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216 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-654-2022 (O&M)
Date of Decision: 30.08.2024

PARVEEN KAUR

...Applicant

Versus

BALBIR SINGH AND OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Jammu, Advocate
for the applicant.

Harpreet Singh Brar, J. (Oral)CRM-41690-2022

Allowed as prayed for, subject to all just exceptions.

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This is an application under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 598 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 598 days in filing the application seeking leave to appeal is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 08.12.2015 passed by learned Additional Sessions Judge, Sirsa in a criminal complaint case bearing No. SC/00000010/2015 titled as *Parveen Kaur Vs. Balbir Singh and Others*, filed under Sections 148, 323, 354, 379, 452, 504, 506 and 149 of Indian Penal Code and Sections 3 and 4 of Scheduled Castes and Scheduled Tribes (Prevention of



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Atrocities) Act.

2. Facts briefly are that a criminal complaint was filed by complainant namely 'P' (name and identity withheld and hereinafter referred to as "the prosecutrix") against the accused on 18.05.2011 in the Court of learned Sub Divisional Judicial Magistrate, Dabwali, wherein she has alleged that accused Balbir Singh had executed an agreement to sell dated 06.01.2013 in her favour for sale of a plot for a sum of Rs. 15,500/- and the sale consideration was to be paid in two installments of Rs. 11,000/- and Rs. 3,500/-, which were paid to Balbir Singh, who had handed over the possession of the plot to her and she had constructed a house thereupon and she was living there with her family. However, accused Balbir Singh did not execute the sale deed and she had got her presence marked on the target date i.e. 10.07.2005 by getting her affidavit attested. Despite her repeated requests Balbir Singh did not execute the sale deed in her favour and started threatening her to give back the possession of the plot. On 14.05.2011 at 5:00 p.m., while she was present in her confectionery shop which is in her house, all the accused after forming an unlawful assembly came to her shop in a tractor-trolley and started abusing her. Accused Balbir Singh uttered caste based abuses, "Saale Dhedh Chure" and gave a *Lalkara* that she should be taught a lesson for encroaching upon his land and constructing a house thereupon. Thereafter, accused Balbir picked up a brick which was lying there and gave a blow with the same on the right side of her abdomen. Accused Lakhwinder @ Pappu also picked a brick and gave a blow on her stomach near her belly button. Thereafter, the accused grabbed her with bad intention and they tore her clothes. All the accused loaded sugar, rice and other articles lying in her shop in their trolley and left while calling her "Chure Dhedh". When she raised alarm, her

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husband namely Manoj Kumar alongwith Gianni and Jaila Singh came at the spot and on seeing them, all the accused absconded on their tractor trolley. Thereafter, her husband brought her to Civil Hospital, Dabwali and she was treated by the doctor and after her medical examination she was discharged. Thereafter, she and her husband went to Police Station, City Dabwali and disclosed the said incident to the police but the police officials told them to inquire after 2-3 days and they were sent back home. On 17.05.2011 they had again gone to the police station but the police refused to take any action against the accused persons. Hence, the present complaint.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that the prosecutrix has stated before the Court that her clothes were torn by accused Lakhwinder Singh alone, while, on the other hand, in complaint Ex. P-1, she has alleged that all the accused except accused Balbir Singh and Lakhwinder Singh had grabbed her and torn her clothes. Therefore, the version in complaint Ex. P-1 was found to be contradictory to the version given before the Court below. Moreover, Manoj Kumar PW-3 (husband of the prosecutrix), had stated that accused Gobinda, Balbir Singh, Lakhwinder Singh and Raju, all had caught hold of his wife and had torn her clothes. Therefore, the discrepancy was again found material and although the prosecutrix had alleged that her clothes were torn by the accused, but the said torn clothes were neither shown to the doctor at the time of medical examination nor produced before the Court. Therefore, the essential ingredients for constituting an offence under Section 354-B of Indian Penal Code were not found to be true by the Court below. Further to constitute an offence under Section 3 of Scheduled Castes and

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Scheduled Tribes (Prevention of Atrocities) Act, firstly accused should not be a member of Scheduled Caste or a Scheduled Tribe and the prosecutrix in the present case has not proved any caste certificate issued by the competent authority to prove that she belongs to scheduled caste i.e. Bajigar. Moreover, the prosecutrix has also admitted in her cross-examination that accused Satpal belongs to Majbhi caste, which is the same as Bajigar and accused Gobinda is also Bajigar by caste. Since both the accused Satpal and Gobinda as per admission of the prosecutrix, belongs to scheduled caste, hence no offence under Section 3(1)(xi) of the Act is made out against them. Learned Court below has rightly come to the conclusion that neither in the statement of prosecutrix nor in the testimony of PW-3, it has been alleged that the prosecutrix was sexually assaulted by the accused, specially because she belonged to Scheduled Caste and that this fact was in the knowledge of the accused. Learned Court below has further opined that as it has been alleged that the accused had called the prosecutrix as “Dhed Chura” and no doubt prosecutrix and PW-3 both have levelled aforesaid allegations in their testimonies, however, as per the allegations, the alleged utterance have been made in a fit of anger and not with an intention to humiliate, insult or intimidate the prosecutrix because she belonged to SC & ST caste and prosecutrix cannot be allowed to gain unfair advance just because of her caste without proving the other allegations levelled by her. It has further been pointed out by learned Court below that though the accused have been charged under Sections 452 and 148 of Indian Penal Code for rioting, when armed with deadly weapons and house trespass, after having made preparation to cause hurt, however, it had nowhere come in evidence that the accused were armed with any weapon of offence when they allegedly trespassed into the shop of the

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prosecutrix. The alleged injuries were, as per the version of the prosecutrix, inflicted by accused Balbir Singh and Lakhwinder Singh by picking up the bricks, which were lying at the spot, therefore, the accused clearly were not armed with any weapon. Learned Court below further rightly come to the conclusion that that there are contradictions in the statement of the prosecutrix with regard to alleged theft of sugar, rice and other articles lying in her shop on a trolley by the accused, because witness Manoj Kumar (PW-3 i.e. husband of the prosecutrix) had stated that the accused had thrown the articles lying in the shop on the road, therefore, as per the version of PW-3 Manoj Kumar, which is totally contradictory to the version of the prosecutrix, the accused had not taken away the articles lying in the shop with them and had rather thrown them on the road and as per the version of PW-3 Manoj Kumar, the accused had not moved the aforesaid articles lying in the shop of prosecutrix with the intention of stealing them and had rather thrown them on the road. Therefore, learned Court below has rightly come to the conclusion that offence under Section 379 of IPC is not made. It has also been observed by learned trial Court that prosecutrix has admitted in her cross-examination that the occurrence was witnessed by many persons but none had been examined in this regard by the prosecution. Therefore, no attempt was made to produce any of the independent witness.

4. 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,



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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** 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.

6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant 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 application and hence, the leave to appeal is denied.

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

(HARPREET SINGH BRAR)
JUDGE

30.08.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No