

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

CRR-2582-2016

Date of decision: 05.03.2024

Khalia Devi

....Petitioner

Versus

Sanjay Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sarfaraj Hussain, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. The present revision petition is preferred against the judgment dated 04.04.2016 passed by learned Additional Sessions Judge, Gurugram, whereby appeal against judgment of acquittal dated 03.12.2013 passed by learned Sub Divisional Judicial Magistrate, Pataudi, District Gurugram in the case stemming from FIR, bearing no. 181 dated 17.10.2007 registered under Sections 148, 149, 323, 452, 506 of the IPC at Police Station Pataudi, District Gurugram, was dismissed.

2. Briefly, the facts are that on 15.10.2007 at about 07:30 a.m., the petitioner/complainant was giving fodder to her buffalo, when she noticed that respondent no. 10-co-accused, Suman was throwing water in front of her house. When the petitioner-complainant raised an objection, Suman got enraged, entered her house, and started hurling abuses at her. In the meantime, other family members of Suman also came inside the house of the petitioner after jumping over the boundary wall of the said house. Respondent no. 2-co-accused, namely, Chander Bhan dealt a lathi blow on the fingers of the left hand

of the petitioner. Respondent no. 12-co-accused, namely, Nirmala struck the petitioner with a lathi on her back and respondent no. 1-co-accused, namely, Sanjay also assaulted her. Respondent no. 7-co-accused, namely, Usha attempted to strangle the complainant, while the other co-accused kicked and punched her. Upon hearing noise, the complainant's sister-in-law, Mohra Devi came to the spot and she was dealt a lathi blow on the head by respondent no. 1-co-accused, namely, Sanjay. Thereafter, other family members of the petitioner arrived at the spot of the occurrence, to rescue the petitioner and her sister-in-law. The complainant as well as her sister-in-law were moved to CHC Gurgaon where they were medico-legally examined. The FIR was registered on the basis of the statement of the complainant on 17.10.2007. After completion of the investigation, challan was presented against respondent no. 1 to 13 to face trial under Sections 148, 323, 452, 506 read with Section 149 of the IPC.

3. After assessing all material on record, the learned Trial Court acquitted respondent no. 1 to 12 vide judgment dated 03.12.2013. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court which was dismissed vide judgment dated 04.04.2016.

4. Learned counsel for the petitioner assails the judgment of acquittal on the ground that the findings of the learned Courts below is against the evidence available on file. The motive on the part of the private respondents was duly proved by the petitioner-complainant. However, the learned Trial Court failed to appreciate the same and wrongly acquitted them.

5. Learned counsel further submits that the MLRs of the petitioner and her sister-in-law are self-explanatory and it is patently discernible that they suffered injuries. Moreover, from the statements of PW 5 and PW 7, it is apparent that the private respondents have caused injuries to the petitioner and

her family members. However, the learned Courts below failed to appreciate this fact and have wrongly acquitted the private respondents which has caused serious prejudice to the petitioner-complainant.

6. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgments of the courts below to indicate perversity or misreading of evidence in them. With respect to the delay of 2 days in the registration of FIR, it must be stated that the delay in setting the law into motion by lodging of complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative for the prosecution to satisfactorily and cogently explain the delay. However, in the instant case, the Investigating Officer himself has admitted that on 15.10.2007 i.e., the day of the incident, the complainant despite being declared fit to give her statement by the medical officer, she refused to do so as she first wanted to consult her family members and an advocate. In fact, she refused to give her statement even on the next day as she had not consulted her lawyer. Her statement could only be recorded on 17.10.2007, after being tutored by her family members and her advocate. This completely defeats the purpose of lodging of FIR, which is to obtain unembellished and early information regarding the circumstances in which the crime was committed. Thus, the delay of 2 days in lodging the FIR is bound to be looked at with suspicion.

7. Furthermore, there are glaring discrepancies in the testimonies of the prosecution witnesses which suffocate the prosecution case completely. As per the contents of the FIR, respondent no. 10-co-accused, Suman threw water in front of the petitioner's house, however, as per the latter's deposition in the

Trial Court as PW-2, she asserted that Suman along with respondent no. 12, Nirmala Devi chucked cow dung in front of her plot. Thus, there is no clarity as to what was the reason of the dispute. Furthermore, a perusal of the MLRs reflect that they have been prepared after a delay of approximately 12 hours. While the alleged incident occurred in the morning the MLRs have been prepared in the late evening. It has been admitted by the petitioner that the distance between the place of occurrence and the hospital is just 5-6 kilometres, yet no explanation has been put forth by the prosecution as to why there was a delay and why the injured were not immediately shifted to the hospital. Lastly, as per the version of the petitioner-complainant one of the private respondents struck the fingers of her left hand with a lathi and another private respondent tried to strangle her. A perusal of the petitioner's MLR reveals that there were no external marks of injury on her neck as well as her fingers. PW-1, namely, Dr. Dasrath Rao has categorically stated in his cross examination that there was no associated physical finding such as swelling, deformity, etc. This further renders the statement of the petitioner doubtful.

8. 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. (**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.

9. 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 lower Appellate Court or the learned Trial Court which warrants interference by this Court. As such, there is no merit in the present present revision petition and the same is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

05.03.2024
Neha

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