

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-S-1652-SBA-2004

Date of decision: 09.03.2015

State of Punjab

..... Appellant

Versus

Ram Juari

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Ms.Shivali, Assistant Advocate General for appellant-State of Punjab.

Mr.Aditya Sanghi, Advocate for respondent.

DARSHAN SINGH, J.

Appellant State of Punjab has preferred this appeal against the order of acquittal dated 30.01.2004, passed by the learned Additional Chief Judicial Magistrate, Fatehgrah Shaib, vide which, respondent Ram Juari has been acquitted for the offences punishable under Sections 279/337/304-A Indian Penal Code, 1860 (for short 'IPC').

2. The brief facts of the prosecution case are that on 24.05.1999, complainant Jaswant Kaur and her husband Ashok Kumar

(deceased) were riding on scooter No.PB-11E-6286 and were going from Kurali to Patiala. The scooter was being driven by deceased Ashok Kumar and complainant Jaswant Kaur was pillion rider. At about 05:00 p.m., when they reached Madhopur Chowk, a TATA Sumo bearing registration No.HR-06E-4506 came from Rajpura side at a very high speed, in a rash and negligent manner and without blowing any horn. The driver of the TATA Sumo struck it against their scooter. Due to which, they both fell down on the ground and suffered the injuries. She removed her husband to Civil Hospital, Fatehgrah Sahib in an ambulance, which was parked at Madhopur Chowk but her husband Ashok Kumar succumbed to the injuries in the hospital. She later on came to know the name of the driver of the TATA Sumo as respondent Ram Juari. On the statement of complainant Jaswant Kaur Ex.P1, FIR Ex.P26 was registered and the investigation was started.

3. The Investigating Officer conducted the inquest proceedings and sent the dead body for the postmortem examination. He inspected the spot and prepared the site plan of the place of occurrence Ex.P27. Complainant Jaswant Kaur was also medico legally examined. The vehicle involved in the accident was taken into possession. Accused Ram Juari was arrested on 26.05.1999 and on completion of the investigation, the report under Section 173 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented in the Court.

4. Respondent accused was charge sheeted for the offences punishable under Sections 279, 337 and 304-A IPC by the learned trial

Court vide order dated 09.10.1999, to which, the respondent pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution examined as many as 10 witnesses.

6. When examined under Section 313 Cr.P.C., the accused pleaded false implication. In the defence evidence, Vinod Kumar the owner of the TATA Sumo No.HR-06E-4506 appeared as DW1.

7. On appreciating the evidence on record and contentions raised by the parties, the learned trial Court acquitted the respondent of the charges.

8. Aggrieved with the aforesaid judgment of acquittal, the present appeal has been preferred by the State of Punjab.

9. I have heard Ms.Shivali, learned Assistant Advocate General for appellant-State of Punjab, Mr.Aditya Sanghi, Advocate, learned counsel for respondent and have meticulously examined the record of the case.

10. Initiating the arguments, learned State counsel contended that the learned trial Court had erred in acquitting the respondent. The charges against the respondent are fully established from the evidence on record. She contended that the learned trial Court has recorded the judgment of acquittal mainly on the ground that the identity of the respondent i.e. the driver of the TATA Sumo was not established. She contended that PW1 complainant Jaswant Kaur is herself an injured witness, so her presence at the spot cannot be doubted. She had seen the

accused at the time of the occurrence. He again met the complainant in the hospital and then he was identified by her in the Court at the time of her evidence. She contended that name of the respondent is also categorically mentioned in the First Information Report. The testimony of the complainant is also corroborated by PW9 Constable Sahib Singh. So, findings of the learned trial Court with respect to the identity of the driver of the TATA Sumo are erroneous.

11. She further contended that from the statement of the complainant and Constable Sahib Singh, it is established that respondent was driving the TATA Sumo in a rash and negligent manner and hit the standing scooter of the victims when he was driving the TATA Sumo at a very fast speed, rashly, negligently and without blowing any horn. Thus, she contended that the charges against the respondent are fully established.

12. On the other hand learned counsel for the respondent contended that the present appeal is an appeal against acquittal and it is the settled principle of law that if two reasonable conclusions are possible on the basis of evidence, the appellate Court should not disturb the findings of acquittal. He contended that the appellate Court can only interfere with the judgment of acquittal if the conclusion reached by the trial Court is palpably wrong or based on erroneous view of law and have resulted in grave injustice. To support his contentions, he relied upon cases **C.K. Dasegowda & Ors. Vs. State of Karnataka 2014(3) RCR (Criminal) 696, Muralidhar @ Gidda & Anr. Vs. State of Karnataka**

2014(2) RCR (Criminal) 507 and A.P. Raju Vs. State of Orissa 1995 SCC (Criminal) 675.

13. He further contended that the view taken by the learned trial Court is based on the right appreciation of evidence. The identity of the driver of the TATA Sumo was not established. Admittedly respondent was not earlier known to the complainant. In the cross-examination, she has stated that one Naresh had told the name of the respondent but said Naresh has not been examined and was given up as unnecessary. She has not mentioned on which date or time, the accused had met him in the hospital. She has not categorically stated that it was the accused who was driving the TATA Sumo at the time of accident. PW9 Constable Sahib Singh has also admitted in the cross examination that he had not seen the respondent at the time of accident. Thus, in these circumstances, the identification of the respondent for the first time in the Court, without holding any prior test identification parade, is of no evidentiary value.

14. He further contended that there is absolutely no evidence to establish that the driver of the TATA Sumo was rash or negligent in driving the TATA Sumo. He contended that in fact it is established from the evidence on record that deceased Ashok Kumar had tried to cross the G.T. Road when there was red light, i.e. in violation of the traffic rules. The TATA Sumo was coming from Rajpura side at the normal speed. Accused came from the other lane of the road and after crossing the divider, he wanted to cross the second lane of the G.T. Road when he met with the accident. The site plan clearly establishes that accident had

taken place when he had reached other lane of the road leading from Rajpura to Ludhiana. The deceased had come from the side of Fatehgarh Sahib after crossing the lane of the G.T. Road from Ludhiana to Rajpura. So, it was the duty of the deceased to comply with the traffic rules and take the precautions before crossing the G.T. Road. So, the victim himself was at fault for this accident. Thus, he pleaded that the judgment of acquittal recorded by the learned trial Court does not suffer from any legal infirmity.

15. I have duly considered the aforesaid contentions.

16. The appellant State of Punjab has filed this appeal against the acquittal of respondent Ram Juari by the learned trial Court. The law is well settled that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is fully reinforced, reaffirmed and strengthened by the trial Court. It is further the settled principle of law that the appellate Court can only interfere with the conclusion of acquittal arrived at by the trial Court if the said conclusion is palpably wrong or based on erroneous view of law or if such conclusion is allowed to stand is likely to result in grave injustice. Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not

justified, if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court. If two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the findings of acquittal recorded by the learned trial Court. To support the aforesaid view reference can be made to cases **C.K. Dasegowda & Ors. Vs. State of Karnataka** (supra), **Muralidhar @ Gidda & Anr. Vs. State of Karnataka** (supra) and **A.P. Raju Vs. State of Orissa** (supra).

17. In the instant case, the prosecution was required to establish that respondent was driving the TATA Sumo in question at the time of the accident. It was further incumbent upon the prosecution to establish that the respondent had caused the death of Ashok Kumar and injuries to complainant Jaswant Kaur by driving the TATA Sumo in question rashly and negligently.

18. It is not disputed that respondent Ram Juari was not earlier known to the prosecution witnesses. It is also an admitted fact that no test identification parade of the respondent has been held after his arrest. There is no dispute with the proposition of law that the identification of an accused in the Court is the substantive evidence. Same can be relied upon even without prior test identification parade, but in that case, the testimonies of the prosecution witnesses with respect to the identity of the accused should be consistent, cogent and reliable. Prosecution has examined PW1 Jaswant Kaur the injured witness and

widow of deceased Ashok Kumar, Constable Raghbir Singh, who was present on duty at Madhopur Chowk has appeared as PW6 and then there is the statement of PW9 C-II Sahib Singh No.350, who was also present on duty at Madhopur Chowk. PW6 Raghbir Singh has not appeared to face the cross examination, so his statement remained incomplete. The accused had no opportunity to test the veracity of his statement by way of cross examination, so his statement cannot be taken into consideration. So, we are left with the statement of PW1 Jaswant Kaur and PW9 Constable Sahib Singh. The statements of both these witnesses is wavering on the point of the identity of the accused. PW1 Jaswant Kaur has admitted in the cross examination that name of the respondent was disclosed to him by one Naresh but said Naresh has not been examined by the prosecution and was given up as unnecessary by the learned Public Prosecutor vide statement dated 13.5.2000. In the absence of his statement, it is not known as to how complainant Jaswant Kaur came to know about the name of the respondent. She has stated that she has seen the respondent and he also came to meet her in the hospital but she has not stated as to on which date and at what time the respondent came to meet her in the hospital. The crucial point to be established by the prosecution was that it was the respondent who was driving the vehicle at the time of the accident but PW1 Jaswant Kaur has stated in the cross examination that she does not know who was driving the vehicle. She further stated that the accused had alighted from the TATA Sumo and had got boarded the passengers in the bus. It shows that the other persons

were also the occupants of the said TATA Sumo. Complainant Jaswant Kaur was not sure as to who was driving the vehicle. She has simply identified the respondent as he had alighted from the TATA Sumo and made the passengers boarded in the bus, but that will not establish that at the time of accident respondent Ram Juarai was driving the TATA Sumo.

19. PW9 Constable Shaib Singh has also admitted in the cross examination that he does not know the accused earlier. He does not know his name. He only came to know the name of the accused when he came to the police station for giving bail. He has further deposed in the cross examination that he had not seen the driver as the driver of the TATA Sumo had fled away from the spot. He further categorically stated that he had not seen the accused present at the spot. Thus, PW9 Sahib Singh has admitted in the cross examination that he had not seen the accused at the spot and the driver of the TATA Sumo had fled away from the spot. He is also only identifying the respondent as he had come to the police station to give bail.

20. In view of the aforesaid evidence, the identity of the respondent as the driver of the TATA Sumo is not established beyond shadow of reasonable doubt and it cannot be stated that view taken by the learned trial Court on this aspect was erroneous or perverse.

21. I also find substance in the plea raised by learned counsel for the respondent that prosecution has also not been able to establish the ingredients of rash and negligent driving. As per the statement of PW1 Jaswant Kaur at about 5:00 p.m., when they reached near Madhopur

Chowk, a TATA Sumo bearing registration No.HR-06E-4506 came from the Rajpura side at a fast speed, rashly and negligently without blowing horn and hit their scooter. In the cross examination, she has stated that they were standing at Madhopur Chowk as there was red light. It is the case of the prosecution that the deceased and complainant Jaswant Kaur were going from Kurali to Patiala. So, at the Madhopur Chowk, they were to cross the G.T. Road. In the site plan Ex.P27, the place of accident has been shown at point 'A' i.e. the lane of G.T. Road on the southern side leading from Rajpura to Ludhiana side. The deceased and complainant were coming from the northern side. They had crossed the lane of the G.T. Road on the northern side leading from Sirhand to Rajpura. The site plan Ex.P27 belies the version of the complainant that they were standing on the side of the road due to red light. The complainant has admitted in the cross examination that at the Madhopur Chowk, where the road turns towards Patiala, the traffic lights are installed. She further admitted that it is the duty of the travellers to drive after seeing the red and green lights. She further stated that they were standing towards Madhopur on the northern side of the G.T. Road because there was no green light for the vehicles going to Patiala. She further admitted that the TATA Sumo was coming from Rajpura side for going to Ludhiana side. She further admitted that the driver of the TATA Sumo was going on the correct side of the road and the said TATA Sumo was going on the road due to the lights (green light) on that side. She further admitted that due to the green light on that side, the driver of the

TATA Sumo was not required to blow the horn.

22. From the aforesaid admissions of the complainant, it comes out that the TATA Sumo in question was being driven by its driver on the correct side of the road. He was crossing the Madhopur Chowk after coming from the Rajpura side and going towards Ludhiana when the traffic lights were green on his side. There was red light to the vehicles intending to cross the G.T. Road and going towards Patiala. In that situation, the crossing of the G.T. Road from Madhopur side to Patiala side will clearly be the violation of the traffic rules. The version of PW1 Jaswant Kaur that they were standing on the side of the G.T. Road due to red light on their side stands totally belied from the site plan Ex.P27. The complainant has admitted that there was a divider on the G.T. Road and it is divided into two parts. She further admitted that the northern lane of the G.T. Road is used by the vehicles going from Sirhand to Rajpura side and the southern lane of the G.T. Road is used by the vehicles going from Rajpura to Ludhiana side. The complainant has stated that at the time of accident, the TATA Sumo in question was coming from Rajpura side. It means the TATA Sumo was on the southern lane of the G.T. Road. The complainant and her husband was coming from the northern side i.e. from the side of village Madhopur. It is also the admitted fact that there were red lights to the vehicles proceeding towards Patiala. In that situation, the complainant and her husband was required to stop their vehicle on the northern side of the northern lane of the G.T. Road. In that situation it was totally impossible that a vehicle coming from Rajpura

side on the southern lane of G.T. Road will hit the scooter standing on the northern side of the G.T. Road waiting for green light beyond the northern lane. Even the site plan Ex.P27 contradicts and belies the version of the complainant, which shows that the place of accident is at point 'A' i.e. the southern lane of G.T. Road meant for the vehicles coming from Rajpura side and going to Ludhiana side. The TATA Sumo in question was also coming from Rajpura side and was going towards Ludhiana side. So, the TATA Sumo was going on its correct side of road/lane and there were green traffic lights for proceeding towards Ludhiana. The accident at point 'A' in the site plan Ex.P27 shows that the husband of the complainant had crossed the northern lane of the G.T. Road and had come on the southern lane of the G.T. Road in spite of the red lights on that side. So, he had violated the traffic rules and had come on the southern lane of the G.T. Road by ignoring the red light. It was the duty of the husband of the complainant to abide by the traffic rules and should have crossed the road only when there was green light for the vehicles proceeding towards Patiala. But in violation of the traffic rules, he came on the southern lane of the road by jumping the red light, which resulted in the accident. The circumstances, emerging from the evidence on record belies the statement of the complainant that at the time of the accident they were standing on the side of the G.T. Road waiting for green light.

23. The stand of the complainant is even contradicted by PW9 Constable Sahib Singh. He has stated that a scooter was going from

the side of 'Jyoti Sarup' (Gurudwara) bearing registration No.PB-11E-6286. One male and female were riding that scooter. TATA Sumo bearing registration No.HR-06E-4506 came from the Rajpura side at a fast speed and negligently. The scooter driver tried to save but the accused present in the Court hit the TATA Sumo in the scooter. From the statement of this witness, the stand of the complainant that they were standing on the side of the road waiting for the green light, stands contradicted, rather the statement of PW9 Constable Sahib Singh shows that at the time of accident they were crossing the G.T. Road. As already discussed, the deceased had proceeded on the G.T. Road in violation of the traffic rules. So, in these circumstances it cannot be concluded that driver of the TATA Sumo was rash or negligent.

24. Thus, keeping in view my aforesaid discussion it cannot be stated that the view taken by the trial Court is palpably wrong or based on erroneous view of law or perverse. The view for the acquittal of the respondent taken by the learned trial Court was the reasonable conclusion on the basis of evidence on record and does not call for any interference by this Court.

25. Resultantly, the present appeal has no merits and the same is hereby dismissed.

Dated: 09.03.2015
sunil yadav

(DARSHAN SINGH)
JUDGE