
(2010) 08 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : C.R.R. No. 1231 of 2008

State (Union Territory Chandigarh)

APPELLANT

Vs

Bachan Dass

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294, 294(1), 311
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2011) 2 RCR(Criminal) 463

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—This is a revision petition against the Order dated 28.09.2007 passed by the (Chief Judicial Magistrate, Chandigarh,

thereby, the application filed by the Union Territory, Chandigarh u/s 311 Code of Criminal Procedure has been declined.

2. The present case involves a road accident on 03.05.2000 between a scooter and a passenger bus of Himachal Pradesh Roadways near

Transport Light Point, Industrial Area, Phase-I, Chandigarh, in which, the driver of the scooter sustained serious injuries and later lost his life. The

case was registered vide FIR No. 91 dated 03.05.2000 at Police Station Industrial Area, Chandigarh under Sections 279 and 337 IPC. After the

death of the driver of the scooter, namely, Amarjeet Singh s/o Harman Singh, Section 304-A was also added. The final report was prepared on

11.07.2000 and the case was put up in the Court on 17.08.2000. The State gave a list of 16 witnesses to support the prosecution case. Amongst

the witnesses, cited by the prosecution, Dr. Rishi Tondon of Government Medical

College and Hospital, Sector 32, Chandigarh, who is an official witness, as he conducted the Post Mortem Examination of the deceased Amarjeet Singh vide PMR No. 24/RT/2000 was also the witness. The prosecution evidence was complete except that Dr. Rishi Tondon could not be examined. As per information received on summons issued to Dr. Rishi Tondon, he was reported to have gone abroad. As such, the State moved an application dated 28.09.2007 u/s 311 Code of Criminal Procedure before the Chief Judicial Magistrate, Chandigarh praying that since Dr. Rishi Tondon, as aforesaid, has gone abroad and it cannot be said as to when he will come back, therefore, summons be issued to Medical Superintendent, GMCH, Sector 32, Chandigarh to depute some Doctor/Medical Officer well conversant with the handwriting and signatures of Dr. Rishi Tondon along with relevant record i.e. PMR No, 24/RT/2000 to depose before the trial Court and to prove the PMR issued by Dr. Rishi Tondon. The said application was, however, dismissed vide Order dated 28.09,2007 passed by the Chief Judicial Magistrate, Chandigarh.

3. Aggrieved with the same, the present revision petition has been filed. The said revision petition is vehemently opposed by the learned Counsel for the Respondent on the ground that in case, the Petitioner is allowed to examine another doctor to prove the postmortem report of the deceased, the right to cross examine the doctor/witness on the point of cause of death shall be defeated.

Heard.

4. Section 294 of the Code of Criminal Procedure reads as under:

294. No formed proof of certain documents:

- 1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.
- 2) The list of documents shall be in such form as may be prescribed by the State Government.
- 3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under

this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

5. In the present case, admittedly and as recorded in the zimini order dated 28.09.2007, the summons issued to Dr. Rishi Tondon were received

back with the report that he has gone abroad and is not available. It is also not disputed that the said doctor has since left the hospital and his

whereabouts are not known. The Division Bench of Delhi High Court in the case of Sher Singh v. State 1995 (3) RCR (Cri.) 555, held in para 23

as under:

We have come across in this matter as well as in some other matters that the medico-legal case papers and postmortem notes are got proved and

brought on record by examining person other than one who prepared them by saying that the person who prepared them is not available. Such a

proof of document is no doubt legal and valid. But we" want to express that trial courts Judges should make a thorough enquiry by asking the

Investigating Officer to go personally to the concerned Hospital and make personal enquiry of tracing the address of the doctor who has left that

service and whether in fact the said doctor is not really available. Only after such attempts the ML Cs and postmortem notes be brought on record

by examining other person. But here also we want to observe that it is not all proper to examine a clerk or record keeper from the hospital to

prove the handwriting and signature of the concerned doctor. In such a case, another doctor working in the hospital and who is acquainted with the

handwriting and signature of the doctor who prepared that document should be examined. In such a case the said doctor could be asked to clarify

the position or the strength of the notes made by the concerned doctor. Such a doctor witness will be of great assistance to the cause of justice.

6. The Full Bench of the Rajasthan High Court in the case of Shabbir Mohammad v. State of Rajasthan 1996 (2) RCR 23 held that when the

genuineness of any document is admitted, the same can be read by the Court as a substantive piece of evidence u/s 294(1) of the Code of Criminal

Procedure for deciding the issue pending before it.

7. The Full Bench of Karnataka High Court in the case of Boraiah alias Shekar v.

State 2003 (2) R.C.R.(Cri) 160 in fact, further held that in case, the genuineness of any document is not disputed then all documents can be read as genuine without the formal proof of such document. However, the provisions of Section 294 Code of Criminal Procedure made it clear that even if the genuineness of a document filed by the prosecution or the accused under Sub-section (1) of Section 294 Code of Criminal Procedure is not disputed by the opposite party, the Court may require the proof of the signature of the person by whom it purports to be signed. However, it also held that even if the genuineness of the document is not disputed by the accused, still it may be necessary to examine the doctor concerned to clarify his opinion mentioned in the postmortem report and went on to hold as under:

xxx xxx xxx

The proviso to Section 294 of Code of Criminal Procedure makes it very clear that even if the genuineness of a document filed by the prosecution or the accused under Sub-section (1) of Section 294 Code of Criminal Procedure is not disputed by the opposite party, the Court may require the proof of the signature of the person by whom it purports to be signed. In such a case the signatory of the document must appear in Court and prove his signature and the document will thereafter be read as substantive evidence. We may however add a word of caution that the medical evidence in a criminal case is of utmost importance as the correctness of both ocular and circumstantial evidence produced by the prosecution is tested on the touchstone of the medical evidence. Therefore even if the genuineness of the Post Mortem report is not disputed by the accused and the report is read as substantive evidence in the case, it may still be necessary to examine the doctor concerned to clarify his opinion mentioned in the PM report or to obtain his opinion on questions of medical nature if the Court feels it absolutely necessary to clarify the questions of a medical nature which may be involved in the case by calling the doctor who has issued the PM report in order to arrive at a correct decision in the case.

This may be done by the trial Court by examining him u/s 311 Code of Criminal Procedure

8. In the present case, the Respondent has not given any indication of admitting the document. The doctor is also stated to have left abroad.

Accordingly, in view of the law laid down by the Karnataka High Court in the case of Boraiah alias Shekar (*supra*), the doctor who is acquainted

with the handwriting and signature of the doctor, who prepared the document requires to be examined.

9. Thus, the revision petition is allowed and the Order dated 28.09.2007 passed by the Chief Judicial Magistrate, Chandigarh, whereby, the

application filed by the Union Territory, Chandigarh u/s 311 Code of Criminal Procedure has been declined is set aside with a direction that the

Petitioner be permitted to examine another doctor who is well conversant with the handwriting and signature of Dr. Rishi Tondon.