

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 822 of 2009
DECIDED ON: AUGUST 04, 2016

SAJID

.....APPELLANT

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rahul Rathore, Advocate
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

JASPAL SINGH, J

Challenge in this revision petition is to the judgment of conviction dated March 03, 2008 and order of sentence dated March 04, 2008 passed by learned Judicial Magistrate Ist Class, Panipat, whereby, petitioner has been convicted and sentenced as under:-

Name of the accused	Under Section	Sentence (R.I.)	Fine
Sajid	279 IPC	Six months	₹500/-
	304-A IPC	Two years	₹2000/- in default thereof, to further undergo RI for a period of one month.

Disheartened from the afore-said judgment of conviction dated March 03, 2008 and order of sentence dated March 04, 2008, petitioner preferred an appeal before lower Appellate Court, which was entrusted to the court of learned Additional Sessions Judge, Panipat. After hearing both the parties and appraisal of evidence, an appeal preferred by the petitioner was dismissed vide judgment dated March 06, 2009 passed by learned Additional Sessions Judge, Panipat.

Still aggrieved of his conviction and sentence, petitioner has approached this Court by way of instant revision.

The facts necessary for the disposal of instant revision are that FIR No. 109, dated August 12, 2002, under Sections 279, 337, 427 and 304-A IPC was registered by Parkash-complainant unfolding that he accompanied by Raghubir was returning to his village on Rajdoot motorcycle bearing registration No. HR-06-B-5632. At about 8.30 PM, when they reached near the fields of Ram Chander, he spotted Sajid coming from the village side on his pony cart suddenly, motorcycle bearing registration No. HR-06-H-0973 being driven by Jiwan Kumar whereas, his son namely Hargian was pillion rider, collided with the cart, as an impact of the collusion one of the cart's rod pierced into the clavicle region of Jiwan Kumar, who succumbed to his injuries at the spot. Hargian also received injuries, who was immediately hospitalized. Thereafter the matter was reported to the police, investigating officer recorded the statements of witnesses under Section 161 Cr.P.C.; visited the spot; prepared the rough site plan and after completion of investigation final report

under Section 173 Cr.P.C. was prepared and presented in the court Jurisdictional Magistrate, Panipat for trial.

On presentation of challan and appearance of the accused in the Court, he was offered the copies of documents, as provided under Section 207 Cr.P.C. On the basis of report under Section 173 Cr.P.C. as well as documents annexed with it, therebeing, a commission of prima facie offence, petitioner-accused was charge sheeted to face trial under Sections 279, 337 and 304-A read with 34 IPC. The accused did not plead guilty and claimed trial.

In order to substantiate its case prosecution examined as many as seven witnesses and, thereafter, prosecution closed the evidence after placing on record the documents. When incriminating circumstances appearing in the prosecution evidence were put to the accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied the same and complained of false implication. However, he did not like to adduced evidence in his defence.

While assailing the impugned judgments and orders passed by both the courts below, it has been ebulliently argued by learned counsel for the petitioner that the same are absolutely against the evidence available and settled canons of law. Misappreciation of evidence as well as legal proposition applicable to the facts and circumstances of the case in hand, has resulted into miscarriage of justice. Even, otherwise the conviction and sentence have been based upon the statement of Hargian-PW-5, son of the deceased-Jiwan Kumar, whose testimony is otherwise neither credible nor worthy of credence,

especially, in view of the fact that the author of the FIR namely Parkash and Raghbir did not support the case of prosecution and have been declared hostile at the instance of learned Public Prosecutor before learned trial Court. He further contends that the presence of Hargian-PW-5 at the spot is not established. Though, as per the case of prosecution, he was pillion rider with his father on the motorcycle at the time of alleged accident and sustained multiple injuries and was also rushed to the hospital where he remained hospitalized. But to the utter surprise no MLR or any other medical evidence has seen in the light of the day to prove that Hargian-PW-5 sustained injuries. Had he been present at the spot and sustained injuries, he must have got registered the FIR and also got himself subjected to medico-legal examination but in the absence of afore-said documents, his presence cannot be said to have been established beyond doubt.

It has further been contended by learned counsel for the petitioner that none of the witnesses while appearing in the witness box have stated that accident has occurred due to the rash and negligent driving of Sajid-accused and the manner in which it occurred. While concluding his arguments, he submits that since the author of FIR namely Parkash and alleged eye witness Sukhdev did not support the case of prosecution and further the presence of Hargian-PW-5 at the time and place of accident is highly doubtful and suspicious and the prosecution has failed to establish the necessary ingredients, which constitute negligence. The conviction and sentence imposed upon the petitioner by both the courts below are illegal and unwarranted and is liable to

be set aside by way of acceptance of instant revision.

Per contra, learned State counsel has supported the impugned judgments of conviction and order of sentence submitting that the same are absolutely in consonance with the evidence available on file and settled canons of law. No doubt Parkash-PW-1 and Sukhdev PW-2 did not toe the line of prosecution and have been declared hostile. But for the mere reason that they have been declared hostile the other evidence available on file cannot be said to have effaced or washed away. There is a testimony of Hargian PW-5 son of the deceased whose presence at the spot cannot be doubtful. He was a pillion rider on the motorcycle being driven by his father Jiwan Kumar. He also sustained injuries, this fact has not been disputed even by the witnesses, who has been declared hostile. Hargian PW-5 has categorically deposed on oath that he alongwith his father Jiwan Kumar was returning to his house on motorcycle No. HR-06-H-0973 and at about 8.30 PM when they reached near the fields of Ram Chander, a pony cart dashed against their motorcycle. As a result of impact, one of the cart's rod pierced into the body of his father Jiwan Kumar, which proved fatal. The testimony of PW-5 has rightly been relied upon by the Courts below, which further finds support from the medical as well as other evidence. As such, instant revision being devoid of merits, deserves to be dismissed.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of evidence as well as scrutinizing the impugned judgments passed by both the courts below, this

Court finds legal as well as factual substance in the submissions made by learned counsel for the petitioner and is further of the view that conviction and sentence awarded to the petitioner are illegal and unwarranted; that too, based upon incredible evidence.

Undoubtedly, Parkash PW-1 is the author of FIR and while appearing in the witness box he did toe the line of prosecution and categorically deposed on oath that neither he witnessed any accident nor he got registered the FIR. It has been further stated by him that his signatures were obtained by the police on blank papers. He has been confronted with each and every aspect of his alleged statement Ex.PA but nothing favourable to the prosecution could be elicited or extracted from him. Similarly, Sukhdev PW-2 alleged eye witness while appearing in the witness box has also categorically stated that though on 12.08.2002, he accompanied by Parkash had gone on motorcycle to the place where due to accident a person belonging to his village had expired but he does not know the manner, in which, accident took place or who was responsible for causing the accident. He has also been thoroughly confronted with his statement alleged to have been made by him under Section 161 Cr.P.C but nothing fruitful to the prosecution could be extracted from him. Thus, no reliance can be placed upon the testimonies of PW-1 and PW-2.

Now this Court remains only with regard to the testimony of Hargian PW-5 which has been made the basis of conviction and sentence by both the courts below. This Court has scrutinized the statement with care and caution and arrives at a conclusion that he was not present at the time and

place of occurrence and that he is a procured witness. Firstly, it is the case of prosecution that Hargian PW-5, son of the deceased sustained multiple injuries and was hospitalized but to the utter surprise there is no evidence to establish that either he was subjected to medico legal examination or hospitalized. Had it been so, the prosecution must have cited Medical Officer as one of the witnesses to prove the MLR, if any, in respect of Hargian PW-5 or indoor record with regard to his admission in the hospital. Secondly, had he been present at the spot, he must have got the FIR registered but in the instant case, FIR was registered by passers by namely Parkash PW-1, who has not supported the case of prosecution or the manner, in which, death of Jiwan Kumar occurred. Moreover, Hargian PW-5 when subjected to cross-examination has admitted that pony cart was seen by him at a considerable distance, meaning thereby, that an accident could have been avoided. Had the motorcycle been driven by the deceased at a normal speed. Otherwise also, it is beyond imagination that pony cart was being driven at a high speed rashly and negligently. Since, the headlights of the motorcycle were in working order, the pony cart could have been easily visible. It appears that since the death of a person has occurred involving the pony cart, FIR has been registered against him. Thus, the statement of Hargian-PW-5 does not inspire confidence. It is also unworthy of credence. The Courts below have not properly appreciated his statement while imposing conviction and sentence.

As an upshot of afore-said discussion, this Court is of the considered view that conviction and sentence imposed upon the petitioner by

both the courts below are not in accordance with the evidence as well as legal proposition. The prosecution has miserably failed to establish the guilt of the accused beyond any reasonable doubt by adducing cogent and convincing evidence.

In the light of what has been discussed above, instant revision is allowed. As such, conviction and sentence awarded by learned Magistrate and upheld by lower Appellate Court are set aside. The petitioner has been acquitted of the charges. Fine if any deposited by him shall be refunded to him.

**JASPAL SINGH
JUDGE**

**AUGUST 04, 2016
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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*