

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

CRR-215-2018

Judgment reserved on: 04.03.2024

Date of decision: 15.03.2024

Om Prakash Dhingra

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J.

1. The present revision petition is preferred against judgment dated 25.10.2017 passed by learned Additional Sessions Judge, Faridabad, whereby appeal against judgment of acquittal dated 27.01.2015 passed by learned Judicial Magistrate 1st Class, Faridabad in the case stemming from FIR, bearing no. 202 dated 03.09.2011 registered under Sections 488, 506, 323 of the IPC at Police NIT Faridabad was dismissed.

2. Briefly, the facts are that the FIR was registered on 03.09.2011 on the basis of the statement of the complainant, wherein it was alleged by the complainant, namely, Asha Nand Dhingra (now deceased) that he was the brother of respondent no. 2-accused and they both along with 3 other siblings co-owned a plot, bearing no. 5R/1 and each had a share in the said plot. All the five siblings constructed a shop each on the plot. Subsequently, respondent No.

2-accused sold his share of the plot, yet he started to construct a room over the shop. When the complainant objected to it, respondent no. 2-accused started verbally abusing him. He also extended threats to kill the complainant. With these assertions, he prayed that appropriate action against respondent no. 2-accused be taken. After completion of the investigation, challan was presented against respondent no. 2-accused to face trial under Sections 448, 323, and 506 of the IPC.

3. After assessing all material on record, the learned Trial Court acquitted respondent no. 2 vide judgment dated 27.01.2015. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court which was dismissed vide judgment dated 25.10.2017.

4. Learned counsel for the petitioner assails the judgment of acquittal on the ground that the findings of the learned trial Court is against the evidence available on file. The findings are contrary to the settled law of evidence under Section 134 of Evidence Act and that there is gross misinterpretation of evidence adduced in the case. Further, the learned trial Court has based its decision on surmises and conjectures, and if the decision is sustained, it would cause grave miscarriage of justice. The learned trial Court has completely overlooked the unimpeachable evidence put forward by the complainant and has misread the material evidence.

5. Learned counsel further submits that it is settled law that evidence has to be weighed and not counted and as such even the sole testimony of a single witness is sufficient to convict the accused if it remains unshattered. Therefore, respondent no. 2-accused was not entitled to be acquitted by extending him the benefit of doubt.

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 judgements of the courts below to indicate perversity or misreading of evidence in the judgement of acquittal. House trespass (Section 442 IPC) involves criminal trespass (Section 441 IPC) which in turn requires a categorical intent to commit an offence and entry into property that is in the possession of another or even a scenario where one lawfully entered their property but unlawfully continued to stay in the said property. One of the fundamental ingredients to prove the guilt of the accused for the offence punishable under section 448 of IPC, is that the accused trespassed on the property of some other person with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. However, in the present case there is no evidence available to prove that respondent no.2-accused trespassed on the property in possession of the complainant. As per the cross examination of the complainant (PW-11), the accused never constructed the room on top of the shop in his presence. Moreover, PW- 3, namely, Jai Prakash who is the son of the complainant has not stated anything in his testimony about the alleged construction that was undertaken by the accused. Furthermore, there is a glaring inconsistency between the initial complaint of the complainant and his cross examination, which significantly weakens the prosecution case. As per the complaint moved by the complainant, the accused trespassed on his property on 02.09.2011 and after demolishing the boundary wall on the roof of the shop, he started to build a room and when the complainant objected to this the following morning, the accused abused him and criminally intimidated him. On the other hand, the complainant in his cross-examination stated that he came to know about the al-

leged construction initiated by the accused after one week from the date of the commencement of the same.

7. Besides, the other eyewitnesses for the prosecution i.e., PW-4, PW-5, PW-6, and PW-7 did not support the version of the prosecution and simply stated that they do not know anything about the alleged occurrence. These witnesses were declared hostile and were allowed to be cross examined by the learned Assistant Public Prosecutor for the State, yet nothing material came out of this exercise in order to corroborate the account of the complainant.

8. With respect to offence under Section 323 of IPC, it is imperative to mention that no medico legal examination of the complainant has been conducted or if conducted, not produced on record to substantiate the allegations of causing hurt. As per the initial statement/complaint, the accused abused the complainant and threatened to kill him. In his testimony as PW-11, however, he asserted that when he objected to the construction, the accused picked up a brick and threatened to strike him with it. Even if the contradiction in the statements of witnesses disregarded as being minor in nature, still, the factum of causing hurt to the complainant is not established. Resultantly, the prosecution miserably failed to prove the guilt of the accused beyond the shadow of reasonable doubt.

9. 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.

10. 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 which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

15.03.2024
Neha

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