

(2015) 03 P&H CK 0146
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc. No. M-22047 of 2014

Manpreet Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2015) 03 P&H CK 0146

Hon'ble Judges : Tejinder Singh Dhindsa, J.

Bench : Single Bench

Advocate : Vaibhav Sehgal, for the Appellant; Mikhail Kad, Assistant Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—The petitioners herein are accused in criminal case arising out of FIR No. 106 dated 7.7.2013, under Sections 302, 201, 364, 34 of the Indian Penal Code, registered at Police Station Dehlon, District Ludhiana.

2. FIR was registered at the instance of complainant Kuldeep Singh and the deceased is his son, namely, Hardip Singh. After completion of investigation, challan was presented. Charges were framed against the accused, the present petitioners, under Sections 302, 201, 364, 34 of the Indian Penal Code, vide order dated 2.12.2013.

3. During the course of trial, the prosecution examined complainant Kuldeep Singh as PW3. Thereafter, he was cross-examined on 7.6.2014. It so transpires that on 7.6.2014 itself, after the cross-examination of Kuldeep Singh PW3 had been concluded, Additional PP made a request seeking permission to re-examine the witness. Such request has been acceded to by the trial Court vide order dated 9.6.2014.

4. The instant petition is directed against order dated 9.6.2014, Annexure P1,

passed by the learned Additional Sessions Judge, Ludhiana allowing the prayer of the prosecution to re-examine witness Kuldeep Singh.

5. Learned counsel appearing for the petitioners would vehemently argue that the prayer of the prosecution to re-examine PW3 Kuldeep Singh should not have been allowed vide impugned order dated 9.6.2014 as the entire objective of the prosecution was to only demolish the effect of cross-examination. It has been argued that even though under Section 311 of the Code of Criminal Procedure, the Court has the power to summon a witness for re-examination if it was essential for the just decision of the case, but such power could not have been exercised in the facts of the present case as the prosecution was clearly trying to demolish the statement of PW3 which had been made during the course of cross-examination.

6. Per contra, Mr. HS Gill, learned senior counsel appearing for the complainant/respondent No. 2 Kuldeep Singh, as also the learned State counsel would support the impugned order and argue that a witness can always be recalled to correct an error and the petitioners herein i.e. the accused would not suffer any prejudice, inasmuch as they would have ample opportunity to cross-examine the witness. In support of such contention, reliance has been placed upon the judgment of this Court in *State of Haryana v. Ram Parshad*, 2005(4) RCR (Criminal) 976.

7. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

8. Statements of PW3 Kuldeep Singh recorded in examination-in-chief and cross-examination before the trial Court have been placed on record and stand appended as Annexure P3 (Colly). In his examination-in-chief, PW3 stated that he was a permanent resident of Manila, Philippines. He was having two sons, namely, Hardip Singh and Gurmeet Singh. He used to come to his village during vacations and on 28.2.2013, his son Hardip Singh had also come to India. On 21.6.2013, he along with his wife Kamaljit Kaur and sons Hardip Singh and Gurmeet Singh was present in his house at village Duley. At about 3.30 p.m. Manpreet Singh @ Manna along with Boota Singh son of Balwinder Singh had come to the house and taken his son Hardip Singh on motorcycle bearing No. PB-10-DD-7798 Make Yamaha, red colour and thereafter his son had not returned back home. PW3 further stated that upon making enquiries as regards whereabouts of his son Hardip Singh, he found both Manpreet Singh and Boota Singh also missing from their houses since 21.6.2013. Further stated that Boota Singh and Manpreet Singh had taken away his son with an intention to kill him. Hardip Singh was having Rs. 50,000/- in cash and was also wearing one gold chain in his neck having mark "TC". PW3 in his statement recorded in examination-in-chief stated that on 14.7.2013, he had joined the police party headed by SI Swaran Singh of Police Station Dehlon. On that date, Boota Singh and Manpreet Singh @ Manna were already behind the bars in Police Station Dehlon. Both, Boota Singh and Manpreet Singh @ Manna were interrogated in his

presence and they admitted that on 21.6.2013 between 10.30 p.m. and 11.00 p.m. after having committed murder of Hardip Singh, they removed the number plates of motorcycle and had thrown Hardip Singh and his motorcycle in the canal opposite Gurudwara Phalahi Sahib. Both accused, Boota Singh and Manpreet Singh @ Manna had got recorded that they can get the dead body and the motorcycle recovered from the canal. Disclosure statements of Boota Singh and Manpreet Singh, Exhibits PC and PD respectively, were stated to have been recorded in the presence of complainant PW3. Further statement of PW3 in examination-in-chief is that on 15.7.2013, Boota Singh and Manpreet Singh @ Manna had led the Police Party at the disclosed place and upon their demarcation, divers were called to look for the dead body and motorcycle. The motorcycle was located and pulled out from the canal and from its dicky, RC bearing No.PB-10-DD-7798 was recovered which was in the name of wife of complainant PW3, namely, Kamaljit Kaur. PW3 is stated to have identified the motorcycle to be that of his son Hardip Singh on which both accused Boota Singh and Manpreet Singh @ Manna had accompanied his son when they started from the house. Motorcycle was stated to have been taken into police possession vide recovery memo, Exhibit PE, and identification memo which were signed by Head Constable Kuldip Singh and the complainant. Further, in examination-in-chief, PW3 Kuldip Singh stated that he had suffered a supplementary statement on 16.7.2013 regarding his son Hardip Singh having taken Rs. 50,000/- from his wife for the purpose of shopping and for going to Chandigarh and Shimla and that he was wearing one gold chain in his neck having marka "TC". He further stated that accused Boota Singh and Manpreet Singh @ Manna had killed his son Hardip Singh and taken away Rs. 50,000/- and gold chain. He further stated that he had come to know that Harvinder Singh @ Nikka son of Santokh Singh, resident of village Duley had also participated in the killing of his son. The other two accused, namely, Boota Singh and Manpreet Singh @ Manna had revealed such fact during their interrogation by the police. Supplementary statement was got recorded on 16.7.2013 as Exhibit PF. PW3 Kuldip Singh in his examination-in-chief further stated that after recording of the supplementary statement, SI Swaran Singh interrogated both Boota Singh and Manpreet Singh @ Manna on 16.7.2013 and the accused admitted to have given injection of heroin to his son Hardip Singh and after killing him had thrown his body in the canal. Accused were also stated to have admitted to have taken Rs. 50,000/- and the gold chain from the person of Hardip Singh, during the course of interrogation on 16.7.2013. As per examination-in-chief, PW3 had accompanied the police party to the houses of accused, Boota Singh and Manpreet Singh @ Manna on 16.7.2013 itself towards recovery of the currency notes and a sum of Rs. 16,800/- was recovered from the house of accused Manpreet Singh and Rs. 17,530/- from the house of Boota Singh.

9. In his cross-examination, PW3 Kuldip Singh had stated that he had not got his statement recorded on 15.7.2013. In his cross-examination, he stated that on 14.7.2013 he had gone to Police Station Dehlon and on that date itself i.e.

14.7.2013, recoveries of cash i.e. Rs. 16,800/- from the house of accused Manpreet and Rs. 17,530/- from the motor of Boota Singh had been effected and police had not joined any independent person at the time of recovery of such amount on 14.7.2013.

10. In the considered view of this Court, the two statements recorded of PW3 i.e. in examination-in-chief and cross-examination cannot be termed as ambiguous. Prima facie, both the statements on certain aspects are at variance and may not be reconciled with each other. Be that as it may, it can certainly not be held that a mere error or ambiguity has crept in so as to justify the calling of a witness for re-examination.

11. In *Jaswant Rai Vs. State of Punjab*, a coordinate Bench of this Court, while examining the power of the Court to summon a witness for re-examination, had observed as follows:

"In the present case, examination-in-chief of PW2 was completed. Part of his cross-examination was conducted on same date and thereafter his further cross-examination was deferred and was conducted on the adjourned date. However, examination-in-chief and cross-examination of PW3 were conducted on the same day. The said witnesses had given their statements. The Court is required to decide the case in terms of the statements made by the witnesses. In this regard, the witnesses i.e. PW2 and PW3 could not be re-summoned to tell the Court as to which part of their statement was correct i.e. examination-in-chief or the cross-examination. Examination-in-chief had been conducted by the public prosecutor and thereafter the witnesses were cross-examined by the defence counsel. At that stage, the public prosecutor had not sought the permission for re-examination of the witnesses. The trial Court cannot call the said witnesses for re-examination to seek their explanations qua the statements made by the witnesses before the said Court. The duty lies with the Court to analyze the statements of PW2 and PW3 and thereafter decide case in accordance with law. However, the trial Court fell in error in obtaining the summoning of PW2 and PW3 for re-examination for rendering explanation qua their statements. 12. Insofar as the judgment rendered by this Court in *Ram Parshad* (supra) is concerned, the same would have no applicability to the facts of the present case. In the case of *Ram Parshad* (supra), directions had been issued to re-examine PW3 by observing that the time of occurrence stated by the witness as 7.00 p.m. as opposed to 7.00 a.m. would be seen as an error and a witness could be recalled to correct an error because to err is human.

13. Adverting back to the facts of the present case, statement of PW3 recorded in examination-in-chief as opposed to his cross-examination would reflect a chain and sequence of events which may be seen at variance with each other and not merely as an error.

14. For the reasons recorded above, present petition is allowed. Impugned order dated 9.6.2014, Annexure P1, is set aside.

15. It is clarified that the observations made in this order shall not be construed as an expression of opinion on the merits of the case and the trial Court would proceed to analyse the deposition of PW3 independently of anything that may have been observed in the present order and to decide the case in accordance with law.

16. Petition allowed.