



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

CRM-A-288-2019 (O&M)
Date of Decision: 14.10.2024

Rajesh Kumar

...Appellant

vs.

State of Haryana and Anr.

...Respondents

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

Present : Mr. Rakesh Gupta, Advocate
 for the applicant/petitioner.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

CRM-2411-2019

1. The applicant/appellant has moved the instant application for condonation of delay of 88 days in filing the present appeal.
2. For the reasons mentioned in the application, the delay of 88 days in filing the present appeal is condoned.

CRM-A-288-2019

1. The applicant/appellant has moved the present application under Section 378 (3) for grant of leave to appeal against the impugned judgment dated 26.07.2018 passed by the Court of Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, whereby the respondent was ordered to be acquitted of the charge under Sections 279,337 and338 of IPC.
2. The FIR in the present case was registered on the basis of the statement made by Rajesh Kumar son of Maya Ram with the allegation that on 03.01.2016 at about 5:30 P.M., the complainant, his mother alongwith his uncle



Dila Ram were going to village Manglai, Distt. Ambala on motorcycle bearing registration No. HR02U-2034 and HR71C-7205. When they reached near village Bhambholi, one Car bearing registration No. HR54B-5855, driven in a rash and negligent manner at a very high speed coming from front side hit his motorcycle bearing registration No. HR02U-2034. Due to which, the complainant and his mother fell down on the road and sustained injuries. With these submissions, he prayed for taking the legal action against the accused.

3. After completion of the investigation, the challan was filed before the Trial Court and finding a prima facie case, charge under Sections 279,337,338 of IPC was ordered to be framed against the respondent No.2/accused.

4. To prove the allegations, the prosecution examined seven witnesses namely PW1 Dr. Dinesh Kaushik, PW2 ASI Hoshiyar Singh, PW3 ASI Ramesh, PW4 SI Rajender Kumar, PW5 Dila Ram, PW6 Rajesh Kumar and PW7 Hari Ram.

5. Learned counsel for the applicant/appellant submits that the impugned judgment is based on mis-appreciation of evidence and the settled law. There was sufficient evidence to show that the respondent No.2 was driving the vehicle in rash and negligent manner and caused serious as well as grievous hurt to the appellant. Even, no defence was led by the respondent and the impugned judgment is based on whims and fancies. He further contends that the impugned judgment is illegally unsustainable.

6. I have heard learned counsel for the applicant/appellant and perused the record.



7. In the present case, the whole prosecution case was based on the testimony of PW-6 Rajesh Kumar, who was the complainant as well as the injured in the present case. However, the Trial Court has rightly held that he had failed to prove the identity of the accused. He stated that on the date of incident, he was going with his mother on motorcycle and the car bearing registration No. No. HR54B-5855 came from the front side and had collided directly in the motorcycle. As a result of this, the complainant and his mother fell down and the complainant had sustained injuries. However, when he had fallen down, he became unconscious and he had seen the respondent in the hospital, when he was shifted to the hospital for treatment. PW-5, Dila Ram had also identified the accused for the first time in the Court itself. Apart from that, the prosecution had examined PW-6, Rajesh Kumar, complainant/injured and he clearly stated that it was 05:30 P.M on 03.01.2016 and it was dawn. He even did not see the occurrence nor the accused in the hospital. Still further, the prosecution could not lead any other evidence to prove the identity of the respondent. While recording the acquittal of the respondent, the Trial Court had made the following observations:-

“(i) First, the alleged accident took place at about 5:30 pm on dated 03.01.2016. Police official seek fitness opinion on 05.01.2016, but not recorded the statement of the complainant and thereafter he lodged the FIR after three days i.e. 06.01.2016. Further, no reason has been given by prosecution for such delay in lodging of FIR.

(ii) Second, the injured stated that the accused ran away from the spot and while running he had seen him. On the other hand, he stated that it was 5:30pm and due to winter on dated 03.01.2016, it



was dawn. Further, the witness stated that he had never seen the accused earlier. Further, it is alleged by PW6 that he had had seen the accused in the hospital. However, during his statement Ex. PW6/A before police, he never stated that he had seen the accused in hospital, when the occurrence was afresh in the mind of the injured and when the accused was the root cause for his admission in the hospital. If the injured had seen the accused in the hospital, non disclosure of this fact at the time of recording his statement before police creates a suspicion on the credibility of the witness.

(iii) Third, it is the version of the PW6 as well as PW5, that the offending vehicle colluded from front side, as a result the leg of injured had broken. The version of PW6 and PW5 is contradictory with mechanical examination report Ex. PW2/A. As per report, there is no mark in front side of motorcycle and no part of motorcycle broken from front side. Further, the collusion was not from front side. Further, the other independent witness was the mother of the complainant, who was with him at the time of accident and also sustained injuries as per the statement of the complainant but she was never examined by the prosecution for the best reason known to him.”

8. Even I have gone through the judgment passed by the Trial Court and finds no reason to overturn the same and the impugned judgment is based on correct appreciation of evidence and law.

9. It has been held by the Hon’ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite



*conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -***

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its



consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

10. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the Trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the trial Court.

11. Sequally, the application for leave to appeal sans merit and is accordingly ordered to be dismissed.

14.10.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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