

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.28111 of 2017
and
Criminal Misc. No.A-1941-MA of 2017

.....

Date of decision:18.01.2019

State of Haryana

...Applicant

v.

Pawan Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anmol Malik, Assistant Advocate General, Haryana for the
applicant-State.

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Inderjit Singh, J.

Cr. Misc. No.28111 of 2017:

For the reasons mentioned in the criminal miscellaneous application, the delay of 210 days in filing the present appeal along with application seeking leave to appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-1941-MA of 2017:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Pawan Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 02.11.2016 passed by learned Additional Sessions Judge, Kurukshetra, whereby the appeal under Section 374 Cr.P.C. against judgment of conviction dated 28.10.2013 and order of sentence dated

28.10.2013 passed by the learned judicial Magistrate Ist Class, Kurukshetra, has been allowed and the accused-respondent has been acquitted of the charges as framed against him.

It has been mainly stated in the application that accompanying appeal is being filed against the impugned judgment dated 02.11.2016 passed by learned Additional Sessions Judge, Kurukshetra, which is likely to succeed on the grounds mentioned therein. It has been stated that the impugned judgment of the learned Court below is contrary to law and facts and the same is not sustainable in the eyes of law. It has been stated that the judgment of acquittal of the accused-respondent has caused grave miscarriage of justice. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that challan against the accused/ respondent has been presented by the Police of Police Station Sadar Thanesar, District Kurukshetra for the offences under Sections 279, 337 and 304-A IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Kurukshetra, in his judgment dated 28.10.2013 are as under:-

“The relevant facts leading to the prosecution case are that on 28.7.2007 complainant Rattan Kaur recorded her statement to the effect that she belongs to House No.1/1, Ram Nagar, Karnal and is house wife. Yesterday, on 27.5.2007 at 12.15 P.M., she and her husband Kulwant Singh were going on motorcycle bearing No.HR-05-K-7736 towards Kurukshetra via Gurudwara in Village Mandi. When they reached near Village

Bachgawa then a motorcyclist “later to know name of driver as Pawan Kumar son of Jai Ram, r/o Village Jhiver Heri” came from front side 'being driving his vehicle No.HR-07-F-3691 in a high speed and rash and negligent manner and occurred accident by direct hit to their motorcycle, as a result of that she and her husband fell down and she sustained injuries on forehead. Her husband sustained injuries with bleedings on head, left leg and other part of body. The passerby picked up them from the place of accident and got admitted them in LNJP hospital from where they were referred to PGI Chandigarh. Yesterday night at about 9/10 P.M. her husband was declared dead due to injuries. The accident was occurred by rash and negligent driving of Pawan Kumar and so action be initiated against him. On the basis of this statement, police proceeding was initiated. FIR was lodged. Investigation swung motion. Postmortem of deceased was conducted. Inquest report was prepared. During investigation, accidental vehicles took into police possession through recovery memo. Accused was arrested, produced before the Court and released on bail. On culmination of investigation, challan under Sections 279, 337 and 304-A Indian Penal Code against accused was put forward to the Court for trial.”

On finding a *prima facie* case, charges against accused were framed for the offences under Sections 279, 337 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 Daler Singh, PW-2 Savinder Singh, PW-3 Rattan Kaur, PW-4 ASI Seth Pal, PW-5 Shalender Kumar, PW-6 ASI Prem Chand, PW-7 ASI Sunil Dutt, PW-8 ASI Dharam Pal and PW-9 Girdwar Singh and closed its evidence.

At the close of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and confronted with the evidence of the prosecution, but he denied the correctness of the same and pleaded himself as innocent and stated that he has been falsely implicated in this case.

After appreciating the evidence, vide judgment dated 28.10.2013, the learned Judicial Magistrate Ist Class, Kurukshetra, convicted the accused for the offences under Sections 279, 337 and 304-A IPC and sentenced him to undergo imprisonment for six months and to pay a fine of ₹200/- for the offence under Section 279 IPC. He has also been sentenced to undergo rigorous imprisonment for six months and to pay a fine of ₹200/- for the offence under Section 337 IPC. He has also been sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- for the offence under Section 304-A IPC. In default of payment of fine, he was order to further undergo imprisonment for one month. However, all the sentences were ordered to run concurrently. Aggrieved from the judgment passed by the learned Judicial Magistrate Ist Class, Kurukshetra, the accused-convict filed an appeal before the learned Sessions Judge, Kurukshetra which was allowed vide impugned judgment dated 2.11.2016 passed by learned Additional Sessions Judge, Kurukshetra and acquitted the accused from the charges framed as against him.

Aggrieved from this impugned judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the applicant-State

I have heard learned counsel for the applicant-State and have gone through the record.

A perusal of the findings given by the learned first appellate Court shows that these are correct as per evidence and law. In no way, these findings can be held as perverse. The evidence has been appreciated in right and proper perspective by the learned first appellate Court. A perusal of the record shows that the accident took place at midnight at about 1.15 a.m. but Rattan Kaur is injured-complainant. The accident took place on head on collision with the two motorcycles. Both the motorcycles remained on the place of accident. Pawan Kumar is not owner of the motorcycle. He is not named in the FIR. The accident took place on 27.5.2007 and he was arrested on 15.6.2007. Rattan Kaur-complainant says that she came to know regarding the name of the accused later on. As per the record, one Devender Singh was found owner of the offending vehicle and he transferred the vehicle in the name of Balkar Singh. Pawan Kumar is neither related to Devender Singh nor to Balkar Singh. Neither Devender Singh nor Balkar Singh have been cited as witnesses by the prosecution. There is no evidence on record that the motorcycle was owned by Devender Singh or Balkar Singh had given it to Pawan Kumar on that day. The identity of the accused is not proved beyond doubt in this case. Secondly, it is also difficult to identify the driver of the motorcycle when at night time it is coming from front side. Furthermore, it is in the evidence that the

offending motorcycle was coming on its right side which means the motorcycle on which the deceased was there was on wrong side and there is evidence that at that time no other vehicle was there on the road. Rather, as per evidence, the road was wide enough and two vehicles could easily go side by side.

Therefore, in these facts and circumstances, the findings given by the learned first appellate Court are correct and as per evidence and law. Nothing has been pointed out as to which material evidence has been misread by the learned first appellate Court below and which material evidence has not been considered by the Court below.

From the perusal of the record, I find that a reasonable doubt exists in the prosecution version and the learned first appellate Court has rightly acquitted the accused-respondent. The findings have been given by the learned Additional Sessions Judge, Kurukshetra, after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (3) Cr.P.C. seeking leave to file appeal, the same is dismissed.

January 18, 2019.

(Inderjit Singh)
Judge

hsp

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