

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRR-1208 of 2005.
Date of Decision: 20.01.2016.**

BALVINDER SINGH

....PETITIONER.

VERSUS

STATE OF HARYANA

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Subhash Godara, Advocate for
Mr. S.S. Dinarpur, Advocate for the petitioner.

Mr. Sandeep Vashisth, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This petition was preferred by Balvinder Singh (petitioner) assailing the judgment dated 06.07.2005 passed by learned Additional Sessions Judge, Jagadhri upholding and affirming the judgment of conviction and order of sentence dated 25.11.2004 recorded by learned Additional Chief Judicial Magistrate, Jagadhri, in case pertaining to First Information Report No.447 dated 02.12.1996 under Sections 279 and 304-A of the Indian Penal Code (for short "I.P.C.") registered at Police Station City Jagadhri, vide which he (petitioner) was held guilty, convicted and sentenced as under:-

(i) to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- for the offence under Section 279 I.P.C., in default of payment of fine, to further undergo rigorous imprisonment for one month.

(ii) to undergo rigorous imprisonment for a period of one and half (1-1/2) year and to pay a fine of Rs.4000/- for the offence under Section 304-A I.P.C., in default of payment of fine, to further undergo rigorous imprisonment for two months.

The sentence of rigorous imprisonment for one and half year awarded under Section 304-A I.P.C. was reduced to one year by the first appellate Court vide judgment dated 06.07.2005.

The story of the prosecution was noticed by learned first appellate Court in Para No.2 of the judgment as under:-

“On 02.12.1996 he (complainant) alongwith one Shiv Charan son of Ramji Lal, resident of village Sankhera was returning to Jagadhri from his fields on his motorcycle. His nephew Rajinder (deceased) was also going towards Jagadhri on car bearing no.HR-02B-0023 which was going ahead of the motorcycle of the complainant. When the car reached near Kothi of Col. Jasbir Singh within the area of Police Station City, Jagadhri, a tractor-trolley being driven by a Sikh person, whose name later on came to know as Balvinder Singh son of Gurbachan Singh, resident of village Leda Khas, in rash and negligent manner came from front side and dashed into the car. As a result of that impact, Rajinder received multiple injuries. The complainant took him to civil hospital, Jagadhri where he succumbed to injuries. The driver of tractor-trolley had fled away from the spot and he can be identified on appearance.”

On the statement of complainant Jangsher (PW2), First Information Report No.447 dated 02.12.1996 under Sections 279 and 304-A I.P.C. was registered against the petitioner. During investigation, both the vehicles involved in the accident were taken into possession and were got mechanically examined vide reports Ex.PW7/A and Ex.PW7/B. Rough site-plan of the site of accident Ex.PW6/B was prepared by the Investigation Officer. The petitioner was arrested and on completion of investigation and other formalities was sent to the Court for trial.

The petitioner was charge-sheeted under Sections 279 and 304-A I.P.C., to which he pleaded not guilty and claimed trial. The prosecution examined PW1 Shiv Charan, PW2 Jangsher Singh, Advocate PW3 Zora Singh, PW4 Dr. Deepika Gupta, PW5 Photographer Raj Kumar, PW6 Sub Inspector Ajit Kumar, PW7 Constable Roshan Lal. After closure of evidence of the prosecution, statement of petitioner under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded by putting to him the incriminating evidence available on record, which he denied and pleaded false implication.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the petitioner, learned trial Court convicted and sentenced him as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 25.11.2004 passed by learned trial court, the petitioner preferred an appeal which was dismissed by learned Additional

Sessions Judge, Jagadhri vide judgment dated 06.07.2005 with modification of reducing the sentence of rigorous imprisonment for one and half years awarded under Section 304-A I.P.C. to one year.

Still unsatisfied, the petitioner has preferred the instant criminal revision.

The submissions made by Mr. Subhash Godara, learned counsel appearing for the petitioner and Mr. Sandeep Vashisth, Deputy Advocate General representing the State of Haryana have been heard and record has been perused.

To begin with, learned counsel for the petitioner argued that the evidence of the prosecution is insufficient and incompetent to establish that the petitioner was the driver of the offending tractor-trolley. In the First Information Report lodged by PW2 Jangsher Singh, he had mentioned that after the accident he had come to know that the name of the driver is Balvinder Singh. He did not mention who told him the name of the driver. After arrest of the petitioner, no identification parade was arranged by the Investigation Officer for his identification by the eyewitnesses. In absence of the same, identification of the petitioner for the first time in the Court could not be used as conclusive evidence.

Learned counsel for the petitioner further argued that identity of the tractor-trolley involved in the accident was also doubtful. PW6 Ajit Kumar, Investigation Officer stated that the tractor-trolley was without number plate. In the First Information Report also, PW2 Jangsher Singh did not mention the registration number of the tractor-trolley involved in

the accident. However, during his deposition in the Court, PW2 Jangsher Singh stated that there was a number plate displayed on the tractor-trolley from where he noted the registration number. He also stated that he had mentioned the registration number of the tractor-trolley in his statement to the police which was a wrong. Learned counsel contended that the inconsistency in the statement made by PW2 Jangsher Singh while lodging the First Information Report and the statement given by him in the Court renders his very presence at the time of accident doubtful.

The arguments of learned counsel for the petitioner may appear to be attractive but are devoid of merit in the light of the ocular and documentary evidence available on record. The accident occurred at 6:15 p.m. on 02.12.1996 and the First Information Report was lodged by PW2 Jangsher Singh at 9:30 p.m. on the same day. The gap between the accident and the report lodged with the police was so short that there was no scope for any kind of concoction or manipulation in the story. Indeed, in the First Information Report Ex.PB, PW2 Jangsher Singh stated that he had later on come to know the name of the driver of the offending tractor-trolley but simultaneously he stated that he was in a position to identify the driver of the tractor who after causing the accident had fled away. PW2 Jangsher Singh was accompanied by PW1 Shiv Charan on a motorcycle when they witnessed the accident. Both identified the petitioner as driver of the tractor-trolley and unequivocally stated that the accident took place due to his rash and negligent driving. They also

consistently stated that since the petitioner was from a nearby village they knew him earlier. The fact that after the accident while lodging the report with the police PW2 Jangsher Singh mentioned that he had come to know that Balvinder son of Bachna Singh, caste Jat Sikh, resident of Leda Khas (petitioner) was the driver of the tractor-trolley, shows that through he knew the petitioner by face, the name of the petitioner surfaced lateron. When the name of the petitioner was mentioned in the First Information Report and it was also stated by the lodger of the report that he can identify the driver if brought before him and then he and the other eyewitness examined by the prosecution identified the petitioner in the Court, it is sufficient to establish that the petitioner was the driver of the offending tractor-trolley.

As far as identification of the tractor-trolley is concerned, it is true that the number plate was not displayed on the vehicle because of which the registration number was not mentioned by PW2 Jangsher Singh in the First Information Report. The testimony of PW2 Jangsher Singh in the Court that the number plate was displayed on the vehicle and he had noted the number from there is not a major infirmity. Needless to say that the memory starts fading with time and such kind of discrepancies are bound to occur in the statement of witnesses when they are examined after a lapse of long time from the date of occurrence. The tractor-trolley which caused the accident was taken in possession by the Investigation Officer from the site of accident itself as is proved from the recovery memo Ex.PA. The engine number and chassis number of the tractor-trolley were

mentioned in Ex.PA. The maruti car of the deceased was also taken in possession vide the same memo Ex.PA. The registration certificate of the tractor-trolley and his driving licence were handed over by the petitioner to the Investigation Officer on 04.12.1996 vide memo Ex.PW6/C at the time of his arrest. Therefore, there is not even a slight doubt with regard to identity of the tractor-trolley involved in the accident.

Another vehemently raised argument of learned counsel for the petitioner is that both PW1 Shiv Charan as well as PW2 Jangsher stated that the maruti car was dragged by the trolley upto 50-60 feet. The photographs of the site of accident Ex.P5 to Ex.P8 were proved by PW5 Raj Kumar, Photographer. In none of the photographs, the dragging marks were visible. In the site plan of the site of accident Ex.PW6/B the tractor-trolley was shown to be standing on its left side of the road. In the mechanical examination report Ex.PW7/B of the tractor-trolley, it was mentioned that its rear right side wheel had no air and the mudguard of the tractor was bend. When the tractor-trolley was on its correct side of the road and its right side wheel had no air, it becomes evident that the wheel of the tractor-trolley had punctured and it was in a stationary position when the maruti car struck into it. From that it follows that the deceased himself was rash and negligent because of which the accident took place.

Here again, there appears no force in the argument of learned counsel for the petitioner. The condition of the tractor-trolley noticed in the mechanical examination report Ex.PW7/B was after it had met with

the accident. To none of the eyewitnesses it was suggested by the petitioner that the tractor-trolley was in a stationary position when the maruti car of the deceased struck into it. For the simple reason that the rear right side wheel of the tractor had no air after the accident, it cannot be assumed that the tractor-trolley was stationary when the accident took place. Needless to say that the condition and the directions of the vehicle abruptly and unknowingly change at the time of accident.

As a consequence to the accident, the trolley had turned turtle and that could be the reason for the scratches on the mudguard of the tractor. The fact that the tractor-trolley stopped on its left side of the road after the accident, will not indicate that the maruti car was in a fast speed because of which it struck into it. In addition to the statement of PW1 Shiv Charan and PW2 Jangsher Singh, who witnessed the accident and consistently deposed that the accident occurred due to rash and zigzag driving of the tractor-trolley by the petitioner, the mechanical examination report Ex.PW7/A of the martui car also shows that the complete right side portion of the car had got badly damaged during the accident. There was no damage to the front right side of the tractor. The minor damage to the tractor on the right side was in the rear portion. Though there was no other vehicle on the road except the tractor-trolley and the car but as deposed by PW1 Shiv Charan and PW2 Jangsher Singh, the trolley, because of rashness and zigzag driving of the tractor, tilted towards the side of the car and its corner struck on the bonnet of the car and damaged the whole upper portion of the car.

The eyewitnesses of the accident PW1 Shiv Charan and PW2 Jangsher Singh stated that while the petitioner was driving the tractor, his brother Joginder was sitting on the mudguard of the tractor. The eyewitnesses took the chance of naming the brother of the petitioner also as an eyewitness of the accident. The name of Joginder may not have been mentioned in the First Information Report but when the eyewitnesses named him in their deposition, the petitioner could have examined him to refute/contradict their allegation. Joginder did not step into the witness box and the fact is that he as well as the petitioner fled away after causing the accident. This is another factor important for drawing an inference that the accident took place due to rash and negligent driving of the petitioner.

In the above premise there appears no ground for intervention in the judgment of conviction dated 25.11.2004 recorded by the trial Court and affirmed by the first appellate Court against the petitioner. The order of sentence, as modified by learned first appellate Court vide judgment dated 06.07.2005, also needs no interference. Hence, the revision filed by the petitioner is dismissed.

The petitioner is on bail in this case, his bail bond shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

20.01.2016.
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Note: Whether to be referred to the Reporter or not? Yes.