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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1109-2023 (O & M)
Date of Decision: 20.03.2024

Kuljas Rai ...Applicant-Appellant

Versus

Sunita Sharma and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Ankit Kharbanda, Advocate
for the applicant-appellant

Harpreet Singh Brar, J. (Oral)

CRM-33139-2023

This is an application under Section 5 of the Limitation Act, 1961 seeking condonation of delay of 93 days in filing the application under Section 378 Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 93 days in filing the said application is condoned.

CRM-A-1109-2023

1. The present application under Section 378(4) of the Cr.P.C. is preferred against the judgment of acquittal dated 21.02.2023 passed by learned Judicial Magistrate Ist Class, Gurdaspur in Complaint No. COMI/125/2015 dated 30.05.2015 filed under Sections 452,307,323,379,506,427,34 of the Indian Penal Code (hereinafter 'IPC').
2. Briefly, the facts are that on 20.06.2014, respondent-accused Abhimanu Sharma called the applicant-complainant and threatened to kill him and his mother. Thereafter, on 21. 06.2014, the applicant moved a

complaint before SSP, Gurdaspur. On 22.06.2014, the respondents-accused came to the applicant's house along with ASI Ranjit Singh and one Head Constable. The accused hurled abuses at the applicant-complainant and started breaking things in his house. The police personnels informed the accused that the applicant has already moved an application before SSP, Gurdaspur, after which the police and the accused went away. The applicant informed SI Kulwinder Singh of Police Station Dhariwal of the incident. When the applicant and his mother returned from the police station, the respondents-accused forcibly entered his house. Respondent-Abhimanu was carrying a pistol, respondent-Puneet was carrying 15-20 feel of rope and one cycle tube while the other respondents-accused were unarmed. Abhimanu asked the applicant to hand over the keys to the house and the almirah on gunpoint and enquired where the cash and gold were kept. Respondent-Sunita handed the applicant a blank paper and told him to write that him and his mother were dying by suicide. When the applicant refused to do the same, Puneet put a rope around the neck of the applicant and the respondents-Narinder and Sanjeev started hitting him. Thereafter, they tried to hang the applicant from the ceiling fan while respondent-Aarti videographed the entire incident on her mobile phone.

3. Due to the injuries sustained, the applicant fell unconscious and was awakened by the accused by sprinkling some water on his face. Subsequently, the applicant raised alarm causing people to gather in the street. The applicant was running towards the police station when the accused caught up to him near the house of one Daljit Singh and gave him beatings. Daljit Singh took the applicant to his house from where he

informed the police about the incident. The police came and took the applicant to the police station and thereafter Dhillon Hospital, Batala, after which he was dropped back to his house. The applicant found the accused giving beatings to his mother at his house. Respondents-Sunita, Puneet and Aarti broke the almirahs of his house and took Rs. 80,000/-, sale deed, fixed deposit, passbook, 22 tolas of gold, five suitcases and many other expensive items. On the basis of material available on record, the learned trial Court acquitted the respondents-accused vide judgment dated 07.12.2015.

4. Having heard the learned counsel for the applicant-appellant and after perusing the record with his able assistance, it transpires that the house of the applicant is in the name of his wife respondent-Sunita. CW2-Rajinder Kumar and CW3-Deepak have categorically mentioned that the respondents-accused used to visit the house of the applicant commonly. CW2-Rajinder Kumar is the nephew of the complainant, making him an interested witness. However, even if that were to be ignored, his testimony does not strengthen the case of the prosecution as the complaint itself is unreliable. In his cross-examination, CW3-Deepak has stated that he was in the street for 4/5 hours which is rather astounding that one would be at the spot for such a long duration and not even attempt was made to save his friend. He has also stated that the respondents accused were unarmed while respondent-Abhimanu was allegedly wielding a pistol. He also stated that respondent-Sunita was not present on the spot which is also in contravention of the prosecution case. It was Daljit Singh who saved him and took him to the hospital, CW3 was not mentioned in the narrative by the applicant and Daljit Singh himself has not been examined as a witness.

5. Furthermore, the application dated 21.06.2014 moved before SSP, Gurdaspur naturally do not contain details of the subsequent events of 22.06.2014. However, the applicant stated to have met the SSP on 23.06.2014 and it remains unexplained as to why he did not submit an application with regard to the alleged incident. Moreover, the complaint(*supra*) was instituted on 30.05.2015, after a suspiciously long time. The applicant has also failed to examine any witnesses to prove inaction on the part of the police authorities. The incident allegedly took place in the house of the applicant, located in a populated area, however, no independent witnesses have been examined.

6. 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 application 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.

7. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant 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 present petition and leave to application is denied.

20.03.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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