

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2577 of 2016 (O&M)
Date of Decision: 15.03.2018

Brijesh
..... Petitioner
Versus
Sukhpal Kaur and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Rakesh Nagpal, Advocate for the petitioner.
Mr. Kanwaljit Singh Brar, Advocate for respondent No.1.
Mr. Vikas Malik, DAG, Haryana for respondent No.2.

MAHABIR SINGH SINDHU, J. (Oral)

The present petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') against the impugned judgment and order of conviction dated 16.07.2016, passed by learned Sessions Judge, Sirsa, vide which the petitioner has been convicted and sentenced under Sections 279 and 304-A of the Indian Penal Code (for short 'IPC') in the following terms:-

<i>Offence</i>	<i>Imprisonment</i>
<i>Section 279, IPC</i>	<i>To undergo rigorous imprisonment for a period of six months.</i>
<i>Section 304-A, IPC</i>	<i>To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/-. In default of payment of fine, to undergo rigorous imprisonment for a period of three months.</i>

It is contended by learned Counsel for the petitioner that now both the parties i.e. petitioner as well as respondent No.1-Sukhpal Kaur have settled the matter amicably and the petitioner has brought a demand draft No.506488 dated 20.02.2018 of ₹ 1,50,000/-, drawn in favour of respondent No.1-

Sukhpal Kaur and she has no objection in case the sentence, imposed upon the petitioner, is modified to the extent of already undergone.

Learned Counsel appearing on behalf of respondent No.1 has stated that he has the instructions to accept the amount of ₹ 1,50,000/- on behalf of respondent No.1 as full and final settlement and he will not be interested in opposing the present petition and for maintaining the sentence, imposed by learned Sessions Judge, Sirsa.

Heard both sides and perused the paper-book.

The prosecution was initiated in this case on the basis of the statement of complainant-Malkiat Singh (since deceased) to the effect that on 27.10.2009, he along with his wife-Sukhpal Kaur (respondent No.1) were coming back from Village Mageana to Sangriya on their motorcycle, driven by him and respondent No.1 was the pillion rider. It is further alleged that when they reached near Swant-Khera to Mangeana T-Point for crossing the G.T. Road then he saw that a Red Indigo Car was coming from Dabwali side and the same was driven at a fast speed as well as in a rash and negligent manner and the said Car hit the motorcycle. Consequently, he (since deceased) along with his wife (respondent No.1) fell down on the road and received injuries on account of the accident and thereafter, the driver of the Car fled away from the spot. It is further alleged that on account of the injuries suffered by both of them, they were brought to the Civil Hospital in an Ambulance and on the basis of his statement, formal FIR No.189 dated 28.10.2009, under Sections 279, 337, 338, 427 and 304-A, IPC, Police Station City Dabwali was registered.

It is necessary to mention here that complainant-Malkiat Singh died on 01.11.2009. The investigation was completed and charges under Sections

279, 337, 338 and 304-A, IPC were framed against the petitioner to which, he pleaded not guilty and claimed trial. The prosecution examined 09 witnesses including respondent No.1-Sukhpal Kaur as PW 1.

On the other hand, the convict-petitioner did not lead any evidence in his defence and while making statement under Section 313 Cr.P.C., claimed innocence.

After hearing both the sides and perusing the record, learned trial Court acquitted the petitioner by observing that *“the evidence led by the prosecution is highly insufficient and discrepant on the material aspects of the case. It is the bounden duty of the prosecution to prove its case against the accused present in the Court beyond the reasonable doubt. In the instant case, prosecution has failed to prove its case against the accused beyond reasonable doubt and so he is entitled to benefit of doubt. So, by extending the benefit of doubt to the accused, he is hereby acquitted of the charge leveled against him in this case.”*

Consequently, vide order dated 08.01.2014, learned trial Court acquitted the present petitioner.

Aggrieved against the judgment passed by learned trial Court, State did not file any appeal, but the present respondent No.1-Sukhpal Kaur preferred Criminal Appeal No.25 of 2014 and the same was allowed by learned Sessions Judge, Sirsa and set aside the judgment of acquittal dated 08.01.2014, passed by learned trial Court and convicted the petitioner under Sections 279 and 304-A, IPC and sentenced as mentioned above. Hence, the present revision.

Although the petitioner has filed the present revision under Section 401 of the Cr.P.C., but since he was acquitted by learned trial Court and as

such, this is akin to an appeal at his instance against conviction.

There is no dispute that both the parties have settled the dispute amicably, but since the offences are under Sections 279 and 304-A, IPC and as such the setting aside of the conviction is not justified on the basis of compromise. But in view of the fact that the matter has been settled amicably and respondent No.1 is more interested in accepting the amount of ₹ 1,50,000/- as compensation instead of insisting for confinement of the petitioner any more to undergo the sentence, as imposed by learned Sessions Judge, Sirsa.

Therefore, in view of the facts and circumstances, discussed hereinabove, this Court is fully convinced that ends of justice will be met in case the present petition be disposed off with a direction to pay the amount of ₹ 1,50,000/- as compensation to respondent No.1 and the sentence already undergone by the petitioner will be sufficient instead of further incarceration. Consequently, the conviction of the petitioner under Sections 279 and 304-A, IPC is upheld and the sentence is reduced to already undergone by him with a direction to pay the amount of ₹ 1,50,000/- as compensation to respondent No.1 and judgment and order of sentence dated 16.07.2016, passed by learned Sessions Judge, Sirsa is modified accordingly. Demand draft No.506488 dated 20.02.2018 of ₹ 1,50,000/-, drawn in favour of respondent No.1-Sukhpal Kaur has been received by learned Counsel for respondent No.1 and he undertakes to hand-over the same to respondent No.1-Sukhpal Kaur at the earliest.

Disposed off accordingly.

March 15, 2018

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes