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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRM-A-774-MA-2018(O&M)
DATE OF DECISION: -27.02.2023**

Manju Devi Appellant
Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Ruhani Chadha, Advocate for the appellant
Mr.R.K. Ambavta, AAG, Haryana.

HARKESH MANUJA, J.

Present application has been filed under Section 378 (4) Cr.P.C., 1973 for grant of leave to appeal against judgment of acquittal dated 10.01.2018 passed by Additional Sessions Judge, Narnaul, whereby respondents No.2 & 3 i.e. Ravinder @ Marshal and Asha have been acquitted of the charges under Sections 323/325/506 read with Section 34 Indian Penal Code and Section 3 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for short 'the Act', framed against them.

2. Briefly, the facts of the case are that on 13.06.2016 FIR No. 272 under Sections 323/325/506 read with Section 34 IPC was registered at Police Station City, Narnaul on the basis of statement made by applicant/ appellant, alleging that on 12.06.2016 at about 6:30 pm respondent No.2- Ravinder @ Marshal and respondent No.3- Asha came to her house with Kulhari, lathis and gandasa alongwith some other persons namely Birender, Indra, Versha, Chintu and Paras. Thereafter, they threatened to kill her family members and used caste specific derogatory words against her as she had filed an application under Section 319 Cr.P.C in some pending criminal matter against them. Furthermore, respondent No.2 attacked on her left leg with an axe while Birender attacked her with a Gandasa on the right

leg. Asha hit her with a baseball bat on her right shoulder while Versha and Indra hit her with lathis on shoulders. Chintu also hit her with stone on her ear. In the quarrel, her right ear ring and gold pendant "Om" also fell down and was lost somewhere. Then Ravinder dragged her out in front of his shop. On hearing the commotion, her husband arrived on the spot who tried to rescue her but he was also assaulted. At last, several persons from the colony gathered there and rescued both of them. They were also taken to the hospital.

3. On completion of investigation by the police, report under Section 173 Cr.P.C., 1973 was submitted before the Court. Thereafter, charges were framed for commission of offence punishable under Sections 323,325 and 506 read with 34 IPC and Section 3 SC/ ST Act.

4. In order to prove its case, prosecution examined as many as ten witnesses. Thereafter, statements of all the accused(s) under Section 313 Cr.P.C., 1973 were recorded, wherein, they denied the allegations of the prosecution and pleaded their false implication.

5. On appreciation of evidence and after hearing arguments advanced by counsel for both the parties, trial Court acquitted respondent No.2& 3 along with other accused(s) vide its judgment dated 10.01.2018. The present application for grant of leave to appeal against aforesaid judgment has been filed by raising various grounds.

6. Learned Counsel for the applicant submits that the prosecution examined as many as ten witnesses which duly supported prosecution's case but still the same has been disbelieved by without justified reasons. Learned Counsel further submits that she herself appeared as PW-1 and categorically deposed against the respondents No. 2 & 3- accused(s); but her testimony has also been discarded. Learned counsel also submits that the Court below also failed to appreciate the testimony of star witness PW-2 who supported the case of prosecution but got discarded only on the basis

that the same was not supported by any independent witness. At the end, learned Counsel for the applicant submits that Court below erred in law as well as on facts while acquitting respondents No.2 & 3 qua the charge of Section 3(2) of the Act, on the ground that the requirement of the said provision that the offence must have been committed on the pretext of victim being a member of Schedule Caste/ Tribe has not been fulfilled in the present case as both the prosecution witnesses deposed categorically that accused(s) used caste specific derogatory words against them and therefore, accused(s) ought not to be acquitted on the aforementioned grounds.

7. Heard the arguments advanced by learned counsel for the applicant besides having gone through the judgment passed by the trial Court and other documents available on the file, I am unable to find any substance in the submissions made on behalf of the applicant.

8. As per the version of prosecution, accused(s) persons entered the house of complainant, armed with lathis gave her beatings and used caste specific derogatory words against her, however, the trial Court, after appreciating the evidence led by the prosecution in detail, came to the conclusion that the testimonies of PW1-Manju Devi and PW2- Husband of Manju Devi, were having glaring discrepancies on many aspects and the same were not even corroborated by any independent witness. Furthermore, trial Court also came to the conclusion that the possibility of false implication of present respondents No 2 & 3/ accused by the appellant/ complainant cannot be ruled out as admittedly there was previous enmity between the parties that too in the shape of one previous FIR for the same kind of offence lodged by the petitioner against respondent No.2 in which he was acquitted. Even the medico legal report of applicant was never proved on record.

9. On account of the aforementioned observations, I do not find any illegality or perversity in the judgment of acquittal passed by the trial Court. In **“Arulvelu & another v. State represented by the Public Prosecutor & another”**, reported as 2009(4) RCR (Criminal) 638, the Hon’ble Supreme Court has laid down the following guidelines for appellate court in dealing with cases where trial court acquitted the accused :-

"1. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanor of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/ appellate courts must rule in favour of the accused.

6. An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused.

7. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

10. In the light of aforesaid guidelines, I have examined the judgment of the trial Court and the reasoning given by it for the acquittal of the private respondents. In the facts and circumstances of the present case and based on the evidence available on record, the trial Court, after properly appreciating the evidence led by the prosecution, has rightly come to the conclusion that the prosecution has failed to prove the case against the private respondents beyond all reasonable doubts. The view taken by the trial Court, is not in any way unreasonable, perverse or impossible. Rather, in the facts and circumstances of the case and the evidence led by the prosecution, no second view is possible and plausible. The trial Court has rightly not relied upon the statements of PW1 and PW2, not only because there are various contradictions and discrepancies in their statements, but their version have also not been corroborated by any independent witness.

11. In view of the above, there being no illegality or perversity in the reasoning recorded by the trial Court, I do not find any ground to grant leave to appeal against its judgment dated 10.01.2018. Hence, the present application is dismissed.

27.02.2023
sanjay

(HARKESH MANUJA)
JUDGE

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