

289 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRR-1796-2022 (O&M)
Date of Decision: 02.06.2023**

Jasvir Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Kanwaljeet Singh Brar, Advocate for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER J.

1. Petitioner (Jasvir Singh) has filed the present revision petition challenging judgment dated 01.06.2022 passed by the Court of Sessions Judge, Faridkot, whereby the Court has set aside the impugned judgment of conviction and order of sentence dated 06.01.2020 passed by the Court of Additional Chief Judicial Magistrate, Faridkot against the petitioner and has remanded the case to the trial Court to summon Assistant Sub Inspector Kuldeep Singh (PW-1) for the purpose of his remaining examination-in-chief and cross-examination and after his cross-examination, to decide the case afresh.

2. Briefly, a case FIR No.103 dated 02.08.2018 was registered against the petitioner herein under Sections 279, 304-A and 427 of the Indian Penal Code, registered at Police Station Sadar Faridkot on the complaint of one Daljit Singh s/o Gurdial Singh, who stated that on 02.08.2018, the complainant along with one Inderdeep Singh s/o Jagsir Singh r/o Village Chahal were present outside their Village, talking to each other and it was about 05:10 P.M., when Bikkar Singh s/o Mangtu r/o Village Chahal came on a motorcycle (Hero Honda) bearing registration No.PB-04-G-4857 from the side of Village Chahal to Faridkot and when he reached at the

bridge/flyover outside Village Chahal, a bus belonging to P.R.T.C., bearing registration No.PB-65-F-1451, being driven by an unknown driver in a rash and negligent manner, came at a high speed and without blowing any horn, ran over Bikkar Singh and dragged him up to some distance. As per the complainant, upon their raising hue and cry, the aforesaid driver stopped the bus and they pulled Bikkar Singh out from under the rear tyres of the bus and he was taken to the Guru Gobind Singh Medical Care and Hospital, Faridkot, however, while undergoing the treatment, Bikkar Singh succumbed to the injuries. The motorcycle of Bikkar Singh was also badly damaged. Accordingly, the aforesaid FIR was registered.

3. On 03.08.2018, the present petitioner (Jasvir Singh) s/o Bikkar Singh, Village Darolli Bhai Ki, District Moga was apprehended and after completion of investigation, the challan was presented against him and subsequently, he was charge-sheeted under Sections 279, 304-A and 427 of the Indian Penal Code, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the following witnesses:-

1.	<i>Dhanjit Singh</i>	<i>PW-10</i>
2.	<i>Inderdeep Singh</i>	<i>PW-5</i>
3.	<i>Sukhwinder Singh</i>	<i>PW-6</i>
4.	<i>Dr. Harvinder Singh Chhabra</i>	<i>PW-12</i>
5.	<i>Assistant Sub Inspector Kuldeep Singh</i>	<i>PW-1</i>
6.	<i>Head Constable Raj Singh</i>	<i>PW-2</i>
7.	<i>C Manpreet Singh</i>	<i>PW-3</i>
8.	<i>Head Constable Subhash Kumar</i>	<i>PW-7</i>
9.	<i>Head Constable Karam Singh</i>	<i>PW-7</i>

10.	<i>Inspector Parminder Singh</i>	<i>PW-8</i>
11.	<i>Assistant Sub Inspector Gurmeet Singh</i>	<i>PW-9</i>
12.	<i>Jugraj Singh</i>	<i>PW-4</i>
13.	<i>Kuldeep Singh, Clerk, Office of R.T.A., S.A.S. Nagar, Mohali</i>	<i>PW-11</i>

5. It is apposite to state here that the witness Inspector/Station House Officer Inderjit Singh and Assistant Sub Inspector Wakil Singh were given up by the State, being unnecessary. Upon closure of evidence by the prosecution, statement of accused Jasvir Singh (petitioner) was recorded under Section 313 of the Code of Criminal Procedure, wherein he denied all the allegations levelled against him and pleaded false implication. No defence was lead by the accused in his defence.

6. After considering the evidence/material on the file, the trial Court vide its judgment dated 06.01.2020 convicted the accused/petitioner for the offences under Sections 279 and 304-A of the Indian Penal Code. Vide separate order of even date, the accused/petitioner was sentenced as under:-

<i>Offence u/s</i>	<i>Imprisonment</i>
<i>304-A of the Indian Penal Code</i>	<i>Rigorous imprisonment for a period of two years along with payment of fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of sixty days.</i>
<i>279 of the Indian Penal Code</i>	<i>Rigorous imprisonment for a period of six months.</i>

7. Being dissatisfied with the aforesaid judgment of conviction and order of sentence dated 06.01.2020 passed by the trial Court, the petitioner herein preferred an appeal before the Court of Sessions Judge,

Faridkot.

8. The Court of Sessions Judge, Faridkot, vide its impugned order dated 01.06.2022, set aside the aforesaid judgment of conviction and order of sentence dated 06.01.2020 and further remanded the case to the trial Court with a direction to summon Assistant Sub Inspector Kuldeep Singh as PW-1 for the purpose of his remaining examination-in-chief and cross-examination and after conducting the same, to decide the case afresh, by holding as under:-

“ - x - x -

10. *During the course of arguments, main contention of learned counsel for the accused is that learned trial court has erred in passing the judgment. PW1 Kuldeep Singh, who conducted investigation in this case was examined in chief in part on 29.01.2019 and he failed to appear again in the court for his remaining examination-in-chief and cross-examination. However, the documents proved by him were put to the accused while recording his statement under Section 313 Cr.P.C. and evidence of PW1 Kuldeep Singh, Investigating Officer is also discussed by the learned trial court in the judgment and great prejudice is caused to the accused because Kuldeep Singh ASI is not subjected to cross examination.*

11. *Learned Additional Public Prosecutor conceded that as per the record of learned trial court, ASI Kuldeep Singh is partly examined in chief and his further examination in chief was deferred on 29.01.2019 and thereafter he did not appear in the court.*

12. *Record of the learned trial court reveals that examination in chief of PW1 Kuldeep Singh was recorded on 29.01.2019 and his further examination in chief was deferred for want of case property. Perusal of subsequent interim orders/zimny orders i.e. 15.02.2019, 26.02.2019, 07.03.2019, 26.03.2019, 10.04.2019, 01.05.2019, 31.05.2019, 02.07.2019,*

16.07.2019, 08.08.2019, 30.08.2019, 13.09.2019 and 30.09.2019 reveals that summons to PW1 Kuldeep Singh were not issued. Neither any effort was made by the learned trial court to procure his presence throughailable warrants or any other coercive means of service. Although he was bound down on 29.01.2019 for 15.02.2019. The record of the learned trial court reveals that the documents proved by PW1 Kuldeep Singh in examination-in-chief were put to the accused while recording his statement under Section 313 Cr.P.C. and for the purpose of passing the judgment of conviction his evidence is relied upon by the learned trial court and is discussed in para No. 18 of the impugned judgment, which is reproduced as under

"Then, the prosecution examined ASI Kuldeep Singh as PW1, who counted down the steps taken during the investigation and proved medical ruqa as Ex P1, statement of the complainant Dhanjit Singh as Ex.P2, ruqa as Ex.P3, FIR as Ex.P4, recovery memo of offending bus bearing registration No. PB65-F-1451 as Ex.P5, recovery memo of ill fated motorcycle make Hero Honda bearing registration No.PB04-G-4857 as Ex.P6, site plan as Ex.P7, recovery memo of blood stained clothes as Ex.P8, arrest memo of the accused Jasvir Singh as Ex.P9, personal search memo as Ex.P10, recovery memo of driving licence Ex.PA of the accused Jasvir Singh as Ex.P11, memo for calling counsel as Ex.P12, application for conducting postmortem examination of deceased Bikkar Singh as Ex.P13, recovery memo of RC of bus bearing No. PB65-F-1451 as Ex.PB, permit as Ex.PC, duty roaster as Ex.PD and yard control register as Ex.PE, recovery memo of driving licence of deceased Bikkar Singh Ex.PF and RC of the ill fated motor cycle bearing No. PB04-G-4857 Ex.PG as Ex.PH."

13. Since PW1 ASI Kuldeep Singh is not subjected to cross examine any document proved by him or his oral testimony could not have been read on record against the accused because the examination of the witness means examined in

chief as well as cross examination. By not calling Kuldeep Singh for the purpose of cross examination by the defence counsel, great prejudice is caused to the accused as the documents and examination in chief of the witness is read against the accused without giving opportunity to the accused to conduct cross examination of this witness. However, acquittal of accused on this sole ground by way of setting aside the judgment of learned trial court would amount to cause injustice to the victim i.e. complainant Dhanjit Singh, PW10 as well as deceased Bikkar Singh.

14. Therefore, in view of the above discussion and in the interest of justice, impugned judgment of conviction and order of sentence is set aside and the case is remanded to the learned trial court with a direction to summon ASI Kuldeep Singh PW1 for the purpose of his remaining examination in chief and cross examination and after conducting his cross examination, to decide the case afresh. Accused is directed to appear before the learned trial court on 06.06.2022. Appeal stands decided accordingly. Copy of this judgment be placed on the record of learned trial court and the record of learned trial court be returned. Appeal file be consigned to record room.”

9. Learned counsel for the petitioner submits that the lower Appellate Court has erred in law in passing the aforesaid impugned judgment dated 01.06.2022. It is contended that PW-1 (Assistant Sub Inspector Kuldeep Singh) had appeared before the trial Court on 29.01.2019 but thereafter he did not appear despite availing thirteen effective opportunities, following which, his remaining examination-in-chief and cross-examination could not be recorded. It is thus contended that when the judgment of conviction and order of sentence passed by the trial Court was set aside, the petitioner ought to have been acquitted by the trial Court and there was no occasion for the lower Appellate Court to remand the case. It is

submitted that Assistant Sub Inspector Kuldeep Singh, who is the Investigating Officer of this case, is not examined properly by the trial Court and there was no independent witness, which was examined by the prosecution. Accordingly, it is submitted that the present revision petition be allowed and by setting aside the impugned judgment dated 01.06.2022 passed by the Court of Sessions Judge, Faridkot, the petitioner be acquitted of the charges framed against him.

10. On the other hand, learned State counsel has supported the judgment passed by the Lower Appellate Court by submitting that the Court has rightly passed the said judgment, after considering the material available on record and finding that examination-in-chief and cross-examination of the Assistant Sub Inspector Kuldeep Singh (PW-1) was required inasmuch as the lower Appellate Court after perusing the zimni orders of various dates itself came to the conclusion that the summons to PW-1 (Assistant Sub Inspector Kuldeep Singh) were not issued and neither any effort was made by the trial Court to procure his presence either throughailable warrants or any other coercive means of service.

11. Learned State counsel has further submitted that the documents proved by PW-1 Assistant Sub Inspector Kuldeep Singh in examination-in-chief and cross-examination were put to the accused/petitioner while recording his statement under Section 313 of the Code of Criminal Procedure and for the purpose of passing the judgment of conviction, his evidence was relied upon by the trial Court.

12. Learned State counsel submits that PW-1 (Assistant Sub Inspector Kuldeep Singh) was not subjected to cross-examination regarding any documents proved by the accused/petitioner and no prejudice was caused to accused/petitioner. Accordingly, impugned judgment dated

01.06.2022 passed by the Court of Sessions Judge, Faridkot does not suffer from any infirmity and no interference is called for in the same. Hence, prayer for dismissal of the present revision petition has been made.

13. I have heard learned counsel for the parties and perused the paper book with their able assistance.

14. A perusal of judgment dated 06.01.2020 passed by the Court of Additional Chief Judicial Magistrate, Faridkot would manifest that while passing the judgment of conviction and order of sentence, the Court has referred to evidence of PW-1 (Assistant Sub Inspector Kuldeep Singh) and also to the various documents (exhibits) which were tendered in evidence at the behest of PW-1, which along with other evidence available on record, found the basis of conclusion arrived at by the trial Court that the petitioner/accused (Jasvir Singh) drove the P.R.T.C. bus bearing registration No.PB-65-F-1451 in a rash and negligent manner, endangering the life and personal safety of the passengers, and thereby hitting the motorcycle (Hero Honda) bearing registration No.PB-04-G-4857, being driven by Bikkar Singh, resulting into his death amounting to culpable homicide.

15. Before the Lower Appellate Court, one of the main contentions raised by the counsel for petitioner/accused was that the trial Court had erred in passing its judgment dated 06.01.2020 as PW-1 (Assistant Sub Inspector Kuldeep Singh), who conducted the investigation in this case, was examined-in-chief in part on 29.01.2019 and thereafter, he failed to appear for his remaining examination-in-chief and cross-examination. Further contention was raised that the documents proved by him (PW-1) were put to the accused while recording the statement under Section 313 of the Code of Criminal Procedure and evidence of PW-1 (Kuldeep Singh, Investigating Officer) has also been discussed in the judgment dated 06.01.2020, however,

he was not subjected to cross-examination by the petitioner/accused, which has caused great prejudice to the petitioner/accused. Thus, considering the totality of facts and circumstances and specifically the arguments raised by the petitioner before the Lower Appellate Court, the said Court came to the conclusion to remand the case to the trial Court with a direction to summon Assistant Sub Inspector Kuldeep Singh for the purpose of his remaining examination-in-chief and cross-examination and thereafter to decide the case afresh.

16. Here, it would be apposite to refer to Sections 374 and 386 of the Code of Criminal Procedure, which read as under:

“Section 374.- Appeals from convictions-

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court. (3) Save as otherwise provided in sub-section (2), any person,- (a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or (b) sentenced under section 325, or (c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session. (4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or Section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Section 386.- Powers of the Appellate Court-

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re- tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict

greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

17. While considering the aforesaid provisions contained in Sections 374 and 386 of the Code of Criminal Procedure, Hon'ble Apex Court in the case of **“P.Ramesh Vs. State Rep. by Inspector of Police”, 2019(3) R.C.R. (Criminal) 871**, held as under: -

“17. We are mindful of the fact that the decision of the High Court was in an appeal preferred by the accused. In such a situation it is necessary to discuss the scope of the High Court's powers in an appeal filed against conviction. Section 374 of the CrPC provides for appeals against convictions and allows any person convicted by a Sessions Judge or an Additional Sessions Judge to appeal before the High Court. section 386 of the CrPC, 1973 defines the powers of the Appellate Court while disposing of an appeal against an order of conviction or acquittal. The power under this section is not unlimited. The provision is to be taken as giving the power to do only that which the lower court could and should have done in a criminal case.

*18. A three judge Bench decision of this Court in **Mohd. Hussain v. State (Govt of NCT of Delhi), 2013(1) RCR (Criminal) 927 : (2012) 9 SCC 408** while dealing with the powers of the Appellate Court to order a retrial under section 386(b) of the CrPC, 1973 held thus:*

“41. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes

indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked.”

18. It is well settled that denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. It is further well settled that justice should not only be done but should be seem to have been done.

19. When the facts of this case are considered along with the aforementioned legal position, this Court does not find any illegality or perversity in the impugned judgment dated 01.06.2022 passed by the Court of Sessions Judge, Faridkot. In the present case, the lower Appellate Court in exercise of its appellate jurisdiction has remanded the case to the trial Court with a direction to summon PW-1 (Assistant Sub Inspector Kuldeep Singh) for the purpose of his remaining examination-in-chief and cross-examination to decide the case afresh. Undoubtedly, the petitioner herein would have the right to examine the aforesaid witness PW-1, once its evidence is recorded

by the trial Judge.

20. Thus, in view of the above discussion, this Court does not find any merit in the present revision petition and the same is accordingly dismissed.

21. All the pending application(s), if any, shall also stand closed.

02.06.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No