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'Massi' came to her house. After having a conversation with her for some time, he started committing rape upon her by pulling down her lower and by doing obscene acts. When prosecutrix was trying to defend herself, she received nail marks on her nose and fingers. Moreover, her teeth loosened after she had given a bite on the hand of accused. When prosecutrix raised 'raulla', respondent No.2-accused fled away from the spot, while threatening the prosecutrix. When the husband of prosecutrix came home, she told him the entire incident. On 03.01.2019, prosecutrix along with her husband Subhash Kumar lodged complaint with police party present at main gate Division no.2, Patiala on patrol duty. FIR was registered under Sections 376, 511, 354, 452 and 506 of IPC against Respondent No.2-accused i.e. Rajinder Kumar and investigation was initiated. SI Sarabjit Kaur visited the place of occurrence alongwith prosecutrix and her husband, prepared the site plan of place of occurrence and also recorded the statements of witnesses. The prosecutrix was medically examined in Mata Kaushalya Hospital Patiala and her samples were handed over to police in a sealed parcel. The MLR of prosecutrix was also handed over which mentioned five injuries on her person caused with blunt weapon, if any. On 04.01.2019, the statement of prosecutrix was recorded under Section 164 of Cr.P.C. Hence the complaint.

3. Having heard learned counsel for the applicant and after perusing the record with his able assistance, it is evident that husband of the prosecutrix owed a sum of Rs.45,000/- to the family of respondent No.2 and he was falsely implicated in the present case to evade that liability. In the cross-examination of PW-2 and PW-3, they both denied any liability to return the said amount to respondent No.2-accused. PW-6, during his cross-examination, admitted that



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fact regarding the money transaction between complainant and family of accused/respondent No.2 was not investigated. Further, prosecutrix, in her cross-examination has herself deposed that one week prior to the incident, her *massi* and respondent No.2 came to their house. Furthermore, prosecutrix in her testimony deposed that she shouted for help but respondent No.2-accused had threatened to kill her and then ran his hands over her body including her private parts and had run away, which does not suggest the intention of accused-respondent No.2 to commit rape upon her at all events. As such, the prosecution has failed to establish its case in any manner.

4. Moreover, 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, 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* 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.

5. In view of the above discussion, this Court finds that learned counsel for the appellant has failed to point out any perversity or illegality in

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findings recorded by the learned Court below which warrants any interference.

As such, there is no merit in the present appeal and the same stands dismissed.

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

August 20, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No