

1) CRM-A-1427-MA-2016 (O&M)
Date of decision: 12.12.2023

Nirmal SinghAppellant

Versus

State of Haryana and others ...Respondents

2) CRM-A-1896-MA-2016 (O&M)

State of HaryanaAppellant

Versus

Raghubir Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: None for the applicant-appellant
(in CRM-A-1427-MA-2016).

None for the respondents
(in CRM-A-1896-MA-2016).

Ms. Geeta Sharma, DAG, Haryana
for the applicant (in CRM-A-1896-MA-2016)
and for respondent No.1-State (in CRM-A-1427-MA-2016).

HARPREET SINGH BRAR, J.

CRM-25604-2016 in
CRM-A-1427-MA-2016

This is an application seeking condonation of delay of 38 days in filing the accompanying application under Section 378(3) of Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 38 days in filing the accompanying application is condoned.

CRM-32359-2016 in
CRM-A-1896-MA-2016

This is an application seeking condonation of delay of 100 days in filing the accompanying application under Section 378 (3) of Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 100 days in filing the accompanying application is condoned.

CRM-A-1427-MA-2016 & CRM-A-1896-MA-2016

1. This judgment shall dispose of both CRM-A-1427-MA-2016 and CRM-A-1896-MA-2016, as they arise from the same factual scenario. However, for the sake of brevity, facts are taken from CRM-A-1427-MA-2016.

2. The present application under Section 378(3) read with Section 482 of Cr.P.C. is preferred against the judgment dated 29.03.2016 passed by Sessions Judge, Kaithal in FIR No. 49 dated 18.04.2014 registered under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter 'SC/ST Act') and Section 323, 325, 506 and 34 of the IPC at Police Station Cheeka, wherein out of the 5 accused, respondent no. 2-Satbir and respondent no. 6-Goldy alias Avtar Singh were convicted but released on probation, while others were acquitted.

3. Briefly, the facts are that on 11.04.2014, a trifle ensued in a barber shop when respondent no. 2 told the applicant to keep his feet on his side since he was from Deid (Chamar) caste. The applicant made a call to his uncle Charan Singh who came to the spot. Thereafter, respondent no. 2, armed with a pistol, started abusing his uncle by addressing him as "Died Chamar". Respondent no. 6, under the influence of alcohol, gave a *tongli* blow on the left side of his uncle's head. Thereafter, the other accused reached the spot, armed with *dandas* and *gandasi*. They addressed the applicant and his uncle as "Deid

Chamar” and stated that they won’t be spared. The accused party attacked the applicant and his uncle and later, Charan Singh (uncle of the applicant) was admitted to PHC, Guha.

4. Having heard the learned State counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that the applicant has placed his caste certificate (Ex. PB) on record however, the caste certificate of the injured Charan Singh (PW7) is not available on record. Further, the complaint nowhere mentions that the accused did not belong to a scheduled caste or tribe and they intentionally insulted or intimidated the applicant in public view and neither do the testimonies of the PWs reflect the same. Moreover, no one was present inside the barber shop except for the accused and the complainant party when the alleged incident occurred, therefore, the ingredient of ‘public’ view is also not satisfied. Admittedly, there was a prior litigation between the parties, PW7-Charan Singh had lodged an FIR No. 93 dated 04.08.2012 under Sections 323, 325, 506 read with 34 of IPC and under the SC/ST Act registered at Police Station Cheeka against the accused along with giving an application to Deputy Commissioner, Kaithal. The PWs have admitted that father of respondent no. 2 had filed a complaint alleging that Gurnam Singh, Sarpanch, who happens to be the nephew of the applicant, was engaged in embezzlement of panchayat funds. Finally, no injury is shown on the person of the applicant in spite of his allegation that he was attacked with *dandas*, *lathis* and *gandasis* and his MLR has also not been placed on record.

5. 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 CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

6. In view of the facts and circumstances of the case, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

12.12.2023
Neha

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