2025:PHHC:098632

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118 **CRM-A 1240-MA of 2016 (O&M)**
Date of Decision: 31.07.2025

Sawinder Singh ...Applicant

Versus

State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gagandeep Singh Sirphikhi, Advocate,
for the applicant.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Nimish Gautam, Advocate and
Mr. Dheeraj Mahajan, Advocate
for respondents No. 2 to 5.

N.S.SHEKHAWAT, J.

1. The applicant has filed the present application under Section 378(4) of Code of Criminal Procedure Code with a prayer to grant leave to appeal against the impugned judgment dated 29.02.2016 passed by the Court of Special Judge, Gurdaspur, whereby, the respondents No. 2 to 5 have been ordered to be acquitted of the notice of the charge under Section 3(v) and 3(x) of Scheduled Castes and scheduled Tribes (Prevention of Atrocities) Act, 1989

(hereinafter to be referred as **'the SC/ST Act')** and Sections 447, 380, 427 and 34 of Indian Penal code.

2. Initially, a complaint was filed by the applicant/appellant before the Court of Judicial Magistrate Gurdaspur against respondents No. 2 to 5 by alleging that the applicant belongs to Majhabi Sikh caste. Dalip Singh, father of the applicant/appellant was in possession of land measuring 56 kanals 08 marlas, as *'Gair Marusi'*, situated in village Talwandi Rama. On 25.03.2007, at about 7.15 a.m., the applicant and his brother Jaswant Singh were cutting fodder in the said land and then accused/respondent Bawa Singh armed with *kirpan,* Satnam Singh armed with *Barchha,* Gurmit Singh armed with *Kulhari* and Nishan Singh armed with a stick came there by raising *lalkaras* that in case the applicant cut the fodder from the said land, they be done to death. Bawa Singh, respondent, caught hold of Jaswant Singh whereas Satnam Singh, respondent caught hold of applicant from their neck. When Satnam, respondent, was about to give Barchha blow to the applicant Sawinder Singh, then Gurcharan Singh son of Wassan Singh, Sulakhan Singh son of Banta Singh, Tarsem Singh son of Ajaib Singh, Buta Singh son of Makhan Singh and 40-50 other persons of the village came at the spot and rescued the applicant and his brother from the respondents No.2 to 5. It is further alleged that then the respondents No. 2 to 5 started calling bad names to the applicant and his brother Jaswant Singh as *"Chuhras"*

and threatened, *"Churheo Peli Chhad Deo Nahin Ta Jano Maar Diange"*. The persons who came for rescue of the applicant requested the respondents No. 2 to 5 not to call them in such like manner, but they said that they would call them *"Chuhras"* for thousand of times. Thus, respondents No. 2 to 5 called them as *"Chuhras"* and also threatened them in the presence of inhabitants of the locality. It is further alleged that the respondents No. 2 to 5 also demolished the *"Pucca Chhapar"* built in the said land, and also demolished the *"Mandir"* and uprooted the hand-pump and broke the plastic pipe of the tube well. The respondents No. 2 to 5 also took away with them one table fan. The said articles were belonging to Dalip Singh, father of the applicant and, thus, the respondents No. 2 to 5 caused the loss to the tune of Rs.25,000/-. It is further alleged that the matter was reported to the police, but no action was taken against the respondents No. 2 to 5 by the police, which compelled the applicant to bring a complaint before Judicial Magistrate, Gurdaspur.

3. After recording the preliminary evidence, the respondents No. 2 to 5 were summoned by the Court of Magistrate. Since, the case was exclusively triable by the Court of Sessions, the case was committed and was entrusted to the Special Court for trial. They were granted the concession of bail by the Court of Additional Sessions Judge, Gurdarpur. Ultimately, finding a *prima-facie* case against respondents No. 2 to 5, they were charge sheeted for the

commission of the offence punishable under Sections 3(v) and 3(x) of the SC and ST Act and Sections 447, 380, 427 and 34 of Indian Penal Code, to which, they pleaded not guilty and claimed trial.

4. During the course of trial, the applicant, namely, Sawinder Singh, appeared as PW1 whereas examined his brother Jaswant Singh as PW2. PW1 Sawinder Singh reiterated the allegations levelled by him in the complaint and exhibited various documents on file. The applicant also examined his brother Jaswant Singh as PW2, who stated that he alongwith his brother Sawinder Singh were present in their field to cut fodder, where, Bawa Singh armed with *kirpan*, Satnam Singh armed with *barchha,* Gurmeet Singh @ Pappu armed with *Kulhari* and Nishan Singh armed with *dang* came there. Satnam Singh gave him a blow with *Barchha,* but he escaped and did not suffer any injury. He further deposed that Sulakhan Singh, Banta Singh, Tarsem Singh, Ajaib Singh, Bir Singh and Pal Singh also came at the spot and saved them from the respondents No. 2 to 5. They abused them and uttered caste related derogatory words. Thereafter, he and his brother Sawinder Singh went from the spot. The respondents No.2 to 5 also demolished the hut and also cut the orange trees and took away the household articles lying there.

5. In their statement under Section 313 Cr.P.C., the respondents No. 2 to 5 denied the entire incriminating evidence,

which was produced by the applicant before the trial Court. They stated that they had been falsely involved in the present case, however, ultimately did not lead any defence evidence.

6. After hearing both the parties, vide the impugned order dated 29.02.2016, the Court of Special Judge, Gurdaspur, held that the applicant had miserably failed to prove the case against the private respondents for the want of cogent evidence and the Court was left with no other option, but to acquit them from the charges levelled against them.

7. Learned counsel for the applicant vehemently argued that the trial Court committed the grave error while acquitting the respondents No. 2 to 5 of the charge in the present case. In fact, it was the admitted case of the parties that the applicant belong to scheduled caste and the respondents No. 2 to 5 belonged to Jat community. Rather, the respondent No. 2 to 5/accused failed to give even one suggestion in cross-examination that they did not belong to Jat Community. Further, the special judge failed to consider that the applicant had examined himself as PW1 and his testimony was duly corroborated by the statement of PW2 Jaswant Singh. Even, both the witnesses were cross-examined by the learned defence counsel but nothing material could be elicited from the same. Even, the witnesses had categorically stated that the respondents No. 2 to 5 had trespassed and not caused damage to the hut and other properties but had taken

away the household goods from the place of occurrence. Thus, there was sufficient evidence to prove the charge against the respondents No. 2 to 5 in the present case.

8. On the other hand, learned counsel appearing on behalf of respondents No. 2 to 5 submitted that the findings recorded by the trial Court were well reasoned and the same is liable to be upheld by this Court. In fact, the trial Court had taken into consideration the evidence led by the applicant and the same was rightly disbelieved by the trial Court. Thus, the application is liable to be dismissed by this Court.

9. I have heard learned counsel for the parties and perused the record.

10. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of ***Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)*** as follows:-

> *"14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed*

in ***Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.***

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of

> *the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."*

11. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62: 1996 CrilJ 2867,** this Court observed as under:

> *"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question is the negative the order of acquittal is not to be disturbed."*

12. In the present case, the case of the applicant primarily rests on two testimonies, i.e., PW1 Sawinder Singh applicant himself and his brother PW2 Jaswant Singh. PW1 Sawinder Singh appeared in the witness box and tried to support the case of the prosecution. However, the cross-examination of the said witness demolished the entire case of the prosecution. In his cross-examination, he admitted that the land in question was in the ownership of Punjab Wakf Board, Ambala Cantt., and he admitted the fact that a civil litigation was

pending between him and the respondents No. 2 to 5 regarding the land in question. However, the factum of pendency of civil litigation between the parties was not mentioned by him in the complaint or in his testimony. Even, respondents No. 2 to 5 came at the spot and started abusing him and even threatened them that they would done to death. Even, they used caste related derogatory words against them. However, none of the respondents No. 2 to 5/accused, who were duly armed, had caused any injury to the applicant or his brother. He further admitted that he had moved a complaint to the police but no such application was placed on record before the trial Court. He had also made representations to the senior police officers, but again same were neither mentioned in the complaint nor the same were exhibited nor such applications were exhibited on the judicial file. Apart from that, the applicant also failed to bring on record any evidence to show that the respondents No. 2 to 5 did not belong to schedule caste. Similarly, PW2 also admitted that he and his brother had gone to police 3/4 times and had presented the applications before the SHO. However, he admitted that no copy of any such application was on judicial file. He also admitted that the land in dispute was in the ownership of the Punjab Wakf Board, Ambala Cantt.

13. In the present case, the initial burden was on the prosecution to prove that the respondents No. 2 to 5 had insulted the applicant with an intention to humiliate the member of scheduled

castes and the insult was done in a place with public view. Even, *mens rea* on the part of the respondents No. 2 to 5 was also one of the essential ingredients of the offence. Apart from that, the prosecution was also obliged to prove that the respondents No. 2 to 5 had committed the offence, knowing very well that the victim belonged to the scheduled castes and the offence was committed solely with the said intention.

14. Now further adverting to the facts of the present case, the applicant had stated that the respondents No. 2 to 5 had uttered word *"Chuhras"*, after giving beatings to him. First of all, neither there is any evidence of beatings nor any medical expert has been to prove the same. Consequently, merely calling the person by his caste would not lead to conviction of the respondents No. 2 to 5 under the provisions of the SC and ST Act. Still further, in his deposition, the applicant had not stated that the respondents No. 2 to 5 were not members of scheduled castes or scheduled tribes. Thus, the trial Court rightly held that the basic ingredients of Section 3(i)(x) of the SC and ST Act were not fulfilled in the facts of the present case.

15. Still further, this Court completely agrees with the findings recorded by the Special Judge that the version of the prosecution is highly improbable and unbelievable. It has been alleged that the respondents No. 2 to 5 armed with *kirpan, barchha, kulhari and dang* came there and had an intention to cause injuries to

the applicant and his brother. However, surprisingly none of them had even suffered a bruise. Still further, admittedly several persons were attracted to spot, but none of the witnesses had been examined by the applicant in the present case. The applicant only examined his brother PW2 Jaswant and since the witness is related to the applicant, the Court should be conscious, while evaluating the evidence of such a witness. Even otherwise, the civil litigation was also pending between the parties with regard to the land in question and the possibility of false implication could not be ruled out.

16. Consequently, the present application for leave to appeal is meritless and is liable to be declined.

17 Dismissed.

18. Pending application(s), if any, also stand disposed off accordingly.

31.07.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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