



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

CRR-1321-2021

Reserved on 06.11.2024

Date of decision: 04.02.2025

State of UT Chandigarh Administration

...Petitioner

Versus

Deepak @ Totla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Ms. Simsi Dhir Malhotra, APP, UT, Chandigarh.
for the petitioner.

Mr. Amit Kumar Pawar, Advocate for respondent No.2.

KARAMJIT SINGH, J.

1. The instant revision petition has been filed by the prosecution against the order dated 12.08.2021, vide which the request made by the public prosecutor to declare PW-2 complainant Devinder Singh as an hostile witness is declined in a criminal case titled State Vs. Deepak and others having FIR No.110 dated 28.05.2019 under Sections 394, 411, 34 IPC, Police Station IT Park, Chandigarh.

2. The brief facts of the case are that complainant Devinder Singh reported to the police that on 28.05.2019 at about 3:45 AM, he hired one three wheeler from light point of Shastri Nagar to go to Tribune Chowk. Apart from the driver, three other boys were also there in the three wheeler. On the way, the driver of three wheeler turned it towards railway light point and after some time, one of the boy sat along with the complainant on the back seat. The complainant asked the driver that why he is going towards



railway light point. On this, the driver of three wheeler replied that they will go via railway light point. After some time, three wheeler was turned towards housing board colony. On this, the complainant raised alarm. Then the boy who was sitting along side the complainant took out knife like sharp object and attacked him while the other boys forcibly removed his wallet, passport of Sonia Gulati and Samsung J7 mobile phone of golden colour having dual sims No.9988449206 and 7707909841 from the side pocket of complainant. The wallet was having Rs.2500/-, voter card, pan card, aadhar card and driving licence and the said boys also gave beatings to the complainant and finally they had thrown out the complainant and fled away in the said three wheeler. On the basis of aforesaid statement of complainant, FIR was registered against the aforesaid unknown miscreants, on 28.05.2019.

3. During investigation, on 28.07.2019, the complainant joined investigation with the police, on the basis of secret information received with regard to movement of the persons who were involved in the incident of snatching dated 28.05.2019. Then the police laid naka in the area of Botanical Garden, Mullanpur Chowk on PGI Road and the vehicles moving on the road were checked. At about 3 PM, one three wheeler of green/yellow colour was seen coming from the side of Mullanpur Chowk and four young men were sitting in the said three wheeler. The three wheeler was stopped by the police officials. Four persons who were traveling in the said three wheeler were identified at the spot by the complainant to be the same persons who attacked and snatched wallet, mobile phone and other articles from him on 28.05.2019. The driver of the



three wheeler disclosed his name as Avinash @ Abhi son of Upinder. The boy sitting along side the driver on the front seat identified himself as Deepak @ Totla son of Ram Niwas. The third boy sitting on the rear seat disclosed his name as Vishawajeet @ Jeet son of Ladam and the fourth boy disclosed his name as Sunny son of Ram Lwot. The complainant disclosed to the police that at the time of occurrence, three wheeler was driven by the same driver namely Avinash @ Abhi, while he was attacked with knife by Deepak @ Totla while Sunny snatched his mobile phone and other articles and boy namely Vishwajeet @ Jeet, shut his mouth by keeping hand on it. The separate identification memo was prepared. On personal search of Vishwajeet, snatched mobile phone of the complainant was recovered from right pocket of his trouser, which was seized by the police vide separate memo. The driver of the three wheeler failed to produce any document with regard to its ownership. The said three wheeler was also taken into possession by the police vide separate memo. All the four accused were arrested at the spot. The aforesaid memos were signed by the complainant at the place of recovery.

4. During trial, complainant Devinder Singh appeared in the witness box as PW-2. He was examined in chief on 18.02.2020 and thereafter cross examined on 12.08.2021 by the defence counsel and on completion of the cross examination, the counsel appearing on behalf of UT Chandigarh made request to declare the witness hostile on the ground that he has resiled from his previous statements i.e. examination-in-chief as well as statement recorded under Section 161 Cr.P.C. The prosecution also made request to grant permission to cross examine the witness. The prayer was



opposed by the defence counsel, on the ground that now prosecution cannot be allowed to fill up the lacunae.

5. The learned trial Court gave opportunity of hearing to the counsel for the parties and finally, declined the request made by the counsel for UT Chandigarh and did not declare the witness hostile vide order dated 12.08.2021.

6. The prosecution being aggrieved by the aforesaid order dated 12.08.2021 has filed the present revision petition.

7. In response to the notice of motion, respondent No.2 Vishwajeet @ Jeet appeared through his counsel.

8. Counsel appearing on behalf of petitioner has *inter alia* submitted that PW-2 has tried to disown the prosecution case in the cross examination to support defence and thus, the prosecution had made request to the trial Court to declare the said witness hostile and to cross examine him. It has been further contended that the prosecution has got every right to cross examine its own witness (PW-2) under the provision of Section 154 of the Evidence Act, as certain statements made by him in his cross examination are going to damage the prosecution case.

9. On the other hand, counsel for respondent No.2 has contended that there is no illegality or perversity in the impugned order. It has been further contended that prosecution cannot be allowed to fill up the lacunae, after the witness has been cross examined by the defence counsel.

10. I have considered the submissions made by counsel for the parties.

11. The moot point involved in the present petition is whether a



witness can be declared hostile even at the stage of cross examination, if he does not support the party which called him.

12. The purpose of cross examination is to test the credibility of the witness in order to establish the truth of the case. Section 154 of Evidence Act allows a party, with the permission of the Court to cross examine his own witness in the same way as the adverse party. It is settled position of law that the witness can be declared hostile, if in his examination in chief, he does not support the party which called him. The prosecution is certainly entitled to seek declaration of his hostility with a permission to cross examine him. It is also settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine 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 that their version is found to be dependable on a careful scrutiny thereof, as has been held by the Hon'ble Supreme Court in ***C. Muniappan and others Vs. State of Tamil Nadu (2010) 9 SCC 567.***

13. It is noticeable that the Hon'ble Supreme Court in ***Dahyabhai Chhaganbhai Thakker vs State Of Gujarat AIR 1964 SC 1563*** observed as follows:-

“Ordinarily this, Court in exercise of its jurisdiction under [Art. 1.36](#) of the Constitution accepts the findings of fact arrived at by the High Court. But, after having gone through the judgments of the learned Additional Sessions Judge and the High Court, we are satisfied that this is an exceptional case to depart from the said practice. The learned Additional Sessions Judge rejected the evidence of the prosecution witnesses on the ground that their version was a subsequent development designed to belly the accused. The learned Judges of the High Court accepted their evidence for two different reasons. Raju, J., held that



a court can permit a party calling a witness to put questions under [s. 154](#) of the Evidence Act only in the examination-in-chief of the witness; for this conclusion, he has given the following two reasons:

(1) the wording of ss. 137 and 154 of the Evidence Act indicates it, and (2) if he is permitted to put questions in the nature of cross-examination at the stage of re-examination by the adverse party, the adverse party will have no chance of cross-examining the witness with reference to the answers given to the said questions. Neither of the two reasons, in our view, is tenable. [Section 137](#) of the Evidence Act gives only the three stages in the examination of a witness, namely, examination-in-chief, cross-examination and re-examination. This is a routine sequence in the examination of a witness. This has no relevance to the question when a party calling a witness can be permitted to put to him questions under [s. 154](#) of the Evidence Act:

that is governed by the provisions of [s. 154](#) of the said Act, which confers a discretionary power on the court to permit a person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. [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 [s. 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.



14. Further, in **Rammi @ Rameshwar Vs. State of Madhya Pradesh AIR 1999 Supreme Court 3544**, Hon'ble Supreme Court laid down as follows:-

“The very purpose of re-examination is to explain matters which have been brought down in cross-examination. [Section 138](#) of the Evidence Act outlines the amplitude of re-examination. It reads thus: Direction of re-examination.- The re- examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the Court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions.

A Public Prosecutor who is attentive during cross- examination cannot but be sensitive to discern which answer in cross-examination requires explanation. An efficient Public Prosecutor would gather up such answers falling from the mouth of a witness during cross-examination and formulate necessary questions to be put in re-examination. There is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination.”

15. In case, some doubt or ambiguity has crept in the statement during the cross examination of the witness by the adverse party, the same can be resolved through cross examination or re-examination, by the party which has called the said witness, as per the settled legal position as has been discussed



above. In case, the prosecution has made any such request to clarify the things by seeking permission to cross examine or re-examine its own witness, the same cannot be termed as filling up the lacunae in the prosecution case.

16. In the instant case, PW-2 Devinder Singh, while appearing in the witness box completely supported the case of prosecution in his examination-in-chief and supported the incident dated 28.05.2019 narrated in the FIR and he also supported the case of prosecution with regard to arrest of accused persons by the police, on the basis of his identification and the recoveries effected from the accused persons at the time of their arrest, on 28.07.2019. However, PW-2 Devinder Singh during his cross examination deviated from what he had stated in his examination in chief. In his cross examination, PW-2 stated that the accused were arrested by the police before he reached CIA staff, where the accused were shown to him and that he does not know the date. But the accused were arrested after about 1 year of the incident. He had gone to CIA staff on being informed telephonically that the accused were already arrested and he should identify them. When he reached CIA staff, there were four persons arrested by the police and at that time, all four of them were sitting in the verandha and he came to know about their names later on from the police. In his cross examination, PW-2 further stated that after recording his statement and prior to the arrest of the accused persons, he was called by the police at IT Park Police Station, twice to identify the boys who were already arrested, but he failed to tell the concerned dates on which he was so called. He further admitted in his cross examination that it being dark he could not identify the persons who boarded the auto rickshaw and sat besides him. He further admitted that after the incident, he had never seen the alleged auto



rickshaw.

17. As PW-2 Devinder Singh in his cross examination made certain statements which go against the case of prosecution, the counsel appearing on behalf of UT Chandigarh, immediately after the recording of cross examination made request to the trial Court that the witness be declared hostile and permission be given to the prosecution to cross examine him. However, the said request was declined by the trial Court.

18. Considering the factual and legal aspects of the case as are discussed above, this Court is of the view that the order dated 12.08.2021, vide which the request made by the public prosecutor to declare PW-2 Devinder Singh as an hostile witness was declined by the trial Court, is not legally sustainable and deserves to be set aside.

19. For the foregoing reasons, the present revision petition is allowed and impugned order dated 12.08.2021 passed by the learned trial Court is hereby set aside. Permission is granted to the prosecution to cross examine PW-2 even if he is already cross examined by the defence counsel. Thereafter, opportunity is to be given to the defence counsel to cross examine the witness on the answers elicited which do not find any place in the examination-in-chief. The parties are directed to appear before the trial Court on the date already fixed in trial.

20. Any observations made herein above is not to be construed as an expression of opinion on the merits of the case.

04.02.2025

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No