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

CRR-2171-2017

Date of decision: 13.02.2024

Komal @ Komal Thukral

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ishnoor Singh, Advocate
for Mr. Vikram Singh, Advocate
for the petitioner

Mr. Gagandeep Singh Chhinna, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant revision petition has been preferred against the impugned judgment dated 18.03.2014 passed by learned Judicial Magistrate Ist Class, Karnal in criminal case No.594/2013, whereby, respondent no. 2 to 4 have been acquitted in FIR No.349 dated 05.08.2008 registered under Sections 323, 325, 34 of IPC, Police Station- Civil Line as well as the impugned judgment dated 26.04.2017 passed by learned Additional Sessions Judge, Karnal in CRA No.1199 of 2014, whereby, the appeal filed by the present petitioner against the judgment dated 18.03.2014 has been dismissed.

FACTUAL BACKGROUND

2. Briefly, the facts are that on 05.08.2008, petitioner-complainant made a complaint to the police alleging that on 27.07.2008, respondent no. 2 to 4 (private respondents) who are her neighbours, attacked her due to an ongoing verbal spat regarding drainage (naali). Allegedly, respondent no. 2 Surinder

Singh @Bobby gave an iron rod blow on the head of the petitioner but she raised her left hand in time and consequently, the iron rod struck her hand as well as her head. Then respondent no.3 Harpreet Kaur caught hold of the hair of the petitioner and started kicking her. Then, respondent no. 4 gave fist blows on the chest of the petitioner and another accused Gurbachan gave *Danda* (Stick) blow on her feet and ankle. When the petitioner raised hue and cry, her husband and her son rescued her while the private respondents-accused fled away from the spot.

3. Consequently, the above-mentioned case was registered. Accused, Gurbachan Singh died during the trial and proceedings against him were dropped. On finding a *prima facie* case, remaining three accused (respondents No.2 to 4) were charge-sheeted for commission of offence punishable under Sections 323, 325, 34 of IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined six witnesses to support its case and then closed its evidence. Thereafter, statements of respondents-accused were recorded under Section 313 Cr.P.C wherein all the incriminating material on record was put to them, however, they pleaded false implication and claimed innocence. The private respondents-accused did not lead any evidence in defence.

5. Ultimately, the learned trial Court concluded that the prosecution had miserably failed to prove the guilt of the respondents-accused and thereby, acquitted them of the allegations levelled against them vide impugned judgment dated 18.03.2014. The appeal preferred by the petitioner against the aforesaid impugned judgment was also dismissed by the learned lower Appellate Court

vide judgment dated 26.04.2017, being devoid of merit. Aggrieved by the same, the petitioner has preferred the present revision petition before this Court.

CONTENTIONS

6. Learned counsel for the petitioner *inter alia* contends that delay in lodging the FIR is *bonafide* as the petitioner was getting treatment for her injuries including a fracture on her forearm due to which she remained admitted in the hospital till 08.08.2008. It is further submitted that the doctor concerned did not send Ruqa to the police till 01.08.2008 for some reason. Due to medical reasons including a surgery on her left forearm where a metal plate was inserted, the statement of the petitioner-complainant could not be recorded till 05.08.2008. It is further submitted that it was the duty of the police to visit the hospital on 02.08.2008, i.e., before the petitioner was taken into surgery as she was not in a position to visit the police station due to the injuries received at the hands of the private respondents. It is further submitted that in the cross-version case filed by the private respondents against the petitioner qua the same occurrence, the petitioner and her co-accused have been acquitted which goes on to prove the version of the petitioner. It is further submitted that despite being given fist, danda and leg blows on her chest, abdomen, left knee and foot, fortunately the petitioner did not suffer any injury on aforesaid body parts, however, it does not vitiate the prosecution version in any way.

7. Learned counsel for the petitioner further submits that the learned trial Court has wrongly concluded that no injury was received by the petitioner on her head, as alleged by her, even though it has been clearly stated by her that she was able to raise her left hand in time due to which major part of the blow fell on the forearm. It is further submitted that the petitioner also suffered a fracture on her forearm due to the aforesaid blow but this fact was completely

ignored by the learned trial Court. Further, the learned trial court has erred in solely relying on the statement of Dr. Amritpal Kaur who stated that there was only swelling on the left forearm but ignored the testimony of Dr. Sarita Bishnoi (PW-2) who categorically stated that fracture was found on her left forearm after conducting an x-ray scan on 28.07.2008. While concluding his contentions, the learned counsel for the petitioner submits that despite minor contradictions which are bound to happen over a period, the entire medical evidence fully corroborates the ocular evidence, thereby making the impugned judgement of acquittal bad in the eyes of the law.

OBSERVATIONS AND ANALYSIS

8. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

9. This Court finds no merit in the submissions made by the learned counsel for the petitioner. A perusal of the material on record shows that the petitioner mentioned in her statement submitted to the police that there were talks of compromise going on between her and the private respondents which could not materialize eventually. This is not sufficient to delay the matter in reporting to the police. Further, the plea taken by the learned counsel for the petitioner that it was lackadaisical approach on the part of the doctor and the police concerned that led to the said delay falls flat after a bare perusal of the record at hand. Pertinently, the investigating officer in his cross-examination admitted that the petitioner herself refused to get the statement recorded before the police on 01.08.2008 despite being declared fit to do so by the doctor concerned. Even a perusal of the MLR on record shows that no injury was suffered by the petitioner on her head, chest, abdomen or left knee as alleged by her in the complaint.

10. Moreover, the Medical Officer (PW-3) also admitted in her cross-examination that the private respondents also suffered injuries during the same incident, making it a cross-version case. Further, it is not clear if the petitioner is the aggressor or the private respondents. The fact that private respondents also suffered injuries during the alleged incident at the hands of the petitioner was nowhere disclosed by her, as such, an adverse inference is drawn against the petitioner and accordingly, the private respondents are entitled to the benefit of doubt.

11. Pertinently, 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 gets entrenched on the acquittal of accused by the trial Court.

CONCLUSION

12. 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 trial Court or the learned lower

Appellate Court which warrants interference by this Court. As such, there is no merit in the present present petition and the same is dismissed. Pending miscellaneous application(s), if any, shall also be disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

13.02.2024
Neha

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