

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR-603-2019 (O&M)
Date of Decision: 12.3.2019

Balbir Singh

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Ravi Gakhar, Advocate, for the petitioner.

RAJ SHEKHAR ATTRI, J.

Notice of motion.

On the asking of this Court, Mr. V.G.Jauhar, Sr. DAG,
Punjab who is present in Court, accepts notice on behalf of State.

Through this petition, the petitioner has challenged order
dated 25.2.2019 and order dated 2.2.2019 passed by learned Special
Judge/Additional Sessions Judge, Fatehgarh Sahib.

Counsel for the petitioner submits that one last opportunity
may be granted to the petitioner to cross-examine the prosecutrix.

Heard.

While holding the criminal trial, a Judge has to take in mind
inter alia the following factors:-

(a) providing the fair trial;

(b) the role of the Judge while holding a criminal trial

So far as providing a fair trial is concerned, to the mind of
this Court, a fair trial is the heart of the criminal jurisprudence. It is well

settled that denial of fair trial is crucifixion of human rights. Equally, this is an integral part of a democratic polity which is governed by Rule of Law. It is ingrained in the concept of due process of law. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred.

A bare perusal of the zimni orders placed on the record transpires that though both the prosecutrix had been appearing on numerous dates but their cross-examination was not concluded without any cogent reason. Now the next date before the trial Court is 30.3.2019. However, denying the right to cross-examine is violation of the principle of natural justice and fair trial.

Hon'ble Apex Court in **Maneka Sanjay Gandhi and another v. Rani Jethmalani**, (1979) 4 SCC 167, though in a different context, observed:-

“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle

although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when- the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

Hon'ble Supreme Court in **Zahira Habibullah H. Sheikh and another v. State of Gujarat and others**, 2004 (2) RCR (Criminal) 836 has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial

calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

This Court is of the view that although opportunity of cross-examination was denied by the prosecution due to sheer fault of the petitioner and his counsel, yet for the purpose of fair trial and in the interest of justice, this Court is of the view that the petitioner be given one last opportunity to cross-examine both the prosecutrix.

In this view of the matter, the petitioner is granted last opportunity to cross-examine both the prosecutrix subject to costs of ₹ 10,000/- payable to each of the prosecutrix by way of bank draft. The petitioner shall appear before the trial court within seven days and move an application to summon both the prosecutrix and fix a date for recording evidence. In case the petitioner fails to appear before the trial court or fails to make costs, then this order shall automatically ceased to exist. The cross-examination be conducted continuously and on day to day basis.

On appearance of both the prosecutrix, the trial court shall hand over the draft of ₹ 10,000/- each of them.

Disposed of accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

March 12, 2019
Paritosh Kumar

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>