



**225 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CRM-A-769-MA-2018 (O&M)
Date of Decision: 08.01.2025**

SURESH KUMAR

...Applicant-Appellant

V/S

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tejasvi Sheokand, Advocate for
Mr. Arjun Sheoran, Advocate for the applicant-appellant.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present application is preferred under Section 378(3) of the Cr.P.C. read with Section 14-A and 15-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 against the judgment of acquittal dated 08.09.2017 passed by learned Additional Sessions Judge, Kurukshetra in case bearing FIR No. 35 dated 22.05.2016 under Sections 148, 149, 323, 341 of Indian Penal Code and Sections 3(1) {za (B)} of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station Jhansa.

2. The brief facts of the case are that on 21.05.2016, Inspector/SHO Nirmal Kumar alongwith other police officials was present at Salpani chowk, where he received V. T. message from Control Room, Kurukshetra that some persons of Rajput community had stopped the function of Gurchari of Balmiki community and an altercation had taken place between them, on which Inspector/SHO Nirmal Kumar alongwith other police official reached Bus stand of village Bhustala and saw that many persons had gathered there and the situation was very critical. Suresh

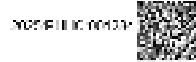
Kumar complainant moved application to Inspector/SHO Nirmal Kumar

alleging therein that on 21.05.2016 there was marriage of his son Sandeep. They were going to the temple of Balmiki in their village to pay obeisance, when some boys of Rajput community quarrelled with them and called him Chura and ashamed their community. 50-60 Rajputs i.e. Shankar, Kuldeep, Roopa, Bablu, Kaptan, Sachin, Joni, Charan, Mohit, Jassi, Tarsem, Vikram, Jagbir, Pappu, Suku, Sonu, Parmod, Mahul, Aman and Raju came with *lathis, dandas, gandasis* and attacked them and abused them. He prayed that action be taken against all the above said persons.

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 occurrence was said to be of 21.05.2016 and the accused persons were arrested on 24.05.2016, 26.05.2016 and 28.05.2016. The star witnesses of the prosecution were the police officials who have not uttered even a single word about the time of information received by them and if the occurrence had taken place at 08.00 pm while the complaint was taken at 01.00 am from the complainant. As per the statement of the complainant, the announcement was made in both the temples of the village that complainant's son should not ride a horse in his marriage ceremony but there is no such evidence or mention in the complaint or in the testimony of any of the witnesses with regard to the said announcement. The Pujari of any of the temples have also not been made witness by the prosecution to prove as to who made the announcement or whether any such announcement was made in this regard or not. There was no videography or photographs taken by the police or by the complainant party to corroborate their oral version with regard to

identification of the accused to be present at the spot as there was different versions of the witnesses of the prosecution with regard to presence of the accused after the arrival of the police at the spot. Thus, it was opined that prosecution had failed to establish the presence of all the accused at the spot and therefore, the prosecution has failed to establish the common object of the members of the assembly regarding Sections 148 and 149 of Indian Penal Code and for the offence punishable under Section 323 of IPC the prosecution was required to prove the same by cogent and reliable evidence. There was no medical evidence to prove the injuries, if any, suffered by the complainant, any of the family members or the investigating officer. Thus the prosecution failed to prove the identification of the accused persons. Moreover, no evidence was found regarding recovery of any *stones, lathies* or any deadly weapons from the possession of the accused persons and as the case of the prosecution was found to be doubtful, thus the ingredients of the offences under Section 3(1) {za (B)} of SC/ST Act have to be proved and when the prosecution has failed to prove the ingredients required to prove this offence, no offence punishable under under Section 3(1) {za (B)} of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was made out against the accused persons.

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, 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.

5. 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.

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

08.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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