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227 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARHCRM-A-35-2021 (O&M)
Date of Decision: 09.01.2025

BABITA

...Applicant-Appellant

V/S

JAI PARKASH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhdeep Singh, Advocate
for the applicant-appellant.Mr. Jitender Singh Kundu, Advocate
for the respondents No. 1 and 2.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 16.03.2020 passed by learned Judicial Magistrate Ist Class, Indri in criminal complaint No. 41 of 2017 under Sections 323, 325, 452, 506, 217, 218 and 219 of Indian Penal Code.

2. Briefly, complainant namely Babita submitted a complaint stating therein that on dated 27.12.2011 at about 7 P.M., Jai Parkash and his wife Naresho Devi (respondents No. 1 and 2) started giving filthy abuses to her. On raising objections/protest, accused persons attacked on complainant with bricks. In order to save herself, she entered into her house. Accused persons forcibly entered into the house of complainant. Jai Parkash caught hold the complainant from her hair, whereas accused Naresho Devi gave *danda* blows to her. Accused Jai Parkash was having a daranti (Sickle) in



his hand. He gave a sickle blow to the complainant on her neck, upon which she raised her hand to save herself and daranti(sickle) hit on her left hand. She received injuries on her back, hands and leg. She raised an alarm, on hearing which Chattar Singh, Bhool Singh, Sunil and Santi came and rescued her from the clutches of accused persons. While leaving the spot, they threatened her to kill in future. She also reported the matter to the police. Accused persons in order to save themselves manipulated the injuries on their persons and got themselves admitted in the hospital. Cross-case has been registered by the police in-collusion with accused persons against the complainant and her husband. Hence, the present complaint.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that learned Court below has opined that in support of her contention, Babita-complainant examined CW-1 Chattar Singh and CW-4 Sunil Kumar. In cross-examination CW-1 Chattar Singh acknowledged that apart from him no other eye-witness was present at the spot. CW-4 Sunil Kumar also during cross-examination acknowledged that in FIR No. 455 and in document Ex. PW2/C, it has been specifically mentioned that they reached the spot later on. It is also pertinent to mention here that during cross-examination also CW-4 acknowledged that he spent approximately 03 years in jail and several cases were pending against him in various districts, which showed that he was having criminal background. Further, he acknowledged that he nowhere mentioned/got written in his statement that Babita raised an alarm and she was inside her house, from which it stood



clear that during cross-examination he improved his version, which creates doubt on his statement. Learned Court below further observed that in the present case, complainant, as per her statement received several injuries but as per the MLR, she has received only one injury and CW-3 Dr. Rajesh Gorla acknowledged that the said injury, which is simple and superficial in nature, can occur due to falling on a hard surface and due to friendly hands. Further CW Babita has failed to depose regarding specific injuries and specific body parts where she received the injuries alleged to be caused by accused Naresho Devi. Thus, learned Court below has rightly acquitted respondents No. 1 and 2.

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



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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.

09.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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