

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

214.

**CRM-A No.1166-MA of 2014 (O&M)
Date of Decision:15.11.2023**

Lal Devi

... Applicant/Appellant

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohit Sapehiya, Advocate for
Mr. Rai Singh Chauhan, Advocate
for the applicant-appellant.

Mr. Madhur Sharma, AAG, Punjab.

Mr. N.S. Diwana, Advocate for
Mr. D.S. Kahlon, Advocate
for respondents No.2 to 6.

HARPREET SINGH BRAR, J. (ORAL)**CRM No.22512 of 2014**

Prayer in the application is for condonation of delay of 39 days in filing the present application.

For the reasons stated in the application, the same is allowed and delay of 39 days in filing the present application is allowed.

CRM-A No.1166-MA of 2014

1. The present application has been preferred by the applicant-appellant under Section 378 (4) of the Criminal Procedure Code, 1973 against the judgment dated 11.04.2014 passed by the learned Judge, Special Court, Pathankot whereby the respondents-accused have been acquitted in the complaint case registered under Section 3 (x) of the Scheduled Caste and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (hereinafter referred to as the Act of 1989) read with Sections 148, 149, 323, 354, 452, 506 IPC.

2. In brief, the facts are that the complainant, who belonged to Mahasha Caste, which is one of the recognized Scheduled Caste in the State of Punjab, made a complaint stating therein that on 08.12.2008 at about 1.00 PM when the complainant was coming back from the school, all the accused namely Arun Saini, Suresh Kumar, Seema Devi, Raj Kumari and Tek Chand standing at the common place of the village had teased and abused the complainant by saying '*eh mashie kitte chali en kadhe shade kol bi bah jaya kr*'. The complainant reached home and narrated the whole incident to her parents. Thereafter, the complainant and her parents along with Tarlok Chand and Smt. Varinder Kumari approached the accused persons and told them not to insult and humiliate the complainant in future but they again insulted and humiliated the complainant and her parents by remarking that '*you may go anywhere you like, we damn care for you mahashyo*'. They further stated that they will not allow the lower caste people to live in the village. On 09.12.2008, all the accused persons illegally trespassed into the house of the complainant and started using filthy and abusive language. Accused Tek Chand gave *lalkara* to kill the complainant and his family members and used offending words against her caste, whereas accused Suresh Kumar tore off the shirt of the complainant and tried to molest her. Accused Arun Saini, who was armed with *dang* gave beatings to the complainant and her parents and accused Raj Kumari kicked in the stomach of the complainant and slapped her and accused Seema Devi had held her by the hair. On hearing hue and cries of the complainant and her parents, Tarlok Bhushan Saini and Smt. Varinder Kumari wife of Sh. Satish Kumar intervened and saved the complainant and her parents from the clutches of accused persons. The

complainant along with her parents went to Civil Hospital, Pathankot for medico-legal examination on 09.12.2018 and made a complaint to the Police Station Sadar, Pathankot but no action was taken thereon. Having left with no other option, the complaint in question was filed.

3. On finding a *prima facie* case under Sections 3 (1) (xi) of the Act of 1989 and Sections 138, 452, 323, 506, 149 IPC against all the accused persons, they were chargesheeted accordingly to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as four witnesses and closed the evidence.

4. Statements of the accused persons were recorded under Section 313 Cr.P.C. and the incriminating evidence was put to them to which they pleaded false implication and claimed their innocence.

5. The learned trial Court after appreciation of documentary as well as oral evidence adduced by both the parties came to the conclusion that prosecution version was not proved beyond reasonable doubt against the respondents-accused, thus, they were acquitted from the charges levelled against them.

6. Learned counsel for the applicant-appellant argues that the learned trial Court has gravely erred in acquitting the accused persons as the complainant and the eye witnesses duly corroborated the prosecution version. It is further argued that the learned trial Court has gravely erred in ignoring the fact that the complainant was insulted by the accused persons by giving remarks related to her caste in full public view and therefore, they were liable to be convicted. Furthermore, injuries inflicted upon the complainant and her parents were duly proved by the MLRs produced on record as Ex.PW-4/A, PW-4/B, PW-4/C and therefore, acquittal of the respondents-accused is bad in law.

7. Per contra, learned counsel appearing for the respondents-accused argues that there were material contradictions in the testimonies of the prosecution witnesses. There was a delay of 9 days in filing the complaint. The complainant claimed that she belonged to Mahasa caste whereas the caste certificate produced indicated that she belonged to caste Batwal. The complaint made at the instance of the complainant was nothing but an outburst because of the defeat of the father of the complainant in a civil litigation between the accused persons and the father of the complainant. The prosecution had miserably failed to prove its case beyond shadow of reasonable doubt and therefore, the respondents-accused were rightly acquitted by the trial Court.

8. Having heard the learned counsel appearing for the parties and after perusing the record of the case with their able assistance, this Court finds no merit in the arguments raised by the counsel appearing for the applicant-appellant.

9. There are stark and glaring contradictions in the statements of material witnesses. The complainant in the complaint stated that she was teased by the accused persons on 08.12.2012 at 1.00 PM whereas in her cross-examination she deposed that on the day of occurrence, she left the school at 2.00 PM, meaning thereby, story put forth by her that she was teased at 1.00 PM is not creditworthy. In her application Mark-A/1 given to the police, the complainant deposed that Arjun Saini had teased her on 08.12.2008 at 1.00 PM when she was returning from school along with two other girls but in her evidence she deposed that all accused were present in chowk and Arjun Saini teased her and used filthy language by giving remarks with regard to her caste. Neither in the complaint nor in her evidence, did she mention that two other girls were accompanying her at the time of alleged incident. The girls mentioned in the application Mark-A/1

were not even examined. She also stated in the said application that her sister was at home when the accused persons trespassed but sister of the complainant was not examined during the trial. She also stated that her parents were not at home at that relevant point of time and therefore, the trial Court has rightly observed that when parents of the complainant were not at home, their testimonies as PW-2 and PW-3 cannot be said to be trustworthy. Furthermore, since the parents were not home, the story put forth that parents of the complainant were beaten up by the accused is also not trustworthy. Moreover, there is a delay of 9 days in filing the complaint as the incident had taken place on 08.12.2008 whereas the complaint was filed on 17.12.2008. There are also contradictions regarding date of trespass i.e. 08.12.2008, 09.12.2008 at 2.00 PM and 09.12.2008 at about 8/9 AM. Admittedly, a previous civil litigation between the accused and the father of the complainant was decreed in favour of the accused.

10. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See ***H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415***). A Division Bench of this Court in the judgment passed in ***State of Haryana Vs. Ankit and others*** passed in CRM-A No.3 of 2022 decided on 06.07.2023 has held that

presumption of innocence further gets entrenched and fortified in favour of the accused after earning acquittal from the trial Court.

11. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the instant application stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 15, 2023
Pankaj*

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