

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2119-MA-2018(O&M)
Date of Order:17.09.2019

Gurdeep Singh

..Appellant

Versus

State of Punjab and others

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ankur Bansal, Advocate, for the appellant

ANIL KSHETARPAL, J.

CRM-34789-2018

Exemption allowed for the reasons stated in the application.

Main

Leave to appeal has been sought against judgment passed by learned Sessions Judge, Jalandhar, acquitting respondent-accused in criminal case arising out of FIR No.27 dated 19.02.2013, under Section 279/304-A IPC, Police Station Division No.6, Jalandhar, while deciding the appeal against conviction passed by Judicial Magistrate Ist Class, Jalandhar.

As per the case of the prosecution, Gurdeep Singh, first informant lodged this FIR by making a statement that his father Satnam Singh on 24.09.2012 had gone to Model Town Jalandhar, on his Eterno Scooter No.PB-08-BS-0467 in connection with some domestic work and he received a call at 7.00 PM that his father has met with an accident near Thind Hospital. He on receiving the information along with Abhijit Sharma reached Modern Hospital where nurse told him to take his father to Civil Hospital, Jalandhar, however, he took his father to Satyam Hospital,

Jalandhar where he succumbed to his injuries. First informant has informed that at this own level had made enquiry and has come to know that one Tempo Traveler No.PB-08-BG-2355, driven by a Sikh gentleman at a very high speed had hit against the scooter of his father due to which he fell down on the road and received injuries on his head. Name of the driver is Gurcharan Singh.

Prosecution in order to proves its case, examined PW1 Gurdeep Singh, PW2 HC Sukhdev Singh, PW3 HC Tarlochan Singh, PW4 Anil Khanna and PW5 Rajesh Kumar.

Statement of accused under Section 313 Cr.P.C. was recorded wherein all incriminating circumstances appearing against him in the prosecution evidence were put to him. He denied allegations of the prosecution and pleaded false implication. No defence evidence was led inspite of opportunity given.

Learned Judicial Magistrate convicted the respondent and sentenced him to undergo rigorous imprisonment for a period of 2 years with fine to the tune of Rs.3000/-, in default of payment of fine to further undergo simple imprisonment for a period of 10 days. Learned Judicial Magistrate also ordered payment of compensation to the tune of Rs. 1,00,000/-.

Learned Sessions Judge while hearing the appeal has recorded following reasons to hold that the prosecution has failed to bring home the guilt of the respondent:-

(1) Rajesh Kumar, who has been examined as PW5, although, claims himself to be eye witness of the occurrence but failed to satisfy the conscious of the court as his statement for the first time was recorded on

02.10.2012 i.e. after a period of 8 days. He in his cross examination has stated that son of the first informant in other words grand son of the deceased had taken him to police for recording his statement but son of first informant has not been examined in evidence.

(2) Rajesh Kumar while deposing before the court has not given out the vehicle number involved in the accident. Thus, the court has found that the prosecution has introduced this witness just to give support to the prosecution case. Still further as per the statement of Rajesh Kumar tempo traveler stopped at the spot and injured was put in the said tempo and taken to the hospital. However, strangely neither the driver was arrested nor Tempo Traveler was taken into possession from the spot or hospital. As per recovery memo Ex.P1 the offending vehicle was produced by one Vijay Pabbi, SDO(T) on 25.09.2012, however, statement of Vijay Pabbi was not recorded under Section 161 Cr.P.C. No record from BSNL department has been produced to prove the connection of the accused with the department or to prove that tempo traveler was being driven by the accused-respondent at the time of accident.

(3) Still further, first informant has stated that he named the alleged driver respondent herein on the basis of his enquiry from a fruit seller and a tea seller. However, neither the tea seller nor the fruit seller have been examined in evidence by the prosecution. No test identification parade was conducted.

(4) Even the Investigating Officer of the case or the doctor who conducted the post mortem examination of the dead body of Satnam Singh have not been examined.

Learned counsel for the petitioner submitted that Judicial

Magistrate had convicted the respondent after appreciating the evidence and therefore, the Court of Session was not correct in interfering with the findings of fact. He further submitted that from the evidence of Rajesh Kumar, involvement of the accused is established beyond shadow of reasonable doubt.

This court has considered the submissions.

Jurisdiction of the Court while hearing leave to appeal is limited. Let us examine the arguments of learned counsel for the appellant.

In the present case, learned Court of Session had taken a reasonable and plausible view. It is beyond any doubt that statement of Rajesh Kuamr, PW5 the alleged eye witness was recorded for the first time after a period of 8 days i.e on 02.10.2012. In cross examination he admit that he was taken to the police by grand son of the deceased, however, the aforesaid grand son has not been examined. Still further, it is the case of the first informant that he named respondent on the basis of enquiry from a tea seller and a fruit seller. However, none of them has been examined by the prosecution in order to prove its case.

As regards argument of learned counsel that Judicial Magistrate on appreciation of evidence has found that the guilt of accused is proved, it may be noted that the judgment passed by Judicial Magistrate has been set aside by the learned Court of Session on re-appreciation of evidence. On reading of the judgment passed by the Judicial Magistrate, it is apparent that the Judicial Magistrate did not go deep into the case. A judicial magistrate while adjudicating a criminal case is required to go deep into the matter and critically analyze the evidence led. The Magistrate cannot be expected to decide the criminal case in a cursory manner. It is the duty of the Judicial

Magistrate to examine the evidence in proper perspective and after critical appraisal thereof, return its findings. The prosecution is required to prove the guilt of the accused beyond shadow of reasonable doubt. The standard of proof required for proving prosecution case is stringent as compared to civil cases (where standard of proof required is preponderance of evidence). Hence, Judicial Magistrate was required to critically analyze the evidence led by the prosecution and after analytical analysis thereof, passed the order.

In these circumstances, this court does not find that this is a fit case for grant of leave to appeal.

Hence, dismissed.

17th September, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No