

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-953-MA of 2014 (O&M)
Date of decision: August 18, 2015

Santosh

...Applicant

Versus

Banti

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Viney Saini , Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Santosh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Banti, challenging the judgment dated 05.04.2014 passed by learned Sub Divisional Judicial Magistrate, Dera Bassi, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted. Along with the application, appeal has been filed.

It is stated in the application that appeal is likely to succeed on the grounds taken therein. The respondent has been wrongly acquitted by learned trial Court. There are arguable points in the appeal, some of which are left undecided by learned trial Court.

I have heard learned counsel for the applicant and have gone through the record.

The brief facts of the case are that Santosh filed a complaint against Banti and Raju under Sections 279, 304-A, 427, 380 and 201 IPC. It is the case of the complainant that on 31.08.2005, when his son Subhash Kumar was coming back to home and was going towards Dera Bassi and reached near Bhushan Factory, then a truck bearing registration No.PB-11B-7595 driven by accused Banti in a rash and negligent manner, came from the side of the link road and hit the motorcycle driven by Subhash Kumar. As a result of the accident, Subhash Kumar fell on the road and succumbed to the injuries at the spot. Accused Raju was sitting in the truck as cleaner. There is also allegation in the complaint that accused took away cash money from the pocket of Subhash Kumar and also removed his gold ring.

After preliminary evidence, only accused Banti was summoned and charge was framed under Sections 279 and 304-A IPC. On the basis of the evidence produced by the parties, learned SDJM, Dera Bassi acquitted the accused of the charges framed against him by holding that complainant has not proved her case.

The perusal of the record shows that complainant herself stepped into the witness box as CW-1 and deposed that she had not witnessed the accident and she went to the police station after the accident and police recorded the statement of her son. CW-2 Harmail Singh, who is stated to be eye witness, deposed in chief-examination that he noted down the number of the truck but in cross-examination, he deposed that Harchand Singh disclosed him about the registration

of the FIR in the present case. He further deposed that he never got recorded his statement with the police. He also deposed that he has not seen the accused at the spot and only recorded the number of the truck and he did not identify the accused present in the Court. Therefore, CW-2 Harmail Singh, who is alleged eye witness, has not identified the accused who was driving the truck. So, reasonable doubt exists regarding the identity of the accused. CW-3 Harchand Singh, who is also eye witness, supported the prosecution version in chief examination. He clearly disclosed the number of the truck and the number of motorcycle and also deposed that the accident took place in his presence. He further deposed that truck driver fled away from the spot. In cross-examination, he deposed that he is having weak eye-sight and he does the night duty with the Truck Union, Dera Bassi. He heard the noise of accident from a distance of 200 feet. He never got recorded his statement with the police. He further admitted that he reached the place of accident after 10 minutes after hearing noise of the accident and when he reached at the spot, then the truck had already went away about 100/150 feet ahead. CW-4 Suresh Saini, Mechanic, is a formal witness, who proved the mechanical test report of the motorcycle. CW-5 Constable Avtar Singh proved the FIR. CW-6 Dr.I.C.Taneja proved the post mortem report. CW-7 Head Constable Salinder Kumar brought the FIR register.

From the evidence on record, I find that no eye witness in the present case has identified the accused. There is no cogent evidence to prove the identity of the accused that he was driving the

truck at the time of accident. Therefore, the Court below has correctly acquitted the accused while appreciating the evidence in right perspective.

In view of the above discussion, I find that the findings given by learned SDJM, Dera Bassi, are correct and as per law.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

August 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE