

In the High Court of Punjab and Haryana at Chandigarh

CRR No. 203 of 2007 (O&M)

Date of decision: 24.02.2016

Gian Chand

..... Appellant

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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?

Argued by: Mr. Gurcharan Dass, Advocate
for the revisionist/petitioner.

Mr. Surjeet Singh Chaudhary, DAG, Punjab

RAJ RAHUL GARG.J.

This revision petition is directed against the judgment dated 19.01.2007 rendered in appeal by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, whereby judgment of conviction dated 12.09.2005 recorded by the Court of Judicial Magistrate 1st Class, Ludhiana and order of sentence of the even date were maintained. Revisionist/petitioner was held guilty under Sections 279, 304-A and 427 of Indian Penal Code (for short 'IPC'). Vide order of sentence, he was sentenced to undergo RI for 3 months for committing offence punishable under Section 279 IPC; to undergo RI for 1 year for committing offence punishable under Section 304-A IPC; to pay a fine of Rs. 500/- for committing offence punishable under Section 427 IPC. In default of

payment of fine to further undergo simple imprisonment for 7 days.

2. Brief facts of the case are like this; that on the statement of Dilbar Singh s/o Puran Singh recorded by the police on 10.04.1998, this case was registered. As per complainant, he and his brother Malkiat Singh (deceased) were going to see their sister who was residing in village Kaddon, Tehsil Payal, on their respective scooters. His brother was ahead of him on scooter No. PB-10Z-688. When Malkiat Singh was near crossing of village Sahni, the offending truck No. PB-23-4288 came from Ludhiana side, being driven by its driver rashly and negligently and at a high speed, without blowing any horn, he turned the truck towards right side of the crossing which hit the scooter of Malkiat Singh. As a result of this accident, Malkiat Singh fell down and suffered multiple injuries. The aforesaid truck dragged the scooter of Malkiat Singh on the other side. Scooter was badly damaged. Truck driver came to the complainant and disclosed his name as Gian Chand son of Sham Singh. Complainant took his brother Malkiat Singh to Mohan Dai Oswal Hospital, Ludhiana, for treatment. As per complainant, this accident had taken place on account of rash and negligent driving of the driver of the truck.

3. On 09.04.1998 police sought opinion of the doctor regarding fitness of Malkiat Singh to make statement, whereupon, doctor opined that he was unfit for making any statement. On 10.04.1998, as well the police sought opinion of the doctor by moving application Ex. PW6/B as to if Malkiat Singh was fit to make statement, whereupon, doctor gave his opinion Ex. PW7/B that he was unfit for making any statement. Again on 13.04.1998, doctor opined that the patient was not fit to give statement.

Even on 14.04.1998, the same opinion was given by the doctor. Malkiat

Singh died on 16.04.1998, thereafter, inquest report Ex. PE was prepared. Dead body of Malkiat Singh was got post-mortemed. Post-mortem report is Ex. PW8/A. Injury report is Ex. PW9/A. Site plan of the place of occurrence was prepared. Photographs of the scooters were obtained. Accused alongwith truck in question were produced before police by Surinder Pal s/o Hans Raj on 11.04.1998. Accused was arrested. The aforesaid scooter alongwith photostat copy of the registration certificate (R.C) which was lying in the scooter itself were taken into police possession. Truck in question alongwith registration book, photocopy of the route permit and driving licence (D.L) were taken into possession vide memo Ex.PB. Photos and negatives were taken into possession vide memo Ex. PA, on 22.04.1998. Statements of witnesses were recorded. After completion of necessary investigations, the challan against the accused was put in the Court.

4. Finding a *prima-facie* case against the accused, he was charge-sheeted for committing offence punishable under Sections 279, 304-A and 427 IPC. To the charge, accused did not plead guilty but claimed trial. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein each prosecution allegation appearing against the accused was denied and accused pleaded his innocence and false implication.

5. After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned Court of Judicial Magistrate 1st Class, Ludhiana, held revisionist/petitioner guilty for the offence under Sections 279, 304-A and 427 IPC and sentenced him vide order of even date, as mentioned in the earlier part of this judgment.

6. Against the judgment of conviction, revisionist/petitioner Gian Chand went in appeal before the Court of learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, wherein the learned Additional Sessions Judge found that the impugned judgment of conviction and order of sentence passed by learned trial Court do not suffer from any infirmity and illegality and the appeal being without any merit, was dismissed.

7. Under the above mentioned circumstances, feeling aggrieved with the aforementioned two judgments of the Courts below, revisionist Gian Chand has come up in this Court by way of filing of this revision petition.

8. I have heard learned Mr. Gurcharan Dass, Advocate, counsel for the petitioner and learned Sh. Surjeet Singh Chaudhary, DAG, Punjab, counsel for the respondent.

9. First of all, it was argued by learned counsel for the revisionist that there is delay in lodging the FIR. As per prosecution case, occurrence had taken place on 09.04.1998 whereas the statement of Dilbar Singh, brother of Malkiat Singh, was recorded on 10.04.1998. There is no reasonable explanation coming forth as to why the Investigating Officer did not record his statement on 09.04.1998 or at any time prior to 10.04.1998. Investigating Officer Sarup Singh deposed during the course of his cross-examination that he had got information about the accident on 09.04.1998 but he did not investigate the case on that day nor he tried to investigate it. That day he was not knowing about the place of accident and also the fact as to with which vehicle the accident had taken place. Under these circumstances, the involvement of revisionist in this accident is not free from doubt and in fact he was not the driver of the truck in question on the

relevant day.

10 It is well settled that FIR in respect of cognizable offences should be lodged as soon as possible. Where lodging of report is delayed, it not only gets bereft of its spontaneity, danger also creeps in of the introduction of coloured version, thought out stories and twisting of facts. Thus, some innocent persons can be roped in and named as culprits, as a result of much thought, consultations and discussion.

11. If we peruse the evidence available on file, it becomes clear that the prosecution could satisfactorily explain the delay in lodging FIR. Even the learned counsel for the revisionist has referred to the statement of Sarup Singh (PW6), Investigating Officer, partly. He has left the explanatory part of the statement of Investigating Officer. Sarup Singh (PW6) stated that he got information about this accident on 09.04.1998 and he did not investigate the case on that date. He also deposed that on that day, the injured was not fit to make statement and there was no eye witness of the accident present in the hospital. After getting the information of this accident, police swung into action and moved application Ex. PW6/A before the doctor for seeking his opinion regarding fitness of the injured to make statement. Doctor gave his opinion at 4:20 P.M. that injured was not fit to give statement. Under these circumstances, it cannot be said that there was no explanation coming forth on the part of the prosecution for not recording the statement of injured or that of complainant on 09.04.1998. Complainant, who is the real brother of injured, when present in the hospital and the police had gone to the hospital for recording the statement of injured on 10.04.1998 and sought opinion of the doctor regarding fitness

of the injured for making statement, whereupon, doctor opined that he was unfit for making statement (i.e. time of opinion 12:05 P.M). The statement of complainant was recorded at 1:00 P.M. Under these circumstances, it is established on the file that delay, if any, in lodging the report regarding this accident, has been satisfactorily explained. In the FIR Ex.PD, the name of driver of the offending truck finds mention, as well the truck number. There is, thus, no reason to doubt the genuineness of the prosecution case. As such, I find no illegality or infirmity in recording of the findings of both the courts below on this aspect.

12. The next point raised on behalf of the revisionist was, that Dilbar Singh-complainant as PW4 deposed during the course of his cross-examination that he left his place for the house of his sister 20 minutes after Malkiat Singh left for village Kaddon, Tehsil Payal, to see their sister. Under these circumstances, by no stretch of imagination, it can be said that the two brothers would be together at the time of accident. Both the brothers had left by their respective scooters, even otherwise, it is unthinkable that if both the brothers were to go to their sister, they would go by separate scooters. In that eventuality, they would always go by one scooter. As such, it is established on the file that Dilbar Singh (PW4) was in fact not present at the place of accident. He is in fact an introduced witness.

13. The above contention of learned counsel for the revisionist is without any substance as Dilbar Singh was cross-examined at length but no question was put to him as to how they came together at the place of occurrence when they had departed separately. Also no question was put to him as to why they had left on separate scooters when they were to go to

the same place. Dilbar Singh was the best witness on that point. Merely on the basis of suspicion nothing can be inferred in this regard. During these days of fast moving world, people have so much to do. They are busy in doing their business and generally people take their vehicles so that they may be able to do their next work. There is nothing on record to show that both the brothers were having one scooter. If they were having two scooters, they could very well go separately. Likewise, there is no evidence regarding speed at which they drove their scooters and further the fact as to if Malkiat Singh met somebody on his way or spent some time on the way or not. There is categorical statement of PW4 that when they reached near crossing of village Sahni, a truck bearing No. PB-23-4288 came from Ludhiana side and took turn towards the right side of the crossing without blowing any horn and was being driven rashly and negligently. It had also dragged the scooter of Malkiat Singh to the other side which further goes to show that the truck was being driven rashly and negligently and at a high speed, otherwise, it would have been stopped at the place of the accident itself particularly when there was a crossing. At the crossing, one is supposed to drive vehicle at a slow speed. By driving the truck rashly and negligently, even at the crossing, the revisionist has committed a breach of his positive duty to drive the vehicle slowly. He drove the vehicle rashly, knowing fully well that if he drives the vehicle at a high speed, he may endanger the life of somebody going on the road. As such, this contention of learned counsel for the revisionist is without any merit.

14. In order to show that Dilbar Singh was not present at the spot, learned counsel for the revisionist argued that in the hospital record the name of Dilbar Singh does not find mention as the one who had brought

Malkiat Singh to hospital. Much stress was laid on the fact that had Dilbar Singh brought his brother Malkiat Singh to the hospital, his name would have been mentioned in the hospital record. As such, this fact proves that Dilbar Singh was not present at the place of accident and that he is an introduced witness.

15. Injury report Ex. PW9/A is there on the file. There is no column shown in the injury report regarding details of the person by whom injured was brought to hospital. Likewise, when there was no column for the purpose, nothing was mentioned in the injury report but that would not mean that the name of somebody else was written as the person by whom injured was brought to the hospital. The doctors have been examined as a witness but no material was elicited from them about this fact. Under these circumstances, when there was no material on the file to show that instead of Dilbar Singh, somebody else had taken the deceased to the hospital, it cannot be said that the prosecution case is in any way doubtful on that account.

16. The next argument of learned counsel for the revisionist that when Investigating Officer was not knowing about this occurrence, then how he prepared the site plan of the place of occurrence and further as to how he took into possession the truck in question on 10.04.1998 whereas the accused was arrested on 11.04.1998; is again not sustainable. As from the record, it reveals that the site plan of the spot was prepared on 10.04.1998. Scooter in question was also taken into possession by the police on 10.04.1998. Statement of complainant was also recorded on 10.04.1998. If after recording his statement, site plan of the place of occurrence was prepared and scooter was taken into possession, there is no

fault of prosecution in this regard. Further, from perusal of memo Ex PB, whereby the truck in question was taken into police possession, it becomes clear that the truck was taken into police possession on 11.04.1998, when it was produced alongwith the accused by Surinder Pal son of Hans Raj. Accused was also arrested on that very day. It was not taken into possession on 10.04.1998. As such, this argument of learned counsel for the revisionist is not substantiated.

17. For the reasons recorded above, finding no merit in this revision petition, it is dismissed. Impugned judgment of conviction dated 19.01.2007 rendered by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, is maintained. If the petitioner is on bail, his bail bonds shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge, Ludhiana, shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

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

(RAJ RAHULGARG)
JUDGE

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