

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

CRR-586-2017

Date of decision: 14.03.2024

Hori Lal

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate
for respondent no. 2 and 3

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J.

1. The present revision petition is preferred against judgment dated 24.10.2016 passed by learned Additional Sessions Judge, Faridabad, whereby appeal against judgment of acquittal dated 05.01.2015 passed by learned Judicial Magistrate 1st Class, Faridabad in the case stemming from FIR, bearing no. 430 dated 02.11.2010 registered under Sections 323, 325, and 34 of the IPC at Police Station Mujessar, District Faridabad, was dismissed.

2. Briefly, the facts are that on 30.10.2010 at around 12:30 p.m., the petitioner-complainant was setting up a tent next to his house in order to accommodate the guests that were going to come to attend his grandson's naming ceremony. However, respondent no. 2-accused, namely, Chander Pal objected to this. The alleged dispute escalated and respondent no. 2 caught hold

of the petitioner. In the meantime, respondent no. 3, namely, Gautam, who is the son of respondent no. 2-accused, arrived at the spot and struck the petitioner with a brick on his forehead and on the backside of his head. Respondent no. 4, namely, Rakeshwati also assaulted the petitioner with her slippers. Upon hearing the petitioner's cries for help, the complainant's son, Ajay Vyas came to the spot of the occurrence and managed to rescue the petitioner. The FIR was registered on the basis of the statement of the complainant on 02.11.2010. After completion of the investigation, challan was presented against respondent no. 3 to 4 to face trial under Sections 323, 325, and 34 of the IPC.

3. After assessing all material on record, the learned Trial Court acquitted respondent no. 2 to 4 vide judgement dated 05.01.2015. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court which was dismissed vide judgment dated 24.10.2016.

6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that there is nothing in the judgements of the courts below to indicate perversity or misreading of evidence in the judgement of acquittal. It is important to mention that there is only one eye witness in the present case i.e., the petitioner-complainant. A perusal of his testimony as PW-1 reveals that he imputed blame on one Ravinder for inflicting grievous injuries on his head. However, there is no accused who goes by the name of Ravinder. In fact, in his examination-of-chief, no allegations were made against Gautam, who is the son of respondent no. 2 and 4. This lack of certainty regarding the identity of the accused makes the prosecution case fragile and fails to inspire confidence. Moreover, apart from the deposition of the petitioner, which is riddled with inconsistencies, and the

medical report of the petitioner, there is no other corroborating evidence placed on record by the prosecution. PW-2, Ajay Vyas, who allegedly came to the petitioner's rescue has stated in his testimony that he was not present at the spot when the alleged brawl took place and has categorically held that he did not witness the alleged incident. Thus, he did not see as to who the assailant was.

7. Furthermore, as per the documents adduced by the respondents in their defence, it is clear that the respondent-accused had earlier filed a criminal complaint (Ex. D-3) against the petitioner-complainant. A long standing animosity between the two parties can be inferred. The filing of the present FIR was the petitioner's way of seeking vengeance cannot be ruled out. This inference is further bolstered by the fact that no independent witness was examined. This makes the prosecution case suspicious. Resultantly, the guilt of the respondents-accused cannot be established beyond the shadow of reasonable doubt.

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

14.03.2024
Neha

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