

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-1573-2019 (O&M)

Date of order: 14.02.2024

Meena Devi

.....Applicant(s)

Vs.

Sanjay & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rohit Singla, Advocate
for the applicant.

Nidhi Gupta, J.

Present is the application under Section 378(4) for grant of special leave to file an appeal against the order of acquittal dated 10.06.2019 passed by learned Sub-Divisional Judicial Magistrate, Loharu, whereby the respondents herein have been acquitted.

2. Brief facts of the case as canvassed by the applicant-complainant are that on 01/02.07.2014, at about 12.00.a.m. when the applicant/complainant and her six year-old son Amit were sleeping in their house, all the accused persons in furtherance of common intention came inside the house by climbing the wall and suddenly accused Subhash/respondent No.3 herein, caught hold of the applicant/complainant from her neck and accused Sanjay/respondent No.1 herein, caught hold of her leg. Thereafter, accused persons tried to unrob the applicant/complainant. Accused Sanjay/respondent No.1 herein, gave several bites on the body of the complainant/applicant including thigh; and accused Subhash/respondent No.3 herein, gave bite on her mouth and

chest. Both the accused persons also beat up the applicant/complainant and threw her son on a heap of stones. Thereafter, son of the applicant/complainant ran away from the spot and cried for help. Then he called one Ramji Lal and Parkash for help. Thereafter, all accused persons ran away from the spot. Thereafter Parkash, Maya Kaur, Bitu and Pankaj, who are neighbors of the applicant/complainant took her to their house and gave her water. On 02.07.2014, at about 5 am, father of the applicant and maternal uncle reached at village Panju to meet the applicant and took her to PHC Nekipur, Hospital where she was medico-legally examined vide MLR No.OPD/111/2014 (Exhibited as CW1/A before the trial Court). Thereafter, she approached the police authority for registration of case against the accused persons but to no avail. Thus, containing the aforesaid allegations, the present complaint was filed against the accused persons for taking action against them for commission of offence punishable under Sections 294, 323, 354,452, 506 read with section 34 of IPC.

3. Learned counsel for the applicant inter alia submits that from the above said clear cut facts, commission of offence on part of the respondent-accused is clearly made out. However, the learned trial Court has totally disregarded this evidence on record and therefore, learned trial Court was in patent error in acquitting the respondents.

4. It is submitted that the learned trial Court has acquitted the accused/respondents on the ground that the prosecution failed to prove the case beyond reasonable doubt. It is argued that the requirement of proving the case beyond reasonable doubt is fulfilled by ocular evidence duly corroborated by the medical evidence on record. The MLR clearly

proves that there were injuries caused to the applicant/complainant on the face and neck with some blunt weapon within 24 hours of the report. Moreover, the depositions of child witness Amit and the applicant/complainant were duly corroborated by the said medico-legal report of the applicant/complainant.

5. It is further submitted that the report submitted by the SHO u/s 202 Cr.P.C is not relevant and should not be considered for the adjudication of the complaint because the incorrect findings of the said report recording the innocence of the accused were already rejected by the learned trial Court itself by issuing summons to the accused.

6. No other argument is made on behalf of the applicant.

7. I have heard learned counsel for the applicant.

8. Perusal of record of the case shows that the applicant/complainant and the respondents/accused are in fact close relatives. The sequence of events as narrated by the applicant is as follows:

9. That after the incident, the applicant had approached the Police Station for registration of the case, and even approached higher authorities for help but to no avail. Accordingly, the applicant filed the criminal complaint before the learned trial Court, Loharu. Preliminary evidence of the applicant and witnesses i.e. the medical officer Dr. O.P. Dudi and applicant's father Mange Ram were recorded by the learned trial Court. Thereafter, report of police under Section 202 Cr.P.C. was called for by the learned trial Court. The SHO of Police Station Behal submitted report dated 20.09.2015 (Annexure A1), as per which no prima facie case was made out against the accused persons.

10. As the preliminary evidence of the applicant/complainant along with medico-legal report made out a prima facie case against the accused/respondents the learned trial Court summoned the accused vide order dated 15.11.2016 to face trial under Sections 294, 323, 354, 452, 506 read with Section 34 IPC. The accused/respondents went in revision against the order summoning them to face trial before the learned Sessions Court, Bhiwani; which was dismissed vide order dated 04.01.2019 (Annexure A2).

11. Thereafter, Pre-charge evidence was led by the applicant whereby she was examined as CW1, Dr. O.P. Dudi as CW2, Mange Ram as CW3, Dharambir as CW4, Sheela as CW5 and applicant's son Amit as CW6. The learned trial Court on finding a prima facie case against the accused persons framed charges against them under Sections 294, 323, 354, 452, 506 read with Section 34 IPC vide order dated 30.04.2019. After framing of charges, no further evidence was led by the applicant. The accused/respondents also did not lead any defence evidence in their favour. Subsequently, vide the impugned order the respondent/accused were acquitted.

12. Before proceeding with the findings/reasoning as recorded in the impugned order, it would be useful to peruse the report filed under Section 202 Cr.P.C. (Annexure A1) wherein, upon investigation it has been reported as under:-

"The accused Sanjay along with his parents and children resides in the house located in centre of the village. Meena Devi puts pressure on her In-laws. That after finding no truth in the above-mentioned complaints, Sh.

Ashok Kumar sent his report dated 31.08. 2014 which is appended with this report. That due to the complaint filed by Meena devi, I have recorded the statements of the complainant, accused and other related persons. That after my investigation it has been found that Meena Devi father-in-law Dayanand son of Sohna Lal caste Jat, resident of Paju have total six children among them four daughter's namely Roshni, Sunita, Bedho, Munni and two son's among them Ravinder is older son whose wife is Meena Devi. He has died on 31.05.2011. Younger son is accused Sanjay. Meena Devi father-in-law have total 11acres land. In this land six children have their share and one share is of him and his wife while adding this it comes to total seven shares and land is divided into these seven shares. Complainant Meena Devi have got more than her seventh share from agriculture land. Complainant Meena Devi wants to take 5 ½ acres land from total 11acres land. For this reason Meena Devi had lodged this complaint in the court at Loharu against Sanjay and all. From the statements recorded, the investigation report of Sh. Ashok Kumar S.1. and the investigation done by me, it has been found that the allegation levelled by Meena Devi are not true. The report under Section 202 CRPc is hereby submitted”.

13. It therefore transpires that the present dispute emanates from a matrimonial-cum-property dispute amongst family members.

14. Besides the fact that the respondents/accused were declared innocent vide the aforesaid report dated 20.09.2015, they have also been acquitted after trial as guilt of the accused persons could not be

established beyond reasonable doubt. I am in complete concurrence with the reasoning of the learned Sub-Divisional Judicial Magistrate, Loharu that where guilt of the accused persons is not established beyond reasonable doubt, then the benefit of doubt must go to the accused.

15. Learned counsel for the applicant has argued that the requirement of proving the case beyond reasonable doubt is fulfilled by the ocular evidence duly corroborated by the medical evidence.

16. However, the said argument on part of the applicant is misplaced as, in respect of the ocular evidence the learned Sub-Divisional Judicial Magistrate, Loharu has returned the following findings:-

“13....In support of these allegations, complainant examined herself as CW1 in her pre-charge evidence. Apart from that complainant has also examined her son namely Amit as CW6. Though, both these CWs have deposed regarding the incident, however, both the CWs have failed to identified the accused person being present in the Court. As such, the identity of the accused person remains unestablished in the present case. Though, other CWs namely CW3 Mange Ram, CW4 Dharambir, CW5 Sheela have also been examined by the complainant who also corroborated the case of the complainant, however, perusal of the depositions of these CWs show that they were not present at the spot of occurrence when the incident took place. Thus, the depositions of these CWs are of no help for the case of the complainant. Admittedly, as per the version stated in the complaint, the incident in question was seen by the various inhabitants of the locality. Here it was incumbent upon the complainant to examine those inhabitants, but none of the said inhabitants, has been examined by the complainant which cast a doubt on the version as stated in the complaint”.

17. Learned counsel for the applicant/complainant is unable to controvert the above said findings of the learned Court below.

18. Though the case of the applicant falls in view of the undisputed findings that the complainant party failed to identify the accused; as also examined persons who were admittedly, not present at the spot; and failed to examine persons who were present at the time of occurrence, yet, even upon perusal of the medical evidence, the case is not proved beyond reasonable doubt against the respondents. As per the MLR dated 02.07.2014 (Annexure A3), the injuries on the person of the applicant were *“multiple reddish abrasions present over side of face and neck. No swelling, no tenderness present”*. The said injury was ‘simple’ in nature and was reported to have been inflicted by a *“blunt weapon”* within 24 hours of examination. It is not the case of the applicant that any weapon was used by the respondent-accused.

19. As regards the allegation of the applicant/complainant that the respondent No.1 had bitten her on her thigh, the said allegation is not corroborated by the medical report, which reads as under:-

“Pain over in general region and upper thigh. No external injury mark present. No swelling. No tenderness present”.

20. The said injury too was reported to be ‘simple’ in nature and was inflicted by *“a blunt weapon (if any)”*, and the Medical Officer could not give any estimation regarding the probable duration during which the said injury was allegedly inflicted. It is, but elementary, that if the respondent accused had bitten the applicant on her thigh, then there would be teeth mark present.

21. Accordingly, in my view, the guilt of the accused persons is not established beyond reasonable doubt, and thus, the benefit of doubt must go to the accused.

22. In view of the above, I find no merit in the present application for grant of special leave to file an appeal against the order dated 10.06.2019 passed by learned Sub-Divisional Judicial Magistrate, Loharu, whereby the respondents herein have been acquitted. Present application accordingly stands **dismissed**.

23. Pending application(s) if any also stand(s) disposed of.

14.02.2024
Sunena

(Nidhi Gupta)
Judge

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