

CRR-2191-2013

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

**CRR-2191-2013 (O & M)
Date of Decision:03.03.2015**

Lalit Kumar

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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. Sandeep Arora, Advocate,
for the petitioner.

Paramjeet Singh, J.

CM-32760-2014

Allowed, as prayed for. Annexures P-1 and P-2 are taken on record.

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Present criminal revision has been preferred by the petitioner against judgment dated 04.03.2013 whereby appeal filed by respondent no.2-accused has been accepted, judgment of conviction and order of sentence dated 01.06.2012 passed by the Judicial Magistrate Ist Class, Jalandhar have been set aside and accused has been acquitted of the charge levelled against him in a case FIR No.01 dated 01.01.2006, under

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Sections 279, 337, 338 and 304-A of the Indian Penal Code, registered at Police Station Division No.6.

In brief, case of the prosecution is to the effect that case has been registered on the statement of complainant-Lalit Kumar, which was recorded by ASI Naresh Kumar, wherein the complainant stated that on 01.01.2006, he along with his brother Raj Kumar was present in the Lovely Ice Cream Factory and their brother-in-law (Jeeja) came to the factory. Raj Kumar came back to the home 10-15 minutes before them. He went on foot, whereas, Lalit Kumar and brother-in-law went on scooter bearing No.PB-08-A-3956 Bajaj Chetak. He himself was driving the scooter and Surinder Kumar was pillion rider. At about 9.15 p.m., when they reached near Shri Guru Ravidass Mandir, Buta Mandir, Jalandhar, they saw their brother was going on foot to the house. He was at a distance of about 20 feet ahead of them. In the meantime, a Santro car bearing No.PB 08-AG-7271 of silver colour, came from Wadala side, which was being driven by a Hindu Gentleman and he was aged about 30-35 years. While driving so rashly and negligently, without giving horn, he struck his car into Raj Kumar from backside. Due to which, Raj Kumar received multiple grievous injuries and he became unconscious. They arranged for a vehicle and took Raj Kumar to Civil Hospital, Jalandhar, where, doctor declared him dead. Complainant stated that said accident was witnessed by himself as well as by his brother-in-law Surinder Kumar. Driver of the offending vehicle ran away from the spot

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along with his car. On the basis of said statement, a case was registered for the commission of offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code. Investigation was set into motion. Statements of witnesses were recorded. Accused was arrested. After completion of investigation, challan against the accused was presented before the trial Court.

On finding a prima facie case, charge under Section 304-A of the Indian Penal Code was framed against the accused-respondent to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Sohan Lal as PW 1, Kuldip Rai as PW 2, Pawan Kumar as PW 3, Dr. Breena as PW 4, complainant Lalit Kumar as PW 5, Surinder Kumar as PW 6, ASI Naresh Kumar as PW 7, Nirmal Kapur, Jr. Assistant, RTO, Jalandhar as PW 8 (wrongly mentioned as PW 7), HC Avtar Singh as PW 9 (wrongly mentioned as PW 8), HC Amarjit Singh as PW 10 (wrongly mentioned as PW 9), C. Jagga Singh as PW 11 (wrongly mentioned as PW 10) and thereafter evidence of the prosecution was closed by court order.

Statement of accused was recorded under Section 313 Cr.P.C. All the incriminating evidence against him was put to him which he denied and pleaded false implication. No witness in defence was examined by the respondent-accused.

After appreciating the evidence on record, the trial Court convicted the accused for the commission of offence punishable under

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Section 304-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 1,000, in default, to undergo rigorous imprisonment for a period of one month.

Against that, the accused preferred an appeal which has been accepted by the lower Appellate Court thereby reversing the findings of the trial Court and acquitting the accused of the charge framed against him. Hence, this revision petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently contended that from the depositions of complainant-Lalit Kumar (PW 5) and eye-witness Surinder Kumar (PW 6), it is evident that it was accused-Satnam Singh, who was driving the offending vehicle at the time of accident and he was responsible for the accident resulting in the death of Raj Kumar. The ocular version of complainant (PW 1) and eye-witness Surinder Kumar (PW 6) is supported by the medical evidence. The guilt of accused-respondent is proved, however, the lower Appellate Court has not applied its judicious mind and has misread the evidence.

I have considered the contentions of learned counsel for the petitioner.

The lower Appellate Court has rightly recorded that depositions of PW 5 complainant-Lalit Kumar and PW 6 eye-witness,

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Surinder Kumar are not trustworthy as none of them identified the accused in the Court. PW 5 Lalit Kumar while appearing in the witness-box stated in his examination-in-chief that offending vehicle came from the side of Wadala Chowk and hit Raj Kumar. He also stated that car at the relevant time was being driven by a clean shaven person, who was aged about 30.-35 years but he did not state even a single word that the accused was driving the offending vehicle at the relevant time. Similarly, PW 6 Surinder Kumar stated in his examination-in-chief that car involved in the accident was being driven by a clean shaven person. He also did not name the accused, nor did he identify the accused to be the driver of the offending vehicle. He also stated in his examination-in-chief that he had not named the accused as driver of the offending vehicle in his statement recorded before the police. The lower Appellate Court has rightly recorded that the prosecution failed to establish the identity of the accused as driver of the offending vehicle. The lower Appellate Court has also rightly recorded that alleged accident took place at 9.30 p.m. on 01.01.2006 and it was a foggy day, therefore, visibility had been adversely affected. It has also been rightly recorded by the lower Appellate Court that the prosecution failed to bring any evidence on record that the statements with which the witnesses had been confronted during cross-examination by the APP for State, had been recorded by the investigating officer without any omission or addition. In the statements of Pawan Kumar and Kuldip Lal recorded

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under Section 161 Cr.P.C, it has been recorded that people were shouting after accident that it was Dr. Satnam Singh, who had caused the accident and it is not that they had personally identified him as driver of the car. Otherwise also, statements of Pawan Kumar and Kuldip Lal recorded under Section 161 Cr.P.C is hearsay evidence and cannot be believed. Admittedly, father of the accused is owner of the offending vehicle, but it does not mean that the accused was driving the car at the relevant time. The lower Appellate Court has rightly recorded that there is no evidence on file to establish that it was the accused-respondent who was driving the offending vehicle at the time of accident.

Moreover, I am afraid, while exercising my revisional jurisdiction, I cannot re-appreciate the evidence. This is not a case where an important piece of evidence has been left from consideration by the lower Appellate Court while deciding the case.

In the opinion of this Court, even if two views are possible on the appreciation of evidence available on record, the view taken by the lower Appellate Court while acquitting the accused must prevail and this Court should not substitute its own view over the view taken by the lower Appellate Court.

For the reasons stated above, petition is devoid of merit, hence, is dismissed in limine.

03.03.2015

parveen kumar

(Paramjeet Singh)
Judge