

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

CRR No.2611 of 2009

Date of Decision: July 26, 2016

Ajmal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.K. Chawala, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

The revisionist-convict Ajmal was initially tried in case got registered by way of an FIR No.205 dated 7.7.2006 under Sections 279, 304A IPC Police Station, Punhana and through judgment dated 27.02.2009 the Court of learned Sub Divisional Judicial Magistrate, Punhana convicted him, whereby, he was sentenced to undergo rigorous imprisonment for six months under Section 279 IPC and two years rigorous imprisonment under Section 304-A IPC and also to pay fine of ₹500/-. The same was challenged in appeal and it is through judgment dated 3.9.2009, the Court of learned Additional Sessions Judge, Fast Track Court, Nuh dismissed his appeal and that is how, the convict is before this Court in this revision.

Heard, Learned counsel for the parties and perused the

records of the case. The brief allegations that are necessitated to be highlighted are that on 6.7.2006 complainant Mausam along with his uncle Jafru were going on their car bearing No. DL-4-CA-0605 towards their village Bichhore from Ballabgarh via Hodal and at that time the deceased was driving the car while the complainant was sitting on the rear side of the car when a tractor trolley came from the front side and rashly and negligently hit their car, as a consequence of which, the occupants of the car received injuries leading to the death of Jafru regarding which accident FIR in question was registered against the driver of the tractor trolley petitioner-Ajmal. Upon completion of investigations and submission of challan the prosecution examined complainant Mausam as PW1 who reiterated his allegations and through PW2 Dr. M.S. Ranga proved post mortem report of the deceased. PW3 Iqbal testified and has proved inquest report Ex.PW3/A. Another witness PW4 Fazru supported the prosecution case and, thereafter, the prosecution evidence was closed. The accused denied the allegations in his stand taken under Section 313 Cr.P.C. but did not lead any evidence in defence leading to the judgment of conviction.

Heard learned counsel for the parties.

From what has been argued before this Court by the revisionist side and the learned State counsel it is certainly a distressing feature that the two Courts below on surmises and conjectures in the absence of any cogent, substantial and reliable evidence have convicted the revisionist and rather to the mind of this Court there is total non-application and consideration of the requirements of law. The first and foremost grave error that is apparent from the records is that neither the name of the

accused driver has ever been duly proved in evidence on the record. No doubt, it is at a belated stage, afterthought after the trial it has come up that Ajmal accused was the driver of the offending vehicle which can by no means be legitimately taken as piece of evidence. Even the identification of the offending tractor trolley is not there, neither its registration number much less any photographs proved and exhibited to connect the offending vehicle with the accident leading to the death of the deceased. What meets the eye is that the most crucial witness in such eventuality is the Investigating Officer who too has not bothered to step into the witness box to fill the yawning gaps in the inherently weak story. No doubt, the mere non-examination of an Investigating Officer cannot always be construed determinable to the prosecution story but in such a situation for the Court to have judicious appreciation of the allegations in the right earnest when there is no evidence to show and establish identity of the driver and the offending vehicle it was a necessary prerequisite. The very documents of taking into police possession the vehicle, the accused in police custody are not there proved on the records. No doubt, a precious human life has been lost in this accident and that Courts need to be careful and vigilant enough to ensure that due justice is accomplished but sadly to observe that the very initial statement Ex.PW1/A, statement of complainant Mausam, nephew of the deceased shows that he has neither named the accused nor identified the vehicle with its number and rather what is reflected from this document is that some unidentifiable vehicle caused the accident leading to the death of Zafru.

Learned counsel for the State could not convince this

Court if there has ever been any test identification parade to prove the identity of the driver by any of the witness which certainly was a mandatory prerequisite in such a situation. The eye-witness account so claimed that it was a tractor trolley does not suffice the purpose. It is the golden principle of Criminal Jurisprudence that it is for the prosecution to establish its case beyond the shadow of reasonable doubt, however, in the instant case there is not even an iota of evidence to point out any finger of accusation against the petitioner. Merely the statement of the complainant PW1 that he knew the driver Ajmal personally cannot be accepted if one goes to his initial statement to Police Ex.PW1/A where it is not so named or mentioned and rather to the mind of this Court his statement at the time of accident is impregnated with falsehood and his absence is highly doubtful. The learned Court below has wrongly interpreted the evidence of the testimonies of other witnesses PW3 Iqbal, who has proved inquest report Ex.PW3/A and PW4 Fazru both stated that after they came to know about the accident they have reached the hospital at G.H. Mandi, Kharar and therefore, cannot be termed to be witnesses of this accident and whatever they have stated is mere of a hearsay and, therefore, inadmissible piece of evidence. The manner of this appreciation of evidence by the two Courts below certainly needs to be deprecated and there is a total non-application of mind to the evidence on the records. Thus, judgment passed by the learned trial Court dated 27.2.2009 and which has been upheld by the learned Additional Sessions Judge, FTC, Nuh through judgment dated 3.9.2009 both are wholly illegal, perverse and, therefore, needs to be set aside.

Thus, in view of these discussions, the instant revision

petition stands allowed, thereby setting aside the judgment of conviction of the accused.

(FATEH DEEP SINGH)
JUDGE

July 26, 2016
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No