



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

SR. No.226

**CRM-A-2598-MA-2017
Decided on:31.07.2024**

Nirmala

...Applicant

Versus

State of Punjab and others

...Respondents

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

Present: Mr.Vinod K. Kaushal, Advocate
for the applicant.

N.S. SHEKHAWAT, J.

1. The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure with a prayer to grant special leave to appeal against the impugned judgment dated 03.08.2017 passed by the Court of Judicial Magistrate 1st Class, Amritsar, whereby the accused has been acquitted for the offence punishable under Sections 323/452 IPC.

2. The applicant/complainant had filed the present complaint in the court of Judicial Magistrate 1st Class, Amritsar by alleging that the applicant had been residing at Kot Khalsa and was a household lady. Respondents no.1 and 2/accused were neighbours and criminal litigation was pending between them. At about 6.30 am on 24.8.2009, Kulwant Singh, husband of respondent No.1 and her son Gurpreet Singh abused them due to which, husband of the applicant moved a complaint with the police post, Kabir Park. The complaint was investigated and both the parties were called at the police post at about 4.00 p.m. on 25.08.2009. After the police officials



left, the respondents forcibly entered the house of the applicant. Respondent No.1 was empty handed, but respondent No.2 was duly armed with a *gandasi*. The applicant and her daughter-in-law Sammy were present in the house and Daljeet Kaur, respondent No.1, exhorted that the complainant be caught and taught a lesson for moving the complaint against them. Due to this, respondent No.2 gave a blow with *gandasi* from its reverse side on the face of the applicant, due to which, her teeth was dislocated and she also suffered an injury below her right eye. The daughter-in-law of the applicant raised alarm and Rani came to the spot and witnessed the whole occurrence. Next day, a complaint was moved to the police, but no action was taken in this regard.

3. The applicant appeared herself as CW-2 and examined CW-1 Rani and CW-3 Dr.Jaswinder Kaur, Medical officer and thereafter closed the pre-charge evidence. The respondents were ordered to be summoned under Sections 323/452 IPC.

4. In pre-charge evidence, the applicant/complainant appeared herself as CW-2 and examined Rani as CW-1 and Dr. Jaswinder Kaur as CW-3 and the evidence was closed. After that, the respondents were charge-sheeted under Sections 323/452 of IPC, to which they pleaded not guilty and claimed trial.

5. In after charge evidence, the respondents cross-examined CW-1 Rani and CW-2 Nirmala and after charge evidence was closed.

6. In the statement under Section 313 Cr.P.C., the accused denied the commission of offence and pleaded their false implication in the present



committed various offences against them, for which separate FIRs have been registered against them.

7. Learned counsel for the applicant vehemently argued that in the present case, the trial Court had misread the evidence by stating that the applicant had failed to explain the delay in filing the complaint. In fact, the applicant had clearly mentioned in the complaint that the police recorded the statement of the applicant/complainant, however, no action was taken. Consequently, when the police failed to discharge its legal duties, the complainant was left with no other remedy, but to file the complaint before the Court. Still further, the trial Court failed to appreciate that respondents No.2 and 3 had caused serious injuries on the person of the applicant and the medical record duly corroborated the same. Still further, Sammy, daughter-in-law of the applicant, was an eye-witness, and she had witnessed the entire fight. Thus, the impugned judgment is legally unsustainable.

8. After carefully reading the evidence led by the applicant as well as the findings recorded by the trial Court, I am of the considered opinion that there is no merit in the application in hand for grant of special leave to appeal.

9. In the present case, the incident had taken place on 24.08.2009, when respondents No.2 and 3 had entered into her house and had caused injuries to her. However, surprisingly, the present complaint was filed by the complainant on 27.01.2010 and the delay of 05 months could not be explained by them. Moreover, Kulwant Singh, husband of respondent No.2 had lodged an FIR against Roshan Lal and others i.e. the complainant side. It



complainant, has been convicted by the court of CJM, Amritsar and the present complaint was filed as a counter blast to the litigation between the parties. Still further, it has been alleged that respondent No.2 and 3 had beaten her up and respondent No.2 had caused an injury with the blunt side of a *gandasi*. However, the testimony of CW-3 Dr. Jaswinder Kaur was in contradiction to the version of CW-2. Rather the testimony of CW-3 Dr. Jaswinder Kaur demolishes the case of the prosecution, when she deposed that at the time of the blow of *gandasi*, teeth of the complainant got dislocated and there was an injury below her eye. Apart from that, even CW-3 Dr. Jaswinder Kaur clearly stated that there was a possibility of both the injuries being inflicted by friendly hand and injury No.2, in fact, was no injury at all.

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 reappreciation, 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 reappreciation 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. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

11. 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



there does not seem to be any illegality or perversity in the impugned judgment. Accordingly, the present application for grant of special leave to appeal is ordered to be dismissed, being devoid of any merits. Pending application(s), if any, shall also stand disposed off, accordingly.

31.07.2024
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO