

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M No. 28083 of 2017
Date of Decision: 10.01.2018

Sushila

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

Present: Mr. Sandeep K. Sharma, Advocate, for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

Mr. Rakesh Kumar Sharma, Advocate,
for respondent Nos. 2 to 5.

MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed for setting aside the impugned order dated 30.05.2017 (Annexure A) passed by learned Additional Sessions Judge, Hisar, vide which the application filed under Section 311 of the Cr. P.C. by the prosecution has been declined.

It is contended by learned counsel for the petitioner that PW2 Dr. Yashpal Singh, was examined by the prosecution, but inadvertently the reports/opinion given by him i.e. Ex. P-32 and P-33, were not put to him at the time of his examination. It is also contended that although the said reports have been exhibited in the statements of PW-12 ASI Jai Bhagwan, Investigating Officer and PW-10 ASI Ramphal, but until and unless the same are put to PW2 Dr. Yashpal Singh, it shall have no relevance. In support of his contention he has cited the judgment of this Court titled as

'Rakesh Kumar Vs. State of Punjab and another passed in CRM-M-19853 of 2012 decided on 10.07.2012' to contend that the doctor who was examined and proved his MLR, but could not prove his discharge slip and bed head ticket of hospital for want of record, could be examined or re-examined at any stage.

On the other hand, the prayer of learned counsel for the petitioner is opposed by respondents No. 2 to 5 on the ground that PW5 Dr. Anil Goyal has clearly deposed that he is only MBBS, however, he had not completed specialization in surgery. Further contended that PW-5 opined that the opinion regarding the nature of injuries may be obtained from Medical Board of GH, Hisar or PGIMS, Rohtak, but the injured was neither referred to Medical Board of GH, Hisar, nor to PGIMS, Rohtak.

Heard learned counsel for the parties.

There is no dispute that the evidence of the prosecution was closed in this case on 16.01.2017 and the present application of re-examination of PW2 was moved on 02.06.2017, when the trial was at the stage of recording statement of accused under Section 313 Cr. P.C.

The relevant part of testimony of PW-2 being material reads as under:-

'I tender my affidavit Ex. PW2/A which may read as part of my statement. On 9.5.2014, on the application of police, I prepared MLR Ex.P2 of Sushila on the basis of entry in casualty register dt. 30.4.2014. The photocopy of the register is Ex.P3 vide which she was given first aid and refused for MLR and also refused for consent.

X X X X

Sushila and her husband Kaptan did not give any history of assault when they came to the hospital on 30.4.14. There was no incised wound with a sharp edged weapon on the person of Sushila when she came to the hospital. Lacerated wound is not possible with a sharp edged weapon. There was only one injury on the person of Sushila. Sushila came to hospital s a OPD patient in casualty on 30.4.2014. Patient Balbir was accompanied by Krishan son of Hari Kishan. Sushila patient was not referred by me to higher centre for further management. She went of her own to other hospital. The possibility of injury on the person of Sushila by a fall from a height on hard surface cannot be ruled out.'

Further perusal of the testimony of PW5 reveals that on 01.05.2014, injured Sushila was admitted in Jindal Hospital, Hisar where she was treated and operated. This witness also opined that the nature of injuries may be obtained from Medical Board of GH, Hisar or PGIMS, Rohtak, but the injured was neither referred to Medical Board of GH, Hisar, nor to PGIMS, Rohtak. Therefore, it is the prosecution who is to be blamed for the same.

In view of facts and circumstances, discussed hereinabove, merely because the opinion given by Dr. Yashpal, who was examined as PW2, was not put to him during his deposition would not entitle the prosecution for moving the present application at such a belated stage. Since, the accused are not at fault, thus they can not be made to suffer any more by prolonging the trial.

In view of the testimony of PW-2 to the effect that injured Sushila did not give any history of assault on 30.04.2014, thus the judgment cited on behalf of the petitioner titled as '*Rakesh Kumar Vs. State of Punjab and another, 2013(7) RCR (Crl.)1501*' is not relevant and distinguishable to the facts of the present case.

In view of the above, this Court does not find any merit in the petition and the same is dismissed.

However, it is made clear that this order may not be construed as expression of an opinion on the merits of the case.

(MAHABIR SINGH SINDHU)
JUDGE

January 10, 2018

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No