

338 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 979 of 2006.  
Decided on: 7.10.2015.

Lila Ram  
... Petitioner  
Versus  
State of Haryana  
... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. N.S. Shekhawat, Advocate,  
for the petitioner.  
  
Mr. Arun Luthra, AAG, Haryana.

**JITENDRA CHAUHAN.J.**  
This revision is directed against the judgment dated 2.5.2006, passed by the Sessions Judge, Bhiwani, and the judgment of conviction and the order of sentence dated 7.12.2004, passed by the Sub-Divisional Judicial Magistrate, Charkhi Dadri, vide which the petitioner was convicted and sentenced as under:-

| Offence   | Sentence        | Fine      | In default      |
|-----------|-----------------|-----------|-----------------|
| 279 IPC   | RI for 3 months | Rs.200/-  | SI for 1 month  |
| 304-A IPC | RI for 2 years  | Rs.2000/- | SI for 3 months |

Both the substantive sentences were ordered to run concurrently.

The brief facts of the case as noticed in Para no. 2 of the judgment passed by the Sessions Judge are as under:-

“Brief facts of the case are that on 8.8.1999 Assistant Sub Inspector Rameshwar Dass along with other

police officials was present at Badhra chowk in connection with patrol duty, where complainant Rampal son of Tara Chand, resident of Badhra, got recorded his statement to the effect that on that date at about 11.00 a.m., he along with his father and mother Savitri was going to their fields on their right side of the road to bring fodder for their animals. When they reached near the fields of one Tara Chand son of Kalu Ram, a blue coloured Tata bearing registration No. HR-19-GA-0145 being driven at a very high speed and in a rash and negligent manner came from Dadri side and struck against his father from front, as a result of which, his father fell down on the road and driver of the said vehicle ran over his father and fled away along with his vehicle. He and his mother tried to rescue his father, but he died at the spot on account of the injuries suffered by him. After leaving his dead body, he was proceeding to lodge the report, but on the way, the police party met him. His father had died due to rash and negligent driving of aforesaid Tata by its driver and he could recognize him if he is produced before him.”

On the basis of statement of the complainant Rampal,

**FIR under Sections 279 and 304-A IPC was recorded. During**

investigation, the petitioner was arrested. Site plan of the place of occurrence was prepared. Offending vehicle i.e Tata bearing registration No. HR-19A-0145 was taken into possession. Statements of the witnesses under Section 161 Cr.P.C were recorded. After completion of necessary formalities, the challan/report under Section 173 Cr.P.C, was presented in the court.

Charges under Sections 279 and 304-A IPC were framed against the accused, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 complainant, Rampal, PW-2 Savitri, eye witness and wife of deceased Tara Chand, PW-3 Data Ram son of deceased Tara Chand, PW-4 Sub Inspector Budh Singh, PW-5 Assistant Sub Inspector Rameshwar Dass, Investigating officer, PW-6 Dr. H.L. Beniwal, who conducted the post mortem on the dead body of Tara Chand and proved PMR Ex.PW6/A and PW-7 Head Constable Shish Ram and closed the evidence.

Thereafter, statement of the accused under Section 313 Cr.P.C was recorded wherein he denied all the allegations levelled against him and pleaded innocence. However, no evidence in defence was led.

After appraisal of the evidence, the learned trial Magistrate, vide the judgment and the order dated 7.12.2004, convicted and sentenced the accused as narrated above.

Feeling dis-satisfied with the judgment and the order dated 7.12.2004, the accused preferred an appeal before the Sessions Judge, Bhiwani which was dismissed vide the impugned judgment dated 2.5.2006.

Still feeling aggrieved by the aforesaid judgments and order, the accused has filed the present revision petition which was admitted and the sentence of the petitioner was suspended on 12.09.2006.

Learned counsel for the petitioner contends that the the identity of the accused has not been proved in this case. He refers to the statement of PW-1, Rampal and PW-2, Savitri, who are stated to be present on the spot. The witnesses have admitted that for the first time, they saw the accused in the Court. PW-5, ASI Rameshwar Dass, the Investigating Officer of this case has admitted that no Test Identification Parade was conducted and the accused was arrested in this case on the asking of one, Dhana Ram. In the FIR, the complainant did not state that he had identified the accused on the spot. There is no description or detail of the driver in the FIR. The complainant has seen the accused for the first time in the Court. Learned counsel for the petitioner refers to the site plan, Ex.PW-5/D to contend that the offending vehicle was on the road and it was not on the kacha side (berm) of the road, therefore, the driver of the offending vehicle was not negligent. He further contends that rashness and negligence cannot be inferred to convict the petitioner in the absence of any evidence with

regard to the same. There ought to be definite evidence with regard to negligence. In support of the contentions, learned counsel relies upon the judgments (i) Satpal vs. State of Haryana 2000(2) RCR (Criminal) 720; (ii) Ishwar Singh vs. State of Haryana 2000(2) RCR (Criminal) 571; (iii) Balbir Singh vs. State of Punjab 2010(2) RCR (Criminal) 539; (iv) Sanjay Kumar and others vs. State of Haryana 2004(1) RCR (Criminal) 898; (v) Randip Singh vs. State of Haryana 2009(5) RCR (Criminal) 421 and; (vi) Love Raj vs. State of Punjab 2001(3) RCR (Criminal) 15.

On the other hand, the learned State counsel submits that the accused was identified unerringly in the Court by PW-1 and PW-2 and the identification in the Court is sufficient. He supports the judgments passed by the Courts below.

I have heard learned counsels for both the parties and carefully gone through the record.

In the instant case, PW-1, complainant, Rampal-son of the deceased Tara Chand and PW-2, Savitri Devi wife of the deceased, the eye-witnesses of the accident are the star witnesses. PW-1, Rampal has deposed that about 10 months ago, at about 11.00 a.m., he along with his mother Savitri and father Tara Chand had been going to the fields to fetch fodder when the vehicle, a Tata bearing registration No. HR-19-0145 came from Dadri side in a rash and negligent manner, and at a very high speed and struck against his father, as a result of which, his father died on the spot. He recognized

the petitioner as the driver of the said Tata vehicle. It was further stated by PW-1 Ram Pal that after the causing the accident, the driver stopped the Tata at a distance of three-four killas for a while. The driver shot his head outside the Tata vehicle and at that time he had identified him. PW-2, Savitri also corroborated the statement of the complainant by deposing that the petitioner while driving the Tata vehicle in a rash and negligent manner and at a high speed, struck against her husband, as a result of which, he died. The petitioner was driving the aforesaid offending Tata. Both these witnesses were subjected to the test of cross-examination but nothing could be elicited to shake their credibility. They clearly stated that the accident in question was caused by the accused while driving the Tata. PW-6, Dr. H.L. Beniwal, who conducted post-mortem examination, on the dead body of the deceased, opined that the cause of death was the crushed injury of head. The ocular evidence stands corroborated by the medical evidence. This Court is of the opinion that the prosecution has well established the identity of the accused. Since the accused was identified by the complainant on the spot the non-holding of test identification parade does not assume much importance.

As regards the negligence, the site plan, Ex. PW-5/D shows that Badhra-Dadri road is from east to west. The position of dead body shows that the deceased was on his correct side i.e. left side but the accused drove the offending vehicle on the wrong side and struck it against the deceased. The recovery memo, Ex. PW-5/E reveals

that the front mirror of the offending vehicle was in a broken condition and there was damage to the bonnet also. In such circumstances, this Court will be well within its jurisdiction if the principle of res ipsa loquitur (The thing speaks for itself) is pressed into service. The impact of the accident resulting into damage to the vehicle and the death of the deceased at the spot speaks volume of the rash and negligent driving of the accused.

The judgments cited by learned counsel for the petitioner are to the effect that where the accused fled away from the spot and he was not known to the witnesses earlier, the identification in the Court cannot be said to be established beyond doubt.

In **Daya Singh vs. State of Haryana AIR 2001 SC**

**1188**, the Hon'ble Apex Court held as under:-

“For this purpose, it is to be borne in mind that purpose of test identification is to have corroboration to the evidence of the eye witnesses in the form of earlier identification and that substantive evidence of a witness is the evidence in the Court. If that evidence is found to be reliable then absence of corroboration by test identification would not be in any way material. Further, where reasons for gaining an enduring impress of the identity on the mind and memory of the witnesses are brought on record, it is no use to magnify the theoretical possibilities and

arrive at conclusion-what in present day social environment infested by terrorism is really unimportant. In such cases, not holding of identification parade is not fatal to the prosecution.”

The aspect of identification parade comes at the initial stage of investigation. The accused can claim holding of the test identification parade during investigation at initial stage. Section 54-A added in the Cr.P.C now authorizes the Court to direct holding of identification parade on the request of the Officer in charge of a police station also. The holding of test identification parade is part of the investigation. It is the discretion of the Police Officer making investigation to make a request to the Court for the purpose of holding identification. In any case, this piece of evidence is not substantive one. It lends support to the evidence recorded before the Court. Therefore, mere failure to hold a test identification parade would not make inadmissible the evidence of identification in the Court.

In the present case, the complainant stated that the driver of the offending vehicle stopped the vehicle for a while and shot his head out of the vehicle. The complainant identified the accused on the spot and thereafter he again identified the accused in the Court. So, in view of this, the non-holding of test identification parade does not affect the case of the prosecution. In the cited cases, in none of the cases the accused was identified on the spot. Therefore, the judgments are distinguishable from the facts of the present case.

Now adverting to the quantum of sentence, learned counsel for the petitioner prays for taking a lenient view in the matter of sentence. He submits that the accused has been facing the agony of protracted criminal proceedings for the last 16 years. The petitioner is in his fifties. He is the sole bread winner of his family. He is not involved in any other FIR.

Keeping in view the fact that the sword of damocles remained hanging on the head of the accused for the last 16 years and that he is not involved in any other FIR, this Court is of the opinion that the ends of justice would be sufficiently met in case the sentence of the petitioner is reduced from two years RI to one year RI. It is ordered accordingly. However, the petitioner is directed to pay Rs.50,000/- as compensation to the legal heirs of the deceased. The sentence of fine shall remain intact. The payment of compensation be made within two months from the date of receipt of certified copy of the judgment. However, if the amount of compensation is not paid, then the original sentence of two years would revive and the revision petition would be deemed to be dismissed.

The revision is accepted partly in the manner indicated above.

7.10.2015.  
SN

**(JITENDRA CHAUHAN)**  
**JUDGE**