

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1034-2024 (O&M)

Decided on 21.05.2024

Parveen Vijan

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Luvinder Sofat, Advocate and
Mr. Vishal Mehta, Advocate for the petitioner

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment and order of conviction dated 30.07.2018 passed by SDJM, Jagraon and judgment dated 26.04.2024 whereby his appeal has been dismissed by the Addl. Sessions Judge, Ludhiana vide which the petitioner has been convicted and sentenced, *inter alia*, to undergo RI for 6 months under Section 279 IPC; RI for two years under Section 304-A; and RI for 1 year under Section 427 IPC in case FIR No.106 dated 27.07.2012 under Sections 279/304-A/427 IPC, registered at Police Station City Jagraon.

(2). Learned counsel for the petitioner contends that the prosecution has drastically failed to prove by leading evidence that the accident in the present case was caused by the petitioner and it is totally misreading of the evidence by both the courts below which clearly establish that the petitioner was nowhere involved in the accident inasmuch as the testimony of the complainant PW1 Baldev Singh, in his cross-examination, specifically stated that the petitioner has not caused the accident nor did he saw the petitioner at the time of occurrence.

(3). He further argued that the courts below failed to take into consideration the deposition of the eye-witness i.e. Ajaib Singh who also did not identify the petitioner and he specifically stated that he did not see the petitioner at the time of driving the offending vehicle. The courts below did not have a single evidence on file which could prove, in any manner, whatsoever that the petitioner was driving the offending vehicle.

(4). Heard learned counsel for the petitioner and gone through the case file.

(5). A perusal of the statement Ex.PA by Baldev Singh to the police would show that he specifically mentioned that after the occurrence, the driver of the offending vehicle bearing No.PB-10-DH-5734 came and disclosed his name to be Parveen Vijan – the petitioner and he also admitted his fault. As such, there cannot be any dispute with regard to the identity of the petitioner. Where is the question of identification parade or any evidence of such sort to prove involvement of the petitioner when the complainant himself has deposed that he identified the petitioner to be the one who was driving the fateful vehicle. Moreover, the identity of the petitioner duly stands proved by the cross-examination of PW3 Ajaib Singh and the complainant. However, the appellate court has rightly observed that the complainant as well as PW3 Ajaib Singh, subsequently reneging from their earlier stand in the cross-examination that the petitioner has not caused any accident, shows that the said witnesses have been won over by the petitioner.

(6). The trial court has specifically examined the evidence of the independent witnesses and came to the conclusion that the accident had taken place due to the rash and negligent driving of the petitioner, namely, Parveen

Vijan @ Sonu and since a categoric finding has been returned by both the courts below in regard to the petitioner's driving the fateful vehicle, the fact that one or the other witness could not identify the petitioner or that the accident had not been caused by the petitioner loses significance inasmuch as the courts below are to scrutinize the evidence of the witnesses, as a whole and assertion or deposition made by selective or secondary witness cannot override the prime evidence.

(7). The Supreme Court in **C. Muniappan and Others v. State of Tamil Nadu, 0 (2010) 9 SCC 567** held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. The relevant portion the said judgment reads as under:-

*“81. It is settled legal proposition that: (**Khuji** case, SCC p. 635, para 6)*

‘6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’

82. In **State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360** this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to

close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon...

83. *Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.*

84. *In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.*

85. *It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses...*

(8). It is thus settled principle of law that benefit of reasonable doubt is required to be given to the accused only if the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in- chief

cannot be outrightly discarded provided the same is corroborated from the other evidence on record. In other words, if the court finds from the two different statements made by the same accused, only one of the two is believable, and what has been stated in the cross-examination is false, even if the witnesses have turned hostile, the conviction can be recorded believing the testimony given by such witnesses in the examination-in- chief. However, such evidence is required to be examined with great caution as has been rightly done by the courts below in the present case.

(9). Dismissed.

21.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |