

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2599 of 2014 (O&M)
Date of decision: August 03,2017

Gurpreet Singh @ Gopi

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.B.D.Sharma, Advocate for the petitioner.
Mr.K.S.Sidhu, Deputy Advocate General, Punjab

ARVIND SINGH SANGWAN, J.

Petitioner-Gurpreet Singh @ Gopi has filed the present petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging order dated 14.8.2014 passed by the Sessions Judge, Jalandhar vide which, while allowing the appeal filed by the respondent-State against the judgment dated 27.11.2013 passed by the Judicial Magistrate First Class Phillaur, acquitting the petitioner of the charges was set aside and the matter was remanded back to the trial Court for retrial with a direction to grant further opportunity to the prosecution to conclude its evidence .

Brief facts of the case are that the petitioner-Gurpreet Singh @

Gopi faced the trial in FIR No. 53 dated 21.3.2008 under Sections 323/324/325/326 of the Indian Penal Code('IPC' for short) registered at Police Station,Goraya. After the challan was submitted under Section 173 Cr.P.C, charges were framed under Sections 323, 326 IPC. Thereafter, the prosecution examined eight witnesses. Thereafter, petitioner-accused was examined under Section 313 Cr.P.C.

It would be relevant to mention here that as many as 30 dates were fixed for recording the prosecution evidence. The trial Court granted last opportunity to the prosecution vide order dated 27.7.2013 and,thereafter, on 28.10.2013 closed the evidence of the prosecution except for the statement of PW7- Dr. Kiranpreet Kaur, whose examination-in-chief was recorded. However, the cross-examination was deferred.

The Trial Court, while acquitting the petitioner has recorded a finding that there was delay of 5 days in between the alleged occurrence and registration of the FIR. The occurrence took place on 16.3.2008 at about 10.00 pm and the FIR was registered on 21.3.2008 and no proper explanation was given by the prosecution except the statement of complainant Exhibit PW/4/B, wherein, he stated that he would make the statement after consultation as he was in pain and efforts of compromise were going on. However, no evidence was produced regarding any efforts made with regard to compromise and,therefore, it was held that the prosecution has failed to explain delay of 5 days.

Trial Court, after scrutinising the statement of PW1 Makhan Singh also held that the same does not inspire confidence as there are major discrepancies in the statements of the other witnesses. PW1 Makhan Singh

stated that his statement was recorded before the Police on 16.3.2008 and then again stated it was on 17.3.2008. It is further stated by him that the place of occurrence was shown to the Police on 17.3.2008, whereas, at the same time, he stated that he was admitted in hospital from 16.3.2008 to 21.3.2008. The statement of PW1 was found to be contrary to the statement of PW3 Kulwinder Kaur, who stated that Police visited the place of occurrence on 16.3.2008 itself. The Investigating Officer Sub Inspector-Jagdish Kumar, who appeared as PW4, stated that no statement of the complainant party was recorded on 17.3.2008. This witness further stated that he had prepared a site plan. However, the said site plan was never produced on record. The trial Court also noticed that the alleged weapon i.e. the case property (dadar and iron rod) was never produced before the Court and similarly, blood stained earth and blood stained clothes were also not produced by the Police and the recovery memo Exhibit PW2/B does not bear the signatures of the accused. Lastly the trial Court held that though the prosecution has examined Dr.Kiranpreet Kaur, PW7, who gave her opinion regarding the injuries but her statement is not corroborated from the medical record as neither the X-ray report nor X-ray films were produced on the record of the trial Court and, therefore, the trial Court by giving the benefit of doubt acquitted petitioner-accused.

Respondent-State preferred an appeal before the Sessions Court and the State appeal was allowed vide judgement dated 14.8.2014 and the case was remanded back ordering retrial of the accused and allowing prosecution to lead further evidence. Aggrieved against the said judgement, petitioner has filed the present petition.

Learned counsel for the petitioner has submitted that the lower appellate Court has passed the judgment, mainly, on the ground that the statement of PW7-Dr. Kiranpreet Kaur was not complete as her examination-in-chief was completed. The case was adjourned for her cross-examination when she did not appear. Learned counsel further submitted that in case the right to cross-examination would have been given to the petitioner, it would have improved the case of the accused-petitioner and not the prosecution as the prosecution version had already come on record in the examination-in-chief of witness PW7 Dr.Kiranpreet Kaur and,therefore, even if on the face of it the examination-in-chief is taken to be the complete evidence, the trial Court has not relied upon the same as the X-ray films and X-ray report was not produced on record. Therefore, it is submitted on behalf of the petitioner that even on account of non cross-examination of the said witness, no prejudice would be caused to the prosecution as it was for the accused and not for the prosecution-State. It is also contended on behalf of the petitioner that the prosecution had availed number of opportunities and only, thereafter, the prosecution evidence was closed on 14.11.2013. Respondent-State never preferred any revision challenging the closing of prosecution evidence and , therefore, after the conclusion of the trial, it could not be said that the prosecution was not afforded sufficient opportunities to lead its evidence, Therefore, the approach of the appellate Court to remand and order retrial after affording further opportunities to prosecution to lead evidence is patently wrong.

Learned counsel for the petitioner has further submitted that in a criminal trial, the order of remand should not be made in a casual manner

as the appellate Court can remand the case for retrial only after the entire judgment passed by the trial Court is set aside. It is further submitted that the perusal of the impugned judgment shows that the appellate Court has not at all appreciated the other evidence on the basis of which the trial Court has acquitted the petitioner and, therefore, the impugned order is liable to be set aside.

Learned Counsel for the petitioner, in support of his arguments, has relied upon the judgement of the Hon'ble Apex Court **Muralidhar @ Gidda and another vs. State of Karnataka** 2014 ALL SCR 1571 and contended that while entertaining the appeal against order of acquittal, the appellate Court should bear in its mind that accused person is entitled to benefit of doubt in dealing with the appeal against acquittal and unless the conclusion is drawn that the findings of trial Court are palpably wrong or against law or likely to result in grave injustice, the appellate Court should not interfere in the finding of acquittal recorded by the trial Court.

Since the appellate Court has not touched the merits of the case i.e. acquittal of the petitioner by the trial Court on appreciation of the entire oral as well as medical evidence and remanded the case back which is on account of a technical defect, I am of the opinion that the approach of the lower appellate Court in remanding the case in a casual manner is not correct. As observed above, no prejudice was caused to the prosecution even if cross-examination of PW7- Kiranpreet Kaur was not concluded as trial Court has appreciated the examination-in-chief of this witness and found that the same does not prove the case of the prosecution as in examination- in-chief, this witness has not produced the medical record.

Therefore, non- recording the cross-examination of this witness would not cause any prejudice to the prosecution as examination-in-chief was pleaded in all respects. Moreover, the evidence of the prosecution was closed on 13.11.2008 and no explanation has come on record as to why the same was not challenged.

Accordingly, this revision petition is allowed. Order dated 14.8.2014 is set aside and the order dated 27.11.2013 passed by the trial court discharging the petition is restored and the petitioner is discharged.

(ARVIND SINGH SANGWAN)
JUDGE

August 03, 2017
arya

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No