

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1036-MA-2012 (O&M)

Reserved on: 10.05.2023

Date of Pronouncement: 25.05.2023

State of Punjab

...Applicant

vs.

Paramjit Singh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. M.S. Bajwa, DAG, Punjab.

Mr. H.P.S Ishar, Advocate
for the respondent.

N.S.Shekhawat J.

CRM-78187-2012

The applicant/State of Punjab has filed the present application under Section-5 of the Limitation Act for condonation of delay of 264 days in filing the application for leave to appeal.

For the reasons mentioned in the application, the same stands allowed and the delay of 264 days in filing the application is for leave to appeal is condoned.

CRM-A-1036-MA-2012

1. The present appeal is directed against the judgment dated 28.11.2011, passed by the Court of learned JMIC, Jalandhar, whereby the respondent is acquitted of the charge under Sections 279, 304-A of IPC by the learned Trial Court.

2. As per the story of the prosecution, the criminal law was set into motion on the basis of the statement made by Dr. Jaswinder Singh,

complainant, who alleged that at about 08:00 AM on 10.11.2004, he was present at BSF Chowk and was waiting for his father-in-law Dhanpat Rai. Dhanpat Rai alighted from the bus at the said chowk and was coming towards him and in the meantime, one truck bearing registration No.PB-04-F-9998 started moving back at a high speed and without blowing the horn. The said truck, driven by Paramjit Singh, respondent, crushed his father-in-law Dhanpat Rai under the tyres of the said truck by driving truck rashly and negligently backwards. Paramjit Singh tried to flee away from the place of incident, but he was apprehended by him with the help of other persons assembled there and a ruqa was sent to the police station and the FIR was formally recorded in this regard.

3. At this stage, it requires mention that vide the impugned judgment of conviction and order of sentence dated 08.07.2010, passed by the Court of Judicial Magistrate Ist Class, Jalandhar, the respondent was convicted under Sections 279 IPC and 304-A IPC and was sentenced as under:-

Respondent Paramjit Singh

Under Section 279 IPC	To under rigorous imprisonment for a period of six months.
Under Section 304-A IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000,-/. In default of payment of fine, he shall further undergo rigorous imprisonment for three months.

4. However, the respondent filed an appeal before the learned Additional Sessions Judge, Jalandhar and vide the judgment dated 09.12.2010, the Court of learned Additional Sessions Judge, Jalandhar set aside the

judgment and order passed by the learned Trial Court and the case was remanded back to the learned Trial Court with a direction to re-decide the same after affording sufficient and reasonable opportunity to the respondent/accused to cross-examine the PW-1 Dr. Jaswinder Singh by recalling him. Learned Appellate Court held that it is the statutory right of the accused to test the veracity of a witness by availing of his right to cross-examine a witness, as per the requirement of Section 138 of the Indian Evidence Act. However, the opportunity to cross-examine PW-1 Dr. Jaswinder Singh was not afforded to the accused, consequently, it was remanded back with a direction to the learned Trial Court to allow the accused to cross-examine the PW-1, Dr. Jaswinder Singh. Thereafter, the matter was again decided and vide the impugned judgment dated 28.11.2011, the learned Trial Court acquitted the respondent.

5. I have heard the learned counsel for the parties and with their able assistance, I have carefully perused the Trial Court record.

6. Learned State counsel has assailed the findings recorded by the learned Trial Court on the ground that the learned Court had failed to interpret the provisions of Section 33 of the Indian Evidence Act correctly. Learned State counsel submitted that the evidence given by a witness in a judicial proceedings can be read at a later stage of the same judicial proceedings, if the witnesses cannot be found. In the instant case, the testimony of PW-1, Dr. Jaswinder Singh was recorded on 10.03.2006 by the Trial Court and the same should have been considered by the learned Trial Court at the time of delivering the present impugned judgment. Apart from that, after the recording

of the statement of PW-1 Dr. Jaswinder Singh, respondent was granted due opportunity to cross-examine the said witness, but he failed to do so. Thus, the impugned judgment is illegal and unsustainable. The submissions made by the learned State counsel have been vehemently opposed by the learned counsel for the respondent by submitting that the case was remanded back by the learned Ist Appellate Court with a specific direction to allow the respondent/accused to cross-examine the PW-1, Dr. Jaswinder Singh. The case remained pending for several dates and despite repeated adjournments PW-1 Dr. Jaswinder Singh, complainant did not appear at all. Consequently, the learned Trial Court has correctly ignored the testimony of PW-1, Dr. Jaswinder Singh and the impugned judgment is legally sustainable.

7. After hearing the submissions made by both the sides, this Court is of the considered opinion that the arguments raised by learned State counsel are without any merit. Vide the judgment dated 09.12.2010, the Court of learned Additional Sessions Judge, Jalandhar observed that there was zimni order dated 10.03.2006, passed by the learned Judicial Magistrate, from which it is evident that it was a cryptic order and no effective opportunity was granted to respondent/accused to cross-examine the PW-1 Dr. Jaswinder Singh and the statutory right of the accused to test the veracity of a witness by availing his right to cross-examine, was violated. Thus, the case was remanded back to the learned Trial Court with a direction to re-decide it after affording an opportunity to cross-examine the PW-1 Dr. Jaswinder Singh by the accused. The matter was repeatedly adjourned and despite coercive process, PW-1 did not offer himself for the cross-examination and his testimony was liable to be

rejected.

8. Learned State counsel also referred to the provisions of Section 33 of the Evidence Act, which will not be attracted in the peculiar facts of the instant case. Section 138 of the Indian Evidence Act, lays down the manner of examining a particular witness and creates three distinct rights viz., examination-in-chief, cross-examination and re-examination so far as the examination of a witness is concerned. The right of cross-examination available to an opposite party is a distinct and independent right. When this right to cross-examine a witness is not granted to an accused and thereafter the said witness is not made available for cross-examination, the evidence of such a witness is inadmissible in evidence. Consequently, in the given facts and circumstances of the present case, the provisions of Section 138 of the Indian Evidence Act would be applicable and not Section 33 of the Evidence Act and the submission made by learned State counsel sans merit.

9. The prosecution had examined PW-1 Dr. Jaswinder Singh in support of the charge, however, since the said witness was not available for cross-examination, his testimony would be inadmissible in evidence. Similarly, another witness PW-3 Sewa Singh, an eye witness also supported the case of the prosecution in examination-in-chief to some extent, however, in cross-examination he stated that he had seen the accused at the spot but he could not recognize him, and the accused present in the Court was not the same person. Consequently, the testimony of such a witness was of no help to the case of the prosecution. Apart from that, no other eye-witness to the occurrence was examined by the prosecution.

10. Apart from that, the State of Punjab has preferred the instant appeal against the judgment of acquittal passed by the learned Trial Court on 28.11.2011. The Hon'ble Supreme Court as well as this Court have held in a number of judgments that if on appraisal of the evidence and on considering the relevant attending circumstances, it is found that two views are possible, one is held by the Trial Court for acquitting the accused and the other for convicting the accused, in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the Trial Court. Unless, the High Court comes to the conclusion that the Trial Court had overlooked the evidence or the view taken by the Trial Court was found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the judgment of acquittal passed by the Trial Court.

11. Having regard to the entire evidence discussed above and having carefully and closely considered the judgment passed by the learned Trial Court, it appears that the view taken by the learned Trial Court was reasonable and plausible and the impugned judgment does not suffer from any perversity and illegality. Thus, the impugned judgment dated 28.11.2011, passed by the Court of learned JMIC, Jalandhar is ordered to be upheld and the appeal is accordingly dismissed.

12. All pending applications, if any, are also disposed off, accordingly. The Trial Court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

25.05.2023
hitesh

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