

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-2937-2014

Date of decision : 26.02.2015

Satish

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Rajesh Lamba, Advocate
for the petitioner.

Ms.Neelam Kashyap, DAG, Haryana.

REKHA MITTAL, J.

The present petition has been directed against the judgment dated 16.08.2014 passed by the Additional Sessions Judge, Fatehabad whereby the appeal preferred by the petitioner against his conviction and sentence for offence punishable under Sections 279, 337, 338, 304-A of the Indian Penal Code has been dismissed and consequently the judgment of conviction and order of sentence for the aforesaid offences, passed by the trial Court, have been affirmed.

Ragbir Singh PW4, the alleged eye-witness to the occurrence lodged the First Information Report on the allegations that he is running a Karyana shop in his village Garan, P.S.Barwala. On 29.10.2008, he came to Fatehabad on a motor cycle to see his brother in-law Sohan Lal, running a tailoring shop at Ratia Gate. At about 5 PM, he and his brother in-law Sohan Lal while riding on separate vehicles were proceeding towards

village Malher. At about 5.30 PM, when they crossed drain of the village, a motor-cycle driven in a rash and negligent manner came from the side of village Malher and struck against the Moped of Sohan Lal. He (Sohan Lal) fell down on the road and started bleeding from the head. The motor-cyclist along with pillion rider also fell down on the road and sustained injuries. The offending vehicle i.e. HR22-E-3917 was driven by Ganesh son of Krishan Lal resident of village Malher. Sohan Lal was shifted to Pahwa Hospital, Fatehabad where driver of the offending vehicle and the pillion rider were also admitted. As condition of Sohan Lal was serious, he was referred to V.K.Neuro Care Hospital, Hisar and succumbed to the injuries there.

The statement Ex.PW1/A recorded by Raghbir Singh led to registration of formal FIR Ex.P1. The vehicles involved in the occurrence along with registration certificates were taken into police possession. A rough site plan Ex.PW4/C of place of the occurrence was prepared. The scene of accident was got photographed. On completion of investigation, challan was presented in the Court.

Counsel for the petitioner contends that the courts below committed a gross error by holding that the prosecution has established identity of the accused and the petitioner was author of the accident due to his rash and negligent driving beyond shadow of reasonable doubt, therefore, the petitioner deserves to be acquitted of the offence charged against him. To substantiate his contention, it is argued that Randhir Singh complainant in the First Information Report had stated that offending vehicle was driven by Ganesh son of Krishan Lal and not the present

petitioner. Raghbir Singh has admitted during cross-examination that he knew Ganesh and Satish by name as well as appearance, therefore, the petitioner has been wrongly indicted in the crime. Another submission made by counsel is that in the medical records of Pahwa Hospital, Fatehabad, there is no reference to the petitioner having brought injured Sohan Lal for admission which creates suspicion that the complainant was present at the spot. It is argued with vehemence that recording of name of Ganesh as driver of the offending vehicle coupled with the fact that name of Raghbir Singh is not entered in hospital records, is sufficient to hold that Raghbir Singh was not a witness to the occurrence and thus his testimony cannot form the basis for conviction of the petitioner.

Counsel for the State of Haryana, on the other hand, would contend that concurrent findings of fact recorded by the Courts below do not warrant intervention in exercise of limited revisional jurisdiction. Ganesh, the real brother of the petitioner appeared as a prosecution witness and admitted that the motor-cycle was driven by his brother Satish and in the occurrence, Sohan Lal and Babu Lal sustained injuries and they were shifted to Pahwa Hospital.

In reply, counsel for the petitioner submitted that in case conviction of the petitioner is affirmed, substantive sentence awarded to him for offence punishable under Sections 338 and 304-A IPC may be reduced.

I have heard counsel for the parties and perused the records.

Raghbir Singh, at whose behest the criminal law was set in motion has tendered a convincing explanation in regard to name of Ganesh in place of Satish in the First Information Report. He has deposed that he

had not stated name of the person driving the motor cycle but only got recorded that accident was caused by son of Krishan. The discrepancy in the case of prosecution, pointed out by learned counsel has been satisfactorily explained in the light of statement of Ganesh, the real brother of the petitioner. In this view of the matter, the petitioner cannot gain any advantage to his contention from the fact that Ganesh is stated to be driver of the offending vehicle in the First Information Report.

Counsel for the petitioner has relied upon medical evidence in order to create doubt in regard to presence of Raghbir Singh complainant at the spot. However, during cross-examination of Raghbir, no such fact was put to the witness to seek his explanation as to why his name does not figure in the records of Pahwa Hospital if he had shifted injured Sohan Lal to the said hospital. Under these circumstances, the plea of the petitioner in this regard is meritless and accordingly rejected.

No other point has been raised.

This brings the Court to sentence awarded to the petitioner. Counsel for the petitioner, in support of his contention for reduction of sentence, has submitted that the petitioner is in custody since disposal of his appeal by the Sessions Judge, Fatehabad on 16.08.2014. It is further argued that the petitioner is suffering from piles thus not keeping good health.

The criminal proceedings were initiated against the petitioner in the year 2008 with the lodging of FIR on 30.10.2008. He has suffered trauma of criminal proceedings for the past about 7 years. Concededly, he is in custody since 16.08.2014, the day his appeal was dismissed by the appellate Court.

Keeping in view gamut of facts and circumstances discussed hereinbefore, in my considered opinion, ends of justice would be served if substantive sentence awarded to the petitioner for offence punishable under Sections 338 and 304-A IPC is reduced to rigorous imprisonment for a period of one year.

For the reasons aforesaid, the petition stands disposed of with modification in the terms indicated above.

(REKHA MITTAL)
JUDGE

February 26, 2015.

DK