

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 897 of 2015 (O&M)
Date of Decision : 29.04.2015

Laddi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

- 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. Sudhir Sharma, Advocate
for the petitioner.

Mr. Gurveer Sidhu, AAG, Punjab.

R.P. Nagrath, J.

The instant revision has been filed by the petitioner to challenge the concurrent findings of his conviction under Section 304-A and 279 of the Indian Penal Code (IPC). Learned trial Court awarded simple imprisonment to the petitioner for one year under Sections 304-A IPC and six months under Section 279 IPC but no fine was imposed as part of the punishment. Both the sentences were to run concurrently. The appellate court also affirmed the sentence awarded by the trial court.

2. The facts of the case briefly are;

Phool Singh (deceased), the nephew of complainant was working as *Munshi* (clerk) at sand store owned by Vijay Chawla. The sand store was located in the fields of Maya Ram, *Namberdar*. As per

the version put up in the FIR Phool Singh did not return home as per usual routine on 21.08.2011. Balbir Singh-complainant felt worried and went to the sand store with Satpal Singh PW to look out for Phool Singh. Phool Singh was still found working there and loading sand in a tipper truck. Phool Singh told his uncle that because of the extra workload he could not reach home on time. Thereafter, they all started together on foot.

3. Phool Singh was little ahead of the witnesses. It was about 10.30 p.m. when Phool Singh travelled about 100 yards from the sand store that tipper truck No. HR-37A-5812 came from the side of sand store. The vehicle was being driven at a high speed and in a rash and negligent manner and hit Phool Singh. Phool Singh fell on the ground and sustained serious injuries. The driver of the offending vehicle came near the spot but on seeing the serious condition of Phool Singh he left the truck at the spot and himself fled away.

4. The complainant and Satpal arranged a vehicle and took the injured to the Civil Hospital, Dera Bassi, where the doctors declared the victim brought dead. From there Balbir Singh complainant, the uncle of deceased, proceeded to report the matter to police and his statement (Ex. PA) was recorded by HC Jagtar Singh at 08.15 a.m. on 22.08.2011 and formal FIR was registered. The police party reached the spot and prepared a rough site plan (Ex. PC). The tipper truck without documents was recovered from the spot and taken into possession vide memo Ex. PD.

5. The petitioner was arrested on 29.08.2011. Photostat copy of insurance policy and the registration certificate of the vehicle

produced by the petitioner before the police, which were taken into possession vide memo Ex. PG. The offending vehicle was registered in the name of Mukesh Chand son of Tirath Ram.

6. The prosecution examined 10 witnesses in support of its case. The petitioner denied all the incriminating circumstances appearing against him in the prosecution evidence and pleaded false implication. No evidence was led by the petitioner in his defence.

7. Learned counsel for the petitioner tried to attack the findings of the trial Court on the grounds *inter alia*:-

- (i) That there was huge delay in lodging the FIR;
- (ii) that both the attesting witnesses are uncles of the deceased and have been inserted as eye-witnesses by calling them from their house as there was no occasion for them to come to the sand store;
- (iii) that owner of the vehicle has not been examined to prove identity of the petitioner; and
- (iv) that there was a defect in the charges framed by the trial Court which has prejudiced to the petitioner's defence.

8. On the other hand, learned State counsel submitted that the witnesses have made consistent statements about the manner in which the offending vehicle was driven and hitting the victim and also categorically identified the petitioner to be the driver of offending vehicle. It is further submitted that witnesses have no prior enmity to falsely implicate the petitioner and these issues have been meticulously dealt with by the courts below. It is contended that there

is nothing to suggest that the courts below misread the evidence or ignored any material on record calling for interference by this Court in exercise of its revisional jurisdiction. The occurrence took place at about 10.00 p.m. or 10.15 p.m. and since Phool Singh had not still returned home on time, so it was natural for his uncle accompanied by PW-2 Satpal Singh his neighbourer to go to the sand store and find out his welfare.

9. I have heard learned counsel for the petitioner, the State counsel, perused the judgments of both the courts below and the records.

10. PW-1 testified that he immediately arranged a three-wheeler and carried the victim to hospital and the victim succumbed to injuries on way to the hospital. According to PW-2, they had reached the hospital at about 12 O'clock in the night. PW-10 HC Jagtar Singh, the investigating officer, in cross-examination stated that the incident took place at about 10.30 p.m. and the victim died on way to the hospital at 11.30 p.m. as per information of the witnesses. If that be the state of facts of the injured being carried to the hospital and he died on way, it would bring a circumstance to vouchsafe the presence of witnesses at the time of occurrence. In view of the aforesaid factors, recording the statement of the complainant for registration of FIR in the early next morning would make the delay as ground of attack to be quite insignificant.

11. PW-1 stated that the petitioner stopped the offending vehicle at some distance and while the witnesses were taking care of the victim, the petitioner fled from the spot. The witness made a firm

statement that the petitioner was the driver of offending vehicle.

12. PW-2 Satpal Singh, another witness, also stated that the petitioner after stopping the vehicle at some distance came there and stayed for about 5-7 minutes and on seeing the serious condition of the victim, fled away. Despite extensive cross-examination of both these witnesses nothing appeared for bringing suspicion to the story. PW-2 stated that Balbir Singh is uncle of the deceased and he himself is from brotherhood of the family. That would not make him a close relative of the deceased to attack his testimony as that of interested person.

13. The other important factor is that the offending vehicle was left at the spot by the driver and it was recovered from there only. In **Sanjeev Kumar vs. State of Punjab, CRR No. 2313 of 2013** decided on 10.10.2013, it was held by this Court that when an accident is caused with a vehicle like bus or truck, which is recovered from the site of occurrence, it is not difficult to identify the driver of offending vehicle. It may further be seen that the petitioner himself when arrested on 29.08.2011 had produced registration certificate and the insurance policy of the vehicle before the police, for which memo Ex. PG was prepared.

14. About the driver of offending vehicle being rash and negligent in driving the vehicle, the site plan Ex. PC would make the things quite apparent and corroborate the eye-witness account of the version. The location of the dead body and the site where the vehicle was parked after the accident, marked as 'A' and 'B', in site plan Ex.

PC would show that the victim and the vehicle were on the same side of the road.

15. PW-1 in cross-examination stated that left side of the vehicle, hit the victim while he was walking on the road. No question was put to PW-1 and PW-2 that truck driver was not driving the vehicle in a rash or negligent manner especially to challenge the location of the points as mentioned in the site plan.

16. It may also be seen that the defence even challenged the story of involvement of this tipper in the accident. It was suggested to both PW-1 and PW-2 that the accident had not taken place with the vehicle No. HR-37A-5812 or that this vehicle was involved simply to set up a claim for compensation. This defence version could not withstand the test of scrutiny because the vehicle was recovered from the spot.

17. On the contention that the charge framed by the trial Court against the petitioner is defective as it was stated on the second charge that the petitioner caused the death of Phool Singh by driving the aforesaid **motorcycle** in a rash and negligent manner, though, in the first charge under Section 279 IPC, the description of the offending vehicle has been correctly given. The perusal of trial Court record at page no. 56 would show that there is no such defect in the charge-sheet as the second charge also relates to driving of a truck tipper and not a motorcycle as tried to be suggested. Even no such ground was raised in the grounds of appeal filed before the Sessions Court. So the aforesaid contention is not borne out from the record.

18. Therefore, there is no scope of interference in exercise of revisional jurisdiction to the conviction recorded by both the courts below.

19. On the quantum of sentence, learned counsel for the petitioner submitted that an award of ₹ 9.86 lacs has been passed by learned Motor Accident Claims Tribunal but I find that cannot be a mitigating circumstance in favour of the petitioner. However, in the facts and circumstances of the case and the fact that the petitioner had been facing the trial for more than 3½ years, the sentence is reduced from the period of one year to 11 months of imprisonment.

20. With the aforesaid modification in the sentence, the instant revision is dismissed on merits.

April 29, 2015
jk

(R.P. NAGRATH)
JUDGE