

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

CRM-A-53-2020

Date of decision : 19.07.2023

Anita Devi

....Applicant

Versus

Raju @ Bhola and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gulzar Mohammad, Advocate
for the applicant.

PANKAJ JAIN, J. (ORAL)

The applicant seeks leave to appeal against judgment of acquittal dated 30th of October, 2019 passed by SDJM, Khanna whereby the respondents-accused have been acquitted observing as under :

“17. I have heard the Ld. Counsels of the parties and have carefully perused the file. Perusal of the present case file shows that the vide order dated 29.10.2015 only accused Naib Kaur and Raju were summoned to face trial u/s 323 read with 34IPC. Thereafter, notice of accusation was served upon the accused persons u/s 323 IPC. In the present case, the complainant has alleged that there was an old dispute of complainant and her family with accused Divesh and his associates, regarding which the criminal case is pending between them and due to the said grudge the accused persons have always being looking for an occasion to injure the complainant . However, perusal of the case file shows that neither the complainant has brought on record any details/particulars of the said criminal case nor any copy of the said case has been brought on record. Further, the complainant has alleged that the accused no. 5 was tenant in the house of the complainant, and some days ago he left the tenancy and the complainant and her husband reserves their right to file the legal

proceedings against him. However, again neither document regarding the said tenancy has been brought on record by the complainant nor any copy of the legal proceedings, if any initiated against the said accused has been brought on record by the complainant till today . The complainant has further alleged that on 01.10.2014 at 7:00 am when all the accused persons forcibly entered the house of the complainant and started beating her and her husband, then the complainant raised hue and cry and so many persons gathered at the spot. The complainant further alleged that on the same day at 11:00 am, husband of the complainant came to his house to arrange for the food, where accused Reetia and Gopali again gave beatings to him and his daughter Sundari and the complainant saved himself from the clashes of the accused by taking help of his neighbours. However, perusal of the case file further shows that the complainant has not examined any independent witness in support of her allegations for the reasons best known to her. The complainant has further alleged that the husband of the complainant moved a written application to SDM Khanna in the above said matter and the same was marked to SHO Khanna City for further actions. The copy of said applications have been brought on record as ExC1 and Ex-C3. However, the said applications are the mere photocopies and the complainant has not summoned any official witness of the SDM Office or of the PS City Khanna to prove the said applications. CW1 Sehdev Shah in his cross examination stated that the original copies of the said applications are lying in his house, he further stated that he does not remember whether he has given the said applications to somebody or not, but can produce the same if the same are there. However, the said applications were not produced by the complainant or CW1. Thus, it is clear that the said applications have not been proved by the complainant as per the provisions of law. The complainant in the present complaint has further alleged that accused persons started beating her and her husband, it has been further alleged that accused Reetia and Gopali gave beatings

to her husband and his daughter Sundari. However, perusal of the case file shows that no medical evidence regarding any injury to the husband of the complainant and her daughter has been brought on record by the complainant to corroborate her version. So far as the medical evidence of the complainant is concerned, perusal of the MLR Ex-C1 and the evidence of CW4 Dr. Prabhjot Kaur Randhawa shows that there were only complaints of pain and there was no external mark of any injury qua all injuries. Further, CW4 in her cross examination admitted that the said pain mentioned in the MLR might be occurred due to any other reason i.e illness or otherwise. In the present complaint, the complainant has specifically alleged that accused Naib Kaur raised lalkara. However, perusal of application Ex-C1 and Ex-C3 shows that there was no allegations of raising lalkara by accused Naib Kaur. Now so far as evidence of CW1 to CW3 is concerned, there are major contradictions in their version. The complainant in her complaint has mentioned that accused no. 5 was tenant and the said accused left the tenancy with making payment to the complainant and the complainant and her husband reserves their right to file legal proceedings against him. On the contrary, CW1 in his cross examination stated that no case regarding rent is pending between them and the accused no. 5. The complainant in her complaint stated that her husband was sleeping in the room on 01.10.2014. However, CW1 in his cross examination stated that it is wrong that he was sleeping in his room at the time of occurrence and the version of the complainant put forth by the complainant in the complaint regarding the said fact has been wrongly mentioned by the complainant. CW1 further stated that no injuries were caused to him and her daughter. CW1 further stated that no medical examination of him and his daughter were got conducted. CW2 Anita in her cross examination again stated that her husband was sleeping in the room, when the alleged occurrence took place and she does not remember, when her husband came after the alleged occurrence. She also stated that no injuries were caused to her husband and her daughter. CW3 in her

cross examination stated that her father got injured due to the beatings given by the accused persons. CW2 Anita in her cross examination stated that her daughter Sundari was studying in Sandra Arya School and she does not remember in which school her daughter was studying in the year 2014 and she also does not remember that whether her daughter used to go to tuition in the morning or not. CW3 in her cross examination stated that on 01.10.2014 she went to school, but she again said that she has not went to school. On the contrary, the accused persons in the cross examination of the witnesses has specifically set up the plea that the complainant and her family has kept the goats in their residential house and the people of the said residential area used to object to the said act and due to that reason the complainant has moved false complaints against the inhabitants of the area. CW1 in his cross examination has admitted that he has kept 30-40 goats in his residential house, but he denied that due to the said act that the inhabitants of the said area were feeling discomfort and were objected to that. However, CW2 in her cross examination clearly admitted that the inhabitants of the said area, used to feel discomfort due to the said goats and used to object them from keeping the goats and due to the said reasons they have filed the present complaint. In view of the my above said discussion, and the contradictions in the version of the complainant putforth in the complaint, further in the evidence of Cws, I am of the considered view that the complainant has failed to prove the charges levelled against the accused persons beyond shadow of reasonable doubt. 18. Therefore, keeping in view of my above said discussion, I am of the considered view that no ground for conviction is made out against the accused persons namely Naib Kaur and Raju. Accordingly, the accused persons stands acquitted of the charges framed against them after giving them benefit of doubt. Their bail bonds and surety bonds also stands discharged. File be consigned to the record room.”

2. Counsel for the applicant is not in position to dispute the fact

that so far as evidence on record i.e. Ex. C1 and Ex.C3 is concerned, the same could not be proved in accordance with law as the original applications were never produced and only the photocopies were produced before the Court. Likewise he does not dispute that even the MLR qua the injured person does not show any external mark of injury and as per opinion of Dr. Prabhjot Kaur Randhawa, who appeared as CW4 the said pain can be a cause of illness as well.

3. In view of above, this Court does not find any ground to interfere as it cannot be said that the view taken by the Trial Court is improbable. Consequently, the present application seeking leave to appeal is dismissed.

July 19, 2023	(Pankaj Jain)
Dpr	Judge

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