

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 2127 of 2007

Date of Decision: 27.05.2015

Mahender Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Sanjay Gupta, Advocate
for the petitioner

Mr. S.S. Pannu, DAG Haryana

ANITA CHAUDHRY, J.

The petitioner was convicted and sentenced to undergo rigorous imprisonment for 1 year and to pay fine of ₹ 1000/- under Section 338 IPC and rigorous imprisonment for 6 months and to pay a fine of ₹ 1000/- under Section 279 IPC and in case of default of payment of fine to further undergo rigorous imprisonment for 3 months under Section 338 IPC and 1 month under Section 279 IPC.

The trial ended in conviction. The appeal filed by the petitioner was dismissed on 18.10.2007. Still dissatisfied with the judgment of both the Courts below this petition has been filed.

Lower Court record was summoned.

I have heard both the counsels and have carefully considered the submissions and with the able assistance of the

lawyers gone through the record.

Before going into the submissions, it is necessary to give the factual matrix and the manner in which the accident had occurred. Injured Mukesh Kumar was standing by the side of the road on 19.9.1996 in the area of village Sakta Khera. The allegations made in the complaint were that the accused who was driving Rajasthan Roadways Bus bearing Registration No. RJ-13-P-0979 came in a rash and negligent manner and left front tyre of the bus ran over the left foot crushing his foot. The accused did not stop the bus and fled away. Mukesh Kumar was shifted to hospital by his father Subhash Chander was present on the spot. Ruqa was sent from the hospital on the same day but the FIR came to be registered the next day. The accused was arrested a week later. The name and registration number of the vehicle were mentioned in the FIR. The complainant had mentioned that this bus used to ply on that route and was known to the residents of the area. The prosecution examined 9 witnesses i.e. the complainant Subhash Chander, his son Mukesh Kumar who was injured in the accident and Devender Kumar, an eye witness. Besides this, Subhash Chander, the Assistant Supervisor in Rajasthan Roadways, the Medical Officers and the Investigating Officers.

In the statement under Section 313 Cr.P.C. the accused pleaded innocent. He examined Harbans Lal Inspector Haryana Roadways as DW-1 and closed the evidence.

The trial Court accepted the statement of the witnesses and recorded a categoric finding that delay in lodging the FIR had

been explained. It had been noted that Ruqa had come to the police station the same evening but when the police visited the hospital the injured was not in a position to make a statement and thereafter statement of the father was recorded. The trial ended in conviction.

The Appellate Court affirmed the findings and dismissed the appeal on 18.10.2007.

The submissions on behalf of the petitioner is that 3 witnesses had been examined by the prosecution but each one of them had made contradictory submissions. When urged to refer to the contradictions, I find that there is hardly any discrepancy in the two statements. The counsel had referred to the statement made by Subhash Chander who in the cross-examination had stated that he had visited school but did not meet the teacher and later found 15-20 students at the bus stop when the accident occurred. On reading of the statement of Devender it is found that he had stated that 5-6 students of the village were there. There is hardly any discrepancy.

I have gone through the statement of all the three witnesses and find that all the three witnesses have spoken at tandem with each other. All the three witnesses had deposed about the accident and in the same manner though Devender Kumar had given date of accident as 20.09.1996 and Subhash Chander had given date as 19.09.1996. It can not be forgotten that their statement were recorded in the Court after 3 years of the accident and it could be that memory had failed Devender Kumar and it is not fatal to the prosecution case.

Learned counsel for the petitioner contends that the

witnesses examined by the prosecution were interested witnesses. The argument does not find favour with me. We have the testimony of the injured and the statement of the father. The statement given by the complainant gets support from private source and the testimony can not be rejected on account of their relationship and can not be rejected.

The prosecution had summoned the record from Ganganagar Depot of Rajasthan Roadways and the witness had stated that this bus was driven by Mahender Singh and he had started for Yamuna Nagar that day at 4.40. a.m. and he had returned the next day in the evening at about 5–5.15 p.m. The accused had summoned Harbans Lal Inspector of Haryana Roadways who did not bring the original record nor could give details of the time table of another State.

I find no infirmity in the findings. The delay had been explained, the Ruqa had been sent to the police station. The police had arrived late. The police officials wanted to record the statement of the injured but he was not in a position to make a statement and, thereafter, the statement of father was taken.

As regards the quantum of sentence. I find from the custody certificate that the petitioner remained in custody for 3 months and 7 days before he was released on bail in 2008. Since it is a injury case and it is his first offence, I would take a lenient view and modifying the sentence to already undergone by him. There would be no modification with regard to fine. If the fine is not deposited, it would be deposited within two months. Copy of the

order be sent to the concerned CJM.

The revision petition is dismissed.

May 27, 2015

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(ANITA CHAUDHRY)
JUDGE