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

CRM-A-2480-MA-2017 (O&M)
Reserved on: 09.01.2025
Pronounced on: 14.01.2025

Ishwar Singh

... Applicant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amandeep Singh, Advocate and
Mr. Chanderhas Yadav, Advocate
for the applicant.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present application is preferred under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 419(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] against the judgment dated 03.08.2017 passed by learned Additional Sessions Judge, Rewari, vide which judgment of conviction dated 08.01.2016 and the order of sentence dated 11.01.2016 passed by learned Judicial Magistrate 1st Class,

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Kosli, in the case stemming from FIR No.149 dated 03.12.2014 under Sections 323, 325, 34 of the Indian Penal Code, 1860 (for short 'IPC') [*now Sections 115(2), 117(2) & 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS')*], registered at Police Station Rohrai, District Rewari, was set aside and the private respondents were acquitted of charges framed against them.

2. Briefly, the facts are that on 26.11.2014, the complainant-applicant, namely, Ishwar Singh visited Police Station Rohrai and made a formal statement. He stated that he had gone to procure diesel for his tractor and on the way, stopped at the hotel of one Yashu. While there, Surrender, Naresh (respondent No.2), Kallu, and Sanjay arrived in a car. They allegedly abused and assaulted him. Naresh struck him repeatedly on the back with a danda (stick), While the other three accused assaulted him with kicks and punches. A short while later, Rakesh, Mintu, and Mohan (respondent No.3) arrived on a motorcycle. Mohan, who was armed with a rod, struck him on his right wrist and thigh, while Rakesh, Mintu, and Pintu further assaulted him with slaps and punches. Hearing his cries for help, Mahesh and Sadhu, both co-villagers, who were returning from Rohrai on a motorcycle, intervened and rescued him from the accused. The alleged cause of the altercation was that the complainant had previously reported the matter to the police against them for misbehaving and outraging the modesty of his niece. Following the incident, the complainant sought medical assistance and requested legal action against

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the accused persons.

3. Having heard 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 judgment of learned lower appellate Court to indicate perversity or misreading of evidence in its judgment. There are glaring inconsistencies in the testimonies of the prosecution witnesses, which stifle the prosecution case completely. PW-1 deposed that he took the injured-complainant to the police station and does not know when and where the complainant's medical examination took place. The Medical Officer, who was examined as PW-2, however, testified that the complainant was brought to the hospital by PW-1. Further, PW-4 Sadhu Ram corroborated the version of PW-2 and stated that he along with PW-1 accompanied the complainant to the hospital. Another interesting contradiction is that while PW-5 complainant deposed that he went to the police station after the altercation, PW-4 deposed that they went to the hospital after the alleged incident.

4. Moreover, PW-6 ASI Satyabir testified that on 26.11.2014, the complainant came to the police station alone, which is again in contradiction with the account put forth by PW-1 and PW-4. With respect to the recovery of weapons used to inflict injuries on the complainant, it is imperative to mention that as per the recovery memos (Ex.PW3/E and Ex.PW3/F) and the testimony of PW-6 ASI Satyabir, the danda and the rod were recovered on 04.12.2014,

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however, as per the testimony of PW-4, the police recovered the said weapons in his presence on 26.11.2014. As such, the case of the prosecution is riddled with inconsistencies, which strike at the root of the matter. Lastly, the recovery of the weapons was made from a public place, yet no independent witnesses were joined in the investigation. Consequently, the respondents-accused were rightly given the benefit of the doubt.

5. 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, learned 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 Vs. State of H.P., 1973 (2) SCC 808, Hari Ram Vs. State of Rajasthan, 2000 (9) SCC 136 and Chandrappa and others Vs. 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 learned Court below.

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6. 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 learned Additional Sessions Judge, Rewari, 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. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

14.01.2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No