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222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-2502-MA-2017 (O&M)
Date of Decision: 25.07.2024

KULWINDER KAUR

...Applicant-Appellant

Versus

BILLA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Arora, Advocate
For the applicant-appellant

Mr. Rishabh Singla, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

CRM-37493-2017

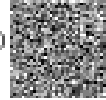
This is an application under Section 5 of the Limitation Act seeking condonation of delay of 43 days in filing the accompanying application/appeal.

For the reasons mentioned in the application seeking condonation of delay, the same is allowed and the delay of 43 days is condoned.

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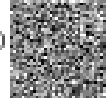
1. This instant application under Section 378(4) Cr.P.C. is preferred against the judgement of acquittal dated 05.07.2017 passed by learned Chief Judicial Magistrate, Ferozepur in complaint case No. 21 of 20.08.2007 filed by applicant under Sections 323/452, 427, 354, 148, 149 of IPC, whereby, the respondents-accused were acquitted of the charges framed against them.

2. The facts, in brief, are that the applicant had filed a previous complaint under The Scheduled Castes and the Scheduled Tribes (Prevention

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of Atrocities) Act, 1989 and during the pendency of the said complaint, accused Ashok Bhateja had warned her of dire consequence. In furtherance of his threat, accused Ashok Bhateja along with the present respondents came to the house of the applicant on 11.07.2006 in an inebriated state and proceeded to attack her. Respondent no.1 gave a *gandasi* blow on the right arm of the complainant, one on her left elbow and another one on her left leg. While trying to escape, the complainant fell down and then co-accused Shubeg Singh gave a blow on her back while co-accused Ashok Bhateja snatched her gold ear rings. Respondent no.2 broke the machines belonging to her husband. Respondent no.3 pushed the daughter of the applicant from the roof. When the applicant raised hue and cry, neighbours started gathering at the spot due to which the accused fled from the scene. While leaving, the accused threatened the applicant of dire consequences in case she did not withdraw her complaint. She was taken to Civil Hospital and her statement was recorded by the concerned police official. However, no action was taken by the police which led to her filing the complaint (supra). The accused persons were charged for commission of offences punishable under Sections 323, 354, 427, 149 of IPC to which they pleaded not guilty and claimed trial. Ultimately, the respondents were acquitted of the charges framed against them. Aggrieved, the applicant has approached this Court by way of the present appeal.

3. I have heard the learned counsel for the applicant and carefully perused the record with his able assistance. It transpires that the complaint (supra) was filed by the applicant after an inexplicable delay of one year. No cogent oral or documentary evidence was adduced by the applicant to justify such an inordinate delay. This substantially vitiates the case of the applicant.



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son and her husband but none of them stepped into the witness box to corroborate her stand. Not even a single neighbour, out of the ones who had gathered at the spot, was examined as a witness by the prosecution. Although, the applicant had examined Dr. Kashmir Singh in her preliminary evidence where he had produced on record the MLR qua the injuries suffered by the applicant but the same witness was examined in her pre-charge evidence due to which material documents relating to the medical evidence remained unexhibited and unproved. It comes to the fore that there are material contradictions between the statement of the applicant (CW-1) and her witnesses. In absence of any cogent medical evidence and independent corroboration of the prosecution version, the respondents were rightly acquitted by the learned Court below.

4. Furthermore, 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 CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant 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

25.07.2024

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No