
(2008) 05 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 21-MA of 2007

State of U.T. Chandigarh

APPELLANT

Vs

Nachhattar Singh

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 482
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2008) 4 RCR(Criminal) 216

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : Sukant Gupta, for the Appellant; Aman Gurbir Singh Dhillon, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This petition u/s 378(1)(b) and (3) read with Section 482 of the Code of Criminal Procedure has been moved for grant of special leave to appeal from the order of acquittal dated 18.9.2006 passed by the Judicial Magistrate Ist Class, Chandigarh.

2. The accused-respondent was charged and tried under Sections 279/304-A, IPC on the allegation that on 27th October 1988 information was received in the Police Station with regard to an accident. On receipt of said information, Sub Inspector Kuldeep Singh alongwith other police officials immediately rushed to the spot, where complainant - Surinder Kumar met him and got recorded his statement sating that he was working as Lab Technician in DHS, Sector-34, Chandigarh. On 27.10.1998, he was coming to his house along with his sister-in-law- Charanjit Kaur, who happened to be working in the same office as Clerk, on his scooter bearing No. CH-01-M-9865. At about 5.15 PM. When while going towards the barrier of Sector 45/46 on the dividing road of Sector 45 and colony No. 5, he was crossing truck No. HR-05-7045 which was parked on the left side of the road, meanwhile a Bus hit his scooter. As a result thereof, he fell on the

road and Charanjit Kaur, who was a pillion rider, had also fallen on the ground and the scooter was also broken into pieces. The driver of the Bus took away the Bus after crushing Charanjit Kaur. He stopped the Bus after covering some distance. Thereafter complainant noted down the number of Bus as PB-11-F-9576 and identity of the driver as the accused above named. Charanjit Kaur breathed her last on the spot.

3. The prosecution examined Dr. Urvashi Sharma as PW-1 to prove the post-mortem report. The complainant was examined as PW-2, who supported the prosecution version. The other witnesses produced by the prosecution in the witness box were formal witnesses.

4. In defence, Mohan Singh, drover of PRTC, District Sangrur, was examined as DW-1, who proved the factum of accident being an eyewitness. According to his evidence, it was proved that the fault for this accident was of the complainant, who hit the scooter with the bus.

5. The learned trial Court, on appreciation of evidence on record, came to the conclusion that the negligence on the part of the scooterist and possibility of accident having taken place because of the collusion of the scooter with the parked truck on the road, could not be ruled out.

6. The learned trial Court also observed that in the present case the Investigating Officer, who did not appear in the witness box and, therefore, the defence of the accused has been badly prejudiced as he could not disprove the prosecution story with regard to place of occurrence and that he was falsely implicated in this case. The accused lost the right to cross-examine the investigating Officer on the material aspects of the case.

7. Mr. Sukant Gupta, learned counsel appearing on behalf of U.T. contends that the order passed by the learned trial Court cannot be sustained as in the present case, the prosecution has been able to prove its case against the accused beyond all reasonable doubt and non-examination of the Investigating Officer could not be a ground to discard the prosecution version. It is also the case that the learned trial Court wrongly shifted the onus on the accused.

8. In support of this contention, reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of Bahadur Naik Vs. State of Bihar, and State of Karnataka Vs. Bhaskar Kushali Kotharkar and Others,

9. The reading of the aforesaid judgments would show that authorities relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case. The Hon'ble Supreme Court has merely laid down that non-examination of investigating officer as witness would be of no consequence when the accused were not prejudiced due to non-appearance.

10. In the present case, a positive finding has been recorded by the trial Court that non-examination of Investigating Officer has caused prejudice to the defence version as the accused was denied to prove the case set up in defence.

11. Learned counsel for the petitioner also contends that no reliance can be placed on the testimony of DW-1 as he was an interested witness being a colleague of the accused.

12. This plea of the learned counsel for the petitioner cannot be accepted as his presence on the place of accident at the time of accident, was natural as he was driving the Bus of PRTC at Chandigarh-Sangrur route.

13. It has clearly come in his evidence that the bus of the accused was ahead of him. Thus, his presence on the spot was quite natural and by no stretch of imagination, he can be said to be an interested witness. The findings recorded are based on appreciation of evidence, which can neither be said to be perverse or not capable of being arrived at on the basis of evidence brought on record.

No ground to interfere is made out.

Accordingly, the application for leave to appeal is dismissed.