

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

**Crl. Revision No. 2124 of 2007 (O&M)
Date of decision : 28.11.2015**

Sucha Singh

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vishal Deep Goyal, Advocate with
Ms. Aditi Girdhar, Advocate (Amicus Curiae)
for the petitioner.

Mr. R.S. Randhawa, Addl.AG, Punjab.

ANITA CHAUDHRY, J.

This revision has been preferred by the petitioner who was convicted under Section 279, 304-A IPC by the SDJM, Samrala, vide order dated 22.09.2006. Petitioner was sentenced to undergo rigorous imprisonment for a period of 3 months for commission of offence under Section 279 IPC. He was further sentenced to undergo rigorous imprisonment for a period of 2 years for commission of offence under Section 304-A IPC along with fine of Rs.5000/-. In default of payment of fine he was to undergo further rigorous imprisonment for a period

of 6 months. The appeal filed by him was dismissed by the Addl. Sessions Judge, Ludhiana, vide order dated 11.10.2007. The sentence of petitioner was suspended and he was released on bail and had served his sentence of about 1 month.

The facts need to be exposited. Kamaljit Singh was a Head Constable with Punjab Police. He had come home to meet his parents at village Harion Kalan. On 21.04.2003, he was returning and was on Behlopur Road, Samrala on a cycle. His father Chuhar Singh was following him on a separate cycle. At 6:00 PM, a tractor-trolley loaded with sand came from behind. It overtook the cycle of Chuhar Singh, went ahead and hit Kamaljit's cycle from behind, crushing him. Kamaljit succumbed to the injuries. The driver of the tractor-trolley fled from the spot. Chuhar started attending to his son and was unable to note the registration number of the tractor-trolley. After informing the police, he went out and saw the driver washing the tractor in the nearby fields. He identified the tractor-trolley and the driver and came back and got a supplementary statement recorded one and a half hour later. The tractor-trolley was taken into possession the same day by the police.

Investigations were completed and challan was presented.

At the trial the prosecution examined Chuhar Singh who was the star witness for the prosecution. Besides him the

photographer, the mechanic, the Investigating Officer and the doctor who had conducted the postmortem examination.

The accused simply denied the allegations and examined Jira Ram as his witness.

The trial Court found that the identity of the accused was not in doubt and it was not a case of identification for the first time in the Court and the registration number of the tractor-trolley was given in a supplementary statement, the same day and the tractor-trolley was also taken into possession by the police. It noted that the complainant was in an extreme traumatic state of mind and was not able to furnish details or the identity of the driver but he on controlling himself went and tracked the driver and gave the details to the police. Finding the statement to be cogent and convincing, the trial Court convicted and sentenced him to the punishment mentioned here-in-above.

The appellate Court considered the evidence, dealt with the issues raised by the appellant and dismissed the appeal upholding the judgment.

Before this Court, the leading submission made on behalf of the petitioner was that the identity of the driver had not been proved and the driver was not known to the complainant and since the deceased was a police officer and the complainant was a retired police official, the police in their

anxiety had challaned the petitioner. It was also their contention that the Investigating Officer had not been examined and crucial evidence was missing which had caused serious prejudice to the petitioner.

The submission on the other hand was that the complainant did not say that he did not know the driver and he had only mentioned that the driver had fled from the spot and he had seen the driver and the tractor-trolley and after informing the police he went on his cycle to find the vehicle as he knew that the vehicle was being driven in the same area and the complainant found the accused washing the tractor tyres to erase evidence and came back and informed the police who reached the spot and took the vehicle into possession. It was urged that it was not a case of false implication and the father would not name a wrong person and let the real culprit go and there was no enmity and the statement of the Investigating Officer would have been formal in nature.

The accident took place at about 6:30 PM. The police was informed at 7:05 PM. The complainant could not give the details of the registration number of the tractor-trolley but one and a half hour later he supplied the details to the police and disclosed that he identified the driver Sucha Singh and the tractor-trolley was owned by Kashmira Singh and Sucha Singh was the son of the paternal uncle of Kashmira

Singh and was a resident of Bodal Road, Samrala. The recovery memos available on record show that the tractor-trolley was recovered the same evening. Therefore, it cannot be said that the complaint was against an unknown vehicle/person. The petitioner was also arrested on the same day. Both the Courts below had examined the evidence in detail and observed that it was not a case of identification for the first time in the Court and it was not a case of false implication either.

The accused did not approach the higher authorities at any time regarding his false implication. There was no plea of *alibi*. The trial Court had also dealt with the discrepancies pointed out before the lower Court with respect to the registration number. The complainant had given the make of the tractor-trolley as D1-475 to the police in his first statement. The Mechanical Examiner who had tested the vehicle had stated that it was a Mahindra Tractor of D1-475 make.

The non-examination of the Investigating Officer has not caused any prejudice to the accused. His statement would have been formal in nature. All the other documents had been proved by the official witnesses examined by the prosecution. I find no infirmity in the findings recorded by both the Courts below. Therefore, the findings are affirmed.

As far as the sentence is concerned, I am of the view that the sentence awarded is slightly on the higher side. The

incident relates to the year 2003. The appellant has faced a protracted trial. Therefore, the sentence for commission of offence under Section 304-A IPC is reduced to 6 months and the fine is increased to Rs.10,000/-. Both the sentences shall run concurrently. The petitioner would surrender before the Chief Judicial Magistrate, Ludhiana within a fortnight to undergo the remaining sentence. In default of payment of fine, the petitioner would further undergo imprisonment for a period of 2 months.

The revision is dismissed with the aforesaid modification in the sentence. Lower Court record be sent back.

28.11.2015
sunil

(ANITA CHAUDHRY)
JUDGE