

**CRR-3447-2015 (O&M)****1****798-2 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR-3447-2015 (O&M)****Date of Decision: 14.11.2024****SAVITA DEVI****...Petitioner****Versus****STATE OF HARYANA AND OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Rahul Rathore, Advocate
 With Ms. Ishita Negi, Advocate for the petitioner.

*********Harpreet Singh Brar, J. (Oral)**

1. The present revision petition has been preferred against the judgment dated 29.07.2015 passed by the learned Additional Sessions Judge, Narnaul upholding judgment dated 28.01.2015 passed by the learned Additional Chief Judicial Magistrate, Narnaul whereby the respondent No.2 was convicted under Sections 323, 354 of Indian Penal Code while respondents No. 3 and 4 were acquitted in the case stemming from FIR No. 101 dated 28.04.2009 registered under Sections 354, 323, 451, 34 IPC at Police Station Sadar Narnaul.

2. Briefly, the facts, as alleged by the prosecution, are that on 24.04.2009 at about 5.30 A.M. the petitioner had gone to the fields to answer the call of nature when respondent No.2 pushed her down. His face was covered with a handkerchief, however, the petitioner was able to pull it down. He covered her mouth, manhandled her and attempted to outrage her modesty. The petitioner raised alarm, causing respondent No.2 to flee away. Subsequently, respondent No.2 and his family, including respondents No.3 and 4, came to the house of the petitioner where a scuffle ensued. Respondent No.2 and his family gave fist and kick blows to the petitioner and her family.

3. On the basis of the material available on the record, the learned trial Court convicted respondent No.2 and acquitted respondents No.3 and 4. Respondent No.2 was sentenced as under:

Offence under	Sentence
Section 354 IPC	Rigorous imprisonment for 1 year
Section 323 IPC	Rigorous imprisonment for 6 months

It was ordered that both sentences shall run concurrently.

Aggrieved by the same, respondent No.2 preferred an appeal before the learned lower Appellate Court which was partly allowed and he was acquitted for the offence under Section 323 IPC while the conviction under Section 354 IPC was upheld, vide judgment dated 29.07.2015. The present revision petition has been preferred by the complainant seeking maximum sentence to be awarded to respondent No.2 and conviction of respondents No.3 and 4.

4. Learned counsel for the petitioner *inter alia* contends that respondents No.3 and 4 were charged with offences under Sections 323, 452, 34 IPC. The learned trial Court has erred in holding that they did not actively participate in the alleged incident. Respondents No.3 and 4 were acquitted for the reason of minor contradictions, which naturally creep in with the efflux of time. Moreover, there is overwhelming evidence, which includes the respective testimonies of PW2- Ami Lal, PW3- Matadin and PW4- Ramanand, indicating house trespass by respondents No.2 to 4, therefore their acquittal under Section 452 IPC was misconceived.

5. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that the incident of house trespassing and the scuffle that occurred at the house of the petitioner. However, no independent witness from the neighbourhood has been



persons had engaged in a fight with the petitioner, she would have sustained injuries that require medical examination. Since no MLR is available on the record, it cannot be conclusively said that the incident of trespass as well as the quarrel definitive occurred. As such, the offences under Section 452, 323 IPC are not made out against respondents No.2 to 4.

6. 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 vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. 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 on the acquittal of accused by the trial Court.

7. Finally, this Court finds no infirmity in the findings rendered by the learned Courts below resulting in conviction of respondent No.2 under Section 354 IPC. As far as the quantum of sentence is concerned, the same has been modified to the custody already undergone by respondent No.2 vide order dated 14.11.2024 passed by this Court in CRR No. 2878 of 2015 titled as '***Vindo Kumar @ Kalu vs. State of Haryana.***' The theory of reformation and

look beyond the one fateful act committed by him. In a civilised society like ours, it would be truly unfortunate if an offender is not given the opportunity to realise and fully fathom his mistake and channel that awareness into making fruitful contributions in society.

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

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)

JUDGE

14.11.2024

Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>