainant had started prompting answers to Mewa Devi, so this court ordered the complainant to stand outside so that the evidence of Mewa Devi can be recorded without any fabrication & influence, however, after two minutes, the complainant again came clandestinely and started prompting answers to Mewa Devi, to which this court sternly told the to wait outside and not to interrupt in the court proceedings. Thereafter, Mewa Devi suddenly stated that she is not feeling well and is unable to stand, to which this court offered her chair, but she lied down on the bench. Thereafter, the court had adjourned the proceedings for 10 minutes so that Mewa Devi can be given proper rest in order to conclude her evidence.*

19. *From the overall above discussion, it is held that the complainant's evidence is contradictory, highly improvised, sketchy, lacks corroboration and does not inspire any faith at all. Consequently, it is held that the complainant has miserably failed to establish the guilt of the accused persons beyond reasonable doubt and resultantly, the accused persons are hereby acquitted of the charges levelled against them. Their bail bonds and surety bonds stand discharged. File be consigned to the 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. I am inclined to agree with the conclusions drawn and view taken by learned trial Court.

10. It is a settled law, as has been held in **C. Antony Vs. K.G. Raghavan Nair**<sup>1</sup>, 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.**<sup>2</sup>, 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

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<sup>1</sup>2002(4) RCR (Criminal) 750 SC

<sup>2</sup>2001(2) RCR(Criminal) 292 SC

*other view. While reappreciating 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. In the instant case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
13. Instant application seeking leave to appeal is hereby dismissed.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

August 9, 2023  
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No