

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.3148 of 2018 (O&M)

Date of Decision: 22.01.2019

State of U.T., Chandigarh

..... Petitioner

Versus

Kala @ Ghodu

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Manish Jain, A.P.P., U.T., Chandigarh
for the petitioner.

Ms. Amarjit Kaur, Advocate for the respondent.

MAHABIR SINGH SINDHU, J.

CRM No.33081 of 2018

This is an application for condonation of 46 days' delay in filing the present revision petition.

For the reasons mentioned in the application, duly supported by an affidavit, the same is allowed. The delay of 46 days in filing the present revision petition is condoned.

MAIN CASE

Present revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) by the petitioner/prosecution for setting aside the impugned order dated 03.05.2018, passed by learned Additional Sessions Judge, Chandigarh, whereby, their application for declaring PW 2-Sachin Chauhan as hostile and to cross-examine him was rejected.

It is contended by learned Counsel for the prosecution that impugned order is not legally sustainable inasmuch as PW-2 has taken a

diametrically opposite stand during his cross-examination by the defence Counsel and thus, the same is adverse to the prosecution case. Consequently, he ought to have been declared hostile and put to cross-examination by prosecution also.

On the other hand, learned Counsel for the respondent/accused opposed the above contention and submitted that since PW-2 has fully supported the case of the prosecution during his examination-in-chief, therefore, there is no occasion to declare him hostile and cross-examine at the instance of the prosecution.

Heard learned Counsel for the parties and perused the record.

Paper-book reveals that initially, an FIR No.33 dated 03.02.2017, under Sections 307, 34 of the Indian Penal Code (*for short 'IPC'*), Police Station Sector 39, Chandigarh was registered on the statement of one Satyawan (PW-9) regarding the injuries suffered by his brother-in-law Ashok, who later on died in the PGIMER, Chandigarh and consequently, Section 302, IPC was added. During investigation, PW 2-Sachin Chauhan was associated and he made a statement that on 02.02.2017, when he was going to Village Dhanas via market of Sector 37, Chandigarh, then saw 5-6 boys near an Auto-rickshaw beating one boy. Some of them caught hold of the victim and the others were attacking with *Iron Rods* and *Slaggers*. On account of the incident, people gathered there and thereafter, all the accused fled away in an Auto-rickshaw. This witness noted the registration number of the said Auto-rickshaw as CH-04-L-8846, but could not intimate the police as he was not having any mobile phone.

Further transpires that during investigation, on 05.02.2017, PW-2

identified all the accused including respondent/accused-Kala @ Ghodu in the presence of Investigating Officer/PW 4-S.I. Naveen Kumar and consequently, they were arrested.

On 30.08.2017, this witness while appearing as PW-2 in his examination-in-chief, deposed as under:-

“ I do my private work for my livelihood. On 2.2.2017 at about between 9.00 to 9.30 pm, I was going from my house to Dhanas on my bike and when I reached near Batra Cinema, I saw that 5-6 boys were beating one person with rod and slagger. Two of the accused had caught the victim and the other were beating him. The victim being injured fell down on the ground. The people started gathering on the spot so all the accused persons ran away in auto no. CH 04 L 8846 driven by the accused present in the court. While running away, the said driver accused Kala asked the other accused to run away and he called accused by name Tarun and one another accused whose name at present I do not remember. At that time, I was not having any mobile phone with me, therefore, I could not make any call to the police. ”

Learned trial Court, after recording the above testimony, adjourned the case for further examination-in-chief of PW-2 on the ground that some connected matter has been received. Thereafter, on 22.09.2017, further examination-in-chief of this witness was recorded, wherein, he again fully supported the prosecution case, but on the request of learned defence Counsel, his cross-examination was deferred. Ultimately, on 03.05.2018, this witness was cross-examined by defence Counsel and while taking a contrary stand to the depositions, made on 30.08.2017 and 22.09.2017, stated as under:-

“ On 2.2.2017 at about 9.30 pm I was proceeding from my house situated in Sector-56, Chandigarh to Sector-37, Chandigarh.

When the occurrence had taken place, I was only 20-30 metres away from the scene. I do not remember if there was any light or it was dark at the place of occurrence. On the date of occurrence my eyesight was OK. At that time, I would not wear specs. At that time, members of public were passing through. I did not know any of the assailants. I did not even know the victim. I had come to know about names of the assailants from police. I am not able to identify the accused by the name of Kala @ Ghodu. Volunteer to state that on the date of occurrence, I had seen all the accused participating in the occurrence. It is correct that the accused wearing light blue check shirt and blue jeans was not present along with other accused at the place of occurrence. (The said accused on the asking of the court has disclosed his name as Kala @ Ghodu which is correct). I had not seen the accused Kala @ Ghodu in an auto rickshaw. ”

Considering the cross-examination of PW-2 against the interest of the prosecution case, on 03.05.2018 itself, an application was made by the Public Prosecutor before learned trial Court to declare him hostile and for cross-examination by the prosecution, but the same was rejected while passing the impugned order on the same day.

From perusal of depositions dated 30.08.2017, 22.09.2017 and 03.05.2018, it is apparently clear that during cross-examination by the defence, this witness has not deposed in consonance with the examination-in-chief, rather resiled and gone against the interest of the prosecution, *firstly*, while stating that he is not able to identify the respondent/accused and *secondly*, he had not seen him in the Auto-rickshaw. Thus, the stand taken by PW-2, in his cross-examination, can certainly be termed as detrimental and adverse to the prosecution case.

Moreover, learned trial Court has not denied this aspect of the

matter, but rejected the application of the prosecution merely on the premise that since during examination-in-chief, this witness has fully supported the prosecution case and if he has stated something averse in his cross-examination, which goes against the interest of the prosecution, then he cannot be declared as hostile in terms of Section 154 of the Indian Evidence Act, 1872 (*for short 'Act'*) as the right to cross-examination is available only to the defence to discredit the prosecution witness.

To decide the matter in controversy, it is necessary to have a glance at Section 154 of the Act and which reads as under:-

“ 154. Question by party to his own witness.—

(1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness. ”

Perusal of sub-section 1 of Section 154 clearly lays down that court may in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Thus, the scope of sub-section 1 is wide enough and the same cannot be confined even to cross-examination of the witness by the person, who is calling him/her, rather the Court may in its discretion allow to put 'any question(s)' to such a witness. At the same time, there is no doubt that discretion by the court is to be exercised judiciously and in view of the facts and circumstances of the given case.

It deserves to be mentioned here that in the present case merely permitting the prosecution to cross-examine PW-2 would not amount to an

adjudication by the trial Court regarding the veracity of this witness, rather that will help to bring the truth on record and that is the foremost object of a criminal trial. Although, the depart of this witness from his examination-in-chief, made on two occasions, may not be deliberate and can be for any other reason(s), but denying cross-examination to the prosecution would be negation of extracting truth from his mouth, which is *sine qua non* in such like case(s).

Thus, the reasoning adopted by learned trial Court, while passing the impugned order, is inherently *dehors* the contour of Section 154 of the Act and thus, legally indefensible.

Even the legal proposition, dealing with such a situation, is well settled by the Hon'ble Supreme Court in the judgment, reported as '**Dahyabhai Chhaganbhai Thakker Versus State of Gujarat**', (1964) 7 SCR 361 and the relevant part of paragraph 8 of which reads as under:-

“ Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of Section 154 of the Evidence Act to a particular stage

in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief. ”

In view of the above, this Court is of the firm opinion that PW-2 has resiled from his examination-in-chief during cross-examination by the defence, therefore, the impugned order, passed by learned trial Court, is not legally sustainable and the same deserves to be set aside. As a result thereof, the present revision petition is allowed and impugned order dated 03.05.2018, passed by learned Additional Sessions Judge, Chandigarh, is set aside. Consequently, the application of the prosecution is allowed and the prosecution would be permitted by learned trial Court to cross-examine PW 2-Sachin Chauhan at the earliest.

January 22, 2019

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes