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

**CRR No.829 of 2015 (O&M)
Date of Decision: 17.07.2015**

Navpreet Singh

....Petitioner

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ranbir Singh Sekhon, Advocate
for the petitioner.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the judgment dated 20.01.2015 passed by Additional Sessions Judge, Ludhiana, remanding the case back to Judicial Magistrate Ist Class, Ludhiana.

[2]. Learned counsel for the petitioner states that petitioner faced trial in FIR No.151 dated 09.11.2006 under Sections 279, 304-A, 427 IPC, P.S. Habiwal, District Ludhiana. Petitioner was driving a three-wheeler for GRD Academy. Anmoldeep daughter of Shaminder Singh, aged about 7 years was also travelling in the three-wheeler. There were five children sitting in the three-wheeler. When the three-wheeler reached Haqiqat Nagar at about 7.40 a.m.,

a motorcycle make Pulsar of red colour dashed into three-wheeler in a rash and negligent manner. Three-wheeler turned and the children sitting in it fell down. Anmoldeep also fell down and came under three-wheeler and suffered injuries. She succumbed to the injuries on the way to Hospital. The driver of the motorcycle fled away from the spot.

[3]. FIR was registered. After leading the evidence, trial Court held Navpreet Singh guilty under Section 279 and 304-A IPC and convicted him. He was sentenced to undergo rigorous imprisonment for 6 months along with fine of Rs.500/- under Section 279 IPC and in the event of default of making payment of fine, to further undergo simple imprisonment for 30 days. He was also sentenced rigorous imprisonment for 2 years along with fine of Rs.1000/- under Section 304-A IPC and in the event of default of making fine, he was to undergo simple imprisonment for 60 days.

[4]. Feeling aggrieved against the judgment of conviction and order of sentence passed by trial Court, petitioner filed appeal before the Lower Appellate Court. Additional Sessions Judge, Ludhiana observed that it was duty of the Magistrate and not the prosecution to put all relevant questions to the accused in his statement recorded under Section 313 Cr.P.C. Lower Appellate Court highlighted the fact that name of the deceased instead of Anmoldeep was mentioned as Mohandeeep. The entire evidence of prosecution was relating to the death of Anmoldeep and, therefore, examination of accused under Section 313 Cr.P.C., was held to be defective and the Lower

Appellate Court remanded the case to trial Court for proper decision after giving due opportunity to the accused to explain the incriminating material collected against him by the prosecution.

[5]. It is a settled principle of law that if entire incriminating material and relevant questions were not put to accused under Section 313 Cr.P.C., then the evidence not so put cannot be relied for convicting and sentencing him.

[6]. Learned counsel for the petitioner vehemently argued that once the statement was found to be defective, the accused should have been acquitted. There was no legal requirement to remand the case for trial for filling lacuna which was left by the prosecution during trial.

[7]. Learned counsel for the petitioner relied upon **2014(2) SCC (Crl.) 600, Radhey Shyam v. State of Rajasthan** to contend that it was obligatory on the part of prosecution to put incriminating material to the accused in his statement under Section 313 Cr.P.C., so that accused could have offered his explanation. Failure to do so would be a serious lacuna. In the aforesaid cited judgment, the Hon'ble Apex Court was dealing with a case in which prosecution case was that clothes of the accused were blood-stained and that blood group of the blood found on the clothes of deceased was the same as that of blood-group of the blood found on the clothes of the accused. The omission was held to be serious and the accused was acquitted along with other drawbacks found in the prosecution version.

[8]. On the other hand learned State counsel relies upon

1586(1) PLR 654 (Punjab), Brij Mohan v. State of Haryana and 2011(1) RCR (Crl.) 346 Gurcharan Singh v. State of Punjab and contended that the discrepancy in the name of the deceased would not entail in acquittal of the accused. The examination of the accused under Section 313 Cr.P.C., if found defective, the First Appellate Court was well within its right to remand the case to the trial Court for proper decision after giving opportunity to the accused to explain incriminating circumstances appearing against him. In such a situation, Appellate Court has ample powers to remand the case to examine the accused again under Section 313 Cr.P.C., for re-decision of the case.

[9]. Since the examination of the accused in terms of recording statement under Section 313 Cr.P.C., was done in the name of Mohandeep instead of Anmoldeep, the prosecution case was not than Anmoldeep @ Mohandeep. There was a clerical omission on record and in order to rule out any such eventuality, it is only a fresh examination under Section 313 Cr.P.C., which would evolve true spirit and no benefit can be given to the accused only on such omission that was only a clerical mistake which needs to be rectified.

[10]. In 2015(1) PLJ (Criminal) 78, Nar Singh v. State of Haryana, the Hon'ble Apex Court has held that trial of accused in the event of not putting a criminal circumstance in his statement under Section 313 Cr.P.C., would not entail in acquittal of the accused. Such omission would not entitle the accused to acquittal. The only remedy is to remand the case for fresh trial. The error on the part of

the Court in putting defective question to the accused in his statement under Section 313 Cr.P.C., would itself not sufficient to presume any prejudice to the accused unless and until it is shown that the accused has suffered some disability or detriment in relation to safeguard given to him under Section 313 Cr.P.C.

[11]. In view of aforesaid, no fault can be found in the approach adopted by Appellate Court/Additional Sessions Judge, Ludhiana in remanding the case back to trial Court for fresh decision.

[12]. Consequently, this revision petition is dismissed.

July 17, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE