

CRA-AS-324-2022

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211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AS-324-2022

Date of decision: 24.09.2024

B.D.

...Appellant

Versus

Gulzar Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Pallavi Babbar, Advocate
for the appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal is preferred against judgment of acquittal dated 13.07.2022 passed by learned Additional Sessions Judge, Kaithal in FIR, bearing no. 76 dated 13.05.2020 registered under Sections 354-B, 452, 506 of the IPC and Section 3 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter the 'SC/ST Act') at Police Station Siwan, Kaithal.

2. The facts, tersely put are that on 13.05.2020, the appellant-complainant moved a complaint before the police. It was alleged that on 12.05.2020 at about 01:00 PM, the appellant was fast asleep in her house, when respondent No.2-accused entered it and lay upon her. When she opened her eyes, she was shocked to see respondent No.2-accused and tried to resist his advances. Respondent No.2-accused hurled casteist slurs and threatened her to keep quiet. He scratched the petitioner-complainant and also tore her clothes. The petitioner, however, managed to rescue herself and cried for help. Consequently, respondent No.2-accused fled away from the spot. Although

police was called right after the alleged occurrence, no action was taken by it.



Hence, the appellant moved a written complaint the next day.

3. On the basis of the aforesaid statement, the instant FIR was registered. After completion of the investigation, *challan* under Section 173 of Cr.P.C. was presented against respondent no.2. Following that, he was charged for offence punishable under Sections 354-B, 452, 506 of the IPC and Section 3(2)(va) of the SC/ST Act, vide order dated 18.02.2021, to which respondent No.2 pleaded not guilty and claimed trial.

4. The prosecution examined as many as 7 witnesses to prove its case. The statement of the accused under Section 313 of the Cr.P.C. was recorded, wherein the respondent No.2 pleaded false implication and one witness was examined by the defense in order to prove the innocence of the respondent No.2-accused.

5. After taking into account all the material on record, the respondent No.2-accused was acquitted by the learned trial Court vide judgment dated 13.07.2022.

6. Learned counsel for the appellant assails the judgment of acquittal on the ground that the learned trial Court mechanically decided the case without due application of mind and recording any reasoned and concrete observations. As per the statement of PW-4, namely, ASI Sudesh, the appellant was not sent for medical examination. This amounts to complete dereliction of duty on the part of the police as it is mandatory to get the appellant medically examined if some injury is explained in the complaint. This also points to the fact that respondent No.2 had the support and protection of police. This is further substantiated by the fact that the FIR was registered on 13.05.2020 but the appellant was arrested on 03.06.2020 i.e. after a delay of 21 days. Additionally,



the learned trial Court below completely disregarded the fact that the charge for offences punishable under Sections 354-B, 452, 506 of the IPC and Section 3(2) (va) of the SC/ST Act, have been clearly and unimpeachably proved as per the testimonies of the appellant and other prosecution witnesses. It is well settled that the accused can be convicted solely on the basis of the solitary statement of the victim, provided it is of sterling quality. Thus, the impugned judgment clearly leads to material irregularity and perversity.

7. Learned counsel for respondent No.2-accused opposes the appeal filed by the appellant on the ground that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, and therefore, no interference is warranted by this court in the instant appeal.

8. 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 judgement of the learned trial Court to indicate perversity or misreading of evidence. The version put forth by the appellant is that she did not know the name of the accused. Rather, another person who had arrived at the spot after hearing the cries of the appellant disclosed his name. Surprisingly, the appellant was not able to identify the person who disclosed the name of the accused. As per the site plan, the house of the appellant is in a residential locality surrounded by other houses. However, neither the neighbours, who were alleged to be present at the spot, were joined in the investigation nor were they examined during trial. As per the testimony of the appellant, many people had gathered at the spot of the incident but she could not reveal the name of anyone. Moreover, the prosecution failed to bring forth even a single witness who could testify that



she was present at the spot of the occurrence or that she had seen the accused fleeing from the house in broad daylight on 12.05.2020. As a result, no independent witness was examined by the prosecution. All these factors create a serious dent in the prosecution case.

9. Furthermore, no convincing explanation as to how the accused managed to enter her house has been given by the appellant. Admittedly, the gate of the house was bolted from inside yet the appellant, who was 62 years old had no trouble entering her house and molesting her. Also, the son of the appellant, namely, Balbir, who stated to sign the complaint moved by the appellant was not joined in the investigation. In fact, the appellant deliberately suppressed the fact that her husband and her two married sons were residing in the same house on the day of the alleged incident. There is nothing on record to show where they were at the time of the occurrence. As per the deposition of the appellant, it was her son who placed the call to the police right after the incident, yet, his statement was neither recorded by the investigating officer nor was he cited as a spot witness in the case. Lastly, there is no medical evidence on record to corroborate the allegations of physical assault and as per PW-4 i.e. ASI Sudesh Rani, the appellant did not produce the torn clothes before the police. Resultantly, respondent No.2 – accused is ought to be given the benefit of the doubt as the prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt.

10. 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.

11. In view of the facts and circumstances of the case, this Court finds that learned counsel for the 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 appeal and the same is dismissed.

12. Pending miscellaneous application(s) if any, stand disposed off.

24.09.2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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