

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

CRM-A-1100-MA-2016(O&M)

Date of decision:-2.4.2018

Hemraj Thakur

...Applicant/Appellant

Versus

Meenakshi Sharma and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aman Kashyap, Advocate
for the applicant.

Mr.Amar Vivek, Advocate
for respondent No.1.

Mr.Yashwant Singh Rathore, Advocate
for U.T., Chandigarh.

H.S. MADAAN, J.

Applicant – Hemraj Thakur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent No.1 – Meenakshi Sharma challenging the impugned judgment dated 8.1.2016 passed by learned Sessions Judge, Chandigarh vide which he had set aside the judgment and order dated 18.4.2015 passed by Judicial Magistrate Ist Class, Chandigarh convicting accused

Meenakshi Sharma for the offences under Sections 279 and 304-A IPC and sentencing her to undergo rigorous imprisonment for six months for the offence under Section 279 IPC and further to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of fifteen days for the offence under Section 304-A IPC, both the sentences were ordered to run concurrently.

The first Appellate Court, while setting aside the judgment passed by the trial Magistrate had acquitted the accused of the charge framed against her.

The applicant prays that such judgment passed by the First Appellate Court of learned Sessions Judge, Chandigarh be set aside by way of acceptance of the appeal and accused be convicted and sentenced in accordance with law.

Briefly stated, facts of the case as per prosecution version are that on 8.10.2012 on receipt of a wireless message at Police Station Sector-34, Chandigarh that a road side accident had taken place near Gurdwara Chowk, a police party from the said police station led by ASI Gurnam Singh (hereinafter referred to as the Investigating Officer/I.O.) went to the spot; a Swift car bearing registration No.CH04-J-5607 and a Honda Activa Scooter bearing registration No.CH01-AG-9626 were found to be standing there; the Investigating Officer got the place of incident photographed; the accidental vehicles were taken into possession; on coming to know that injured had been taken to Government Medical College and Hospital, Sector 32, Chandigarh, the police party went there; it transpired that injured Chandrawati wife of

Hemraj admitted in that hospital was unfit to make statement, therefore, the police party was in the process of returning to the spot; on the way near Market of Sector 33-C, Chandigarh, Constable Vijay Kumar met them and he disclosed to the Investigating Officer that he had seen the accident; his statement was accordingly recorded, in which he stated that on that day while he was on beat duty at Sector 33, Chandigarh and was patrolling, when he reached near Gurdwara Chowk, Sector 20/30/32/33, the time was about 2:30 p.m., then a Swift car having registration No.CH04-J-5607 came from the side of dividing road, Sector 32-33, Chandigarh, which was being driven by a lady Military Officer at a very fast speed and the car hit Honda Activa Scooter bearing registration No.CH01-AG-9626, being driven by a lady, from behind, resultantly, the scooter driver along with scooter fell down and the car dragged the scooter along with its rider towards road divider; the lady scooter driver suffered injuries; many persons gathered at the spot and some person removed the injured to Government Medical College and Hospital, Sector 32, Chandigarh in a private vehicle; the driver of the car disclosed her name as Meenakshi Sharma. According to Constable Vijay Kumar, the mishap had taken place due to rash and negligent driving of the car by said Meenakshi Sharma. The statement was signed by Constable Vijay Kumar. The Investigating Officer put his endorsement below such statement and sent ruqa to the police station, on the basis of which formal FIR was registered. Then the police party proceeded to the spot. The Investigating Officer prepared rough site-plan of the place of accident on the demarcation by complainant – Constable Vijay Kumar. During the course of investigation, the accused was arrested and released on bail.

Statements of witnesses were recorded. Since during treatment, injured had succumbed to the injuries, post-mortem examination was got conducted on her dead body. After completion of investigation, challan against the accused was filed in the Court of Judicial Magistrate Ist Class, Chandigarh.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Chandigarh, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Chandigarh finding that charge for offences under Sections 279 and 304-A IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, she pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution had examined as many as ten witnesses, namely, Desh Raj as PW1, Hem Raj as PW2, Constable Vijay Kumar – complainant as PW3, HC Sat Parkash, Police Mechanic as PW4, ASI Gurnam Singh, Investigating Officer as PW5, Dr.Prabhdeep Singh as PW6, Manoj Kumar as PW7, Constable Mohammad Dilshad as PW8, Constable Dharminder as PW9 and HC Dharamvir as PW10.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against her submitted that she was innocent and had been falsely involved in the case. However, she did not lead any evidence in

defence.

The trial Court formulated following point for determination:

“Whether on 8.10.2012 at about 2:30 p.m. in the area of dividing road, Sector 32/33 on the side of Sector 33, Chandigarh drove your car bearing No.CH04-J-5607 on a public way in a rash and negligent manner so as to endanger human life and public safety of others and you while driving the abovesaid vehicle in abovesaid manner caused death of Chandrawati not amounting to culpable homicide?”

After hearing arguments, the learned trial Court found that prosecution had proved its case against accused beyond a shadow of reasonable doubt, as such, accused was convicted and sentenced as mentioned supra.

Feeling aggrieved, the accused had filed an appeal in the Court of Sessions, which was accepted by the Court of learned Sessions Judge, Chandigarh as detailed above and she was acquitted of the charge framed against her.

Now the complainant is before this Court by way of filing the present application, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard the learned counsel for the parties besides going through the records and I find that there is no merit in the application seeking permission for leave to appeal.

The judgment passed by learned Sessions Judge, Chandigarh is well reasoned one, based upon proper appraisal and appreciation of

evidence and correct interpretation of law. There is no illegality or infirmity therein. Learned Sessions Judge, Chandigarh has disbelieved the prosecution story for several reasons, firstly finding the presence at the spot of Constable Vijay Kumar at the relevant time to be doubtful holding that his statement does not inspire confidence and from conjoint reading of his examination-in-chief and cross-examination, it appears that he did not witness the incident. The reasons given for holding so are as under:

- (i) Constable Vijay Kumar stating that a message was sent to police and statement Ex.PW3/A was made by him to the Investigating Officer and thereafter he left the spot and went to attend his duty, whereas ASI Gurnam Singh appearing as PW5 stated that he had received information regarding accident from control room through wireless and had reached the spot but he did not find any eye-witness there.
- (ii) Constable Vijay Kumar not picking up the injured and taking her to hospital.
- (iii) Constable Vijay Kumar showing ignorance as to whether CCTV cameras are installed at the spot and were functional on the day of accident and his inability to give detailed description of the person, who according to him had taken the injured to hospital.
- (iv) Constable Vijay Kumar stating that car had hit the vehicle from backside, whereas according to PW4 HC Sat Parkash, Police Mechanic, it was not so as rear tail lights of Activa Scooter had not been damaged.

Secondly there are material contradictions between

statements of the prosecution witnesses on important aspect of the case, which are detailed in the impugned judgment passed by learned Sessions Judge, Chandigarh. Thirdly the possibility of deceased talking on her mobile phone while driving resulting in the accident. Fourthly the failure of the police/prosecution to produce the recording of cameras installed at the chowk, which would have disclosed as to how the accident had actually happened, thus an adverse inference being drawn against the prosecution in that regard.

Fifthly, the version put up by the accused appearing to be more probable than the prosecution story. Sixthly the prosecution having failed to prove its charge against the accused to connect the accused with the accident by leading cogent and convincing evidence.

Learned counsel for the applicant has contended that before the Motor Accident Claims Tribunal, Chandigarh, the accused had admitted the accident while she is denying the same in the criminal Court. This contradictory stand should be taken adversely against the accused. However, I am not convinced by this contention. The criminal proceedings and those before Motor Accident Claims Tribunal are entirely different. The proceedings before Motor Accident Claims Tribunal are summary in nature and finding, if any, recorded in such proceedings is not binding upon the criminal Court. A person may take different stands before the criminal Court as well as Motor Accident Claims Tribunal and no adverse inference on that account can be drawn.

As regards the contention of learned counsel for the applicant that judgment passed by the trial Court was correct, wherein it was observed that Chandrawati had suffered injuries in the accident caused

due to rash and negligent driving of offending car being driven by the accused, to which she had succumbed subsequently and learned Sessions Judge, Chandigarh wrongly set aside the judgment of conviction and order of sentence passed by the trial Court, I do not find myself in agreement with the learned counsel for the applicant on this point. The solitary eye-witness in this case happened to be Constable Vijay Kumar, whose presence at the spot at the relevant time keeping in view his act and conduct soon after the accident comes to be highly unnatural and improbable. This fact was taken into view by learned Sessions Judge, Chandigarh while setting aside the judgment passed by the trial Magistrate. Once we find presence at the spot of eye-witness to be doubtful, the account given by him cannot be relied upon and further evidence is definitely lacking in this case to show that accused was author of the accident by her rash and negligent driving of the offending car. Rather the prosecution has failed to show as to how the accused was rash and negligent. There is nothing on record to establish that the accused was driving the car at a very fast speed in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road. The necessary ingredients of offences under Sections 279 and 304-A IPC i.e. rashness and negligent being missing, the accused could not possibly has been convicted for those offences. Learned Sessions Judge, Chandigarh has given detailed reasons for arriving at the conclusion that charge against accused was not sustainable thereby directing her acquittal.

Under the circumstances, the application seeking permission for leave to appeal does not have any merit and is dismissed accordingly.

This application has rather been wrongly filed instead of filing a revision petition, which was the appropriate remedy.

2.4.2018

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**