

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

**CRR No.2380 of 2016 (O&M)
Date of Decision: August 23, 2016**

Rajpal Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Ruchi Sekhri, Advocate
for the petitioner.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Rajpal Singh against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 07.01.2016 passed by learned Sub Divisional Judicial Magistrate, Malout, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months under Section 279 IPC and to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of ten days under Section 304-A IPC and also challenging the judgment dated 18.05.2016 passed by learned Addl. Sessions Judge, Sri Muktsar Sahib, vide which appeal filed by petitioner was dismissed. All the

sentences were ordered to run concurrently.

Notice of motion was issued and learned State counsel appeared and contested the petition.

From the record, I find that the challan was presented against petitioner in case FIR No.74 dated 13.06.2010. The brief facts of the case as noted down in the judgment passed by learned SDJM, Malout, are as under:-

“2. Brief facts of the case are that on 13.6.10 HC Rashpal Singh 229, Police Post Killianwali alongwith HC Gureet Singh 852, HC Amrik Singh 391, PHG Gurnath Singh was present at triangle of Abohar in connection with patrolling when the complainant Mander Singh s/o Gurdev Singh got recorded his statement before HC Rashpal Singh to the effect that he is resident of above address mentioned in column no.1 of the challan and is agriculturist. They are two brothers. They are married and have been living jointly. His elder brother Jasvir Singh is working as mason who has been going to Mandi Killianali for doing work for the last three days. On 12.6.2010 his brother Jasvir Singh went to Dabwali for doing work, but he did not return till evening. On the next morning, the complainant, his father and Binder Singh s/o Surjit Singh, Sukhpal Singh s/o Hamir Singh, residents of Deh went out to search for his brother, they saw the dead body of his brother near farm house of Sardara Singh s/o Mukand Singh, towards right side on the road and the cycle was lying at a little ahead broken due to accident. They went near to the dead body of his brother and found that he has suffered injuries on left leg and the the head due to which he had died. This accident was caused due to rash and negligent driving of the driver of unknown vehicle and action be taken. This statement was read over to the complainant who after admitting the same as correct appended his left thumb impression on the same as correct put his thumb mark beneath the statement and and HC Rashpal Singh attested the statement. The I.O. sent the abovesaid statement through HC Gurnath Singh to the police station for registration of the FIR, on the basis of which FIR was registered. I.O. inspected the spot, prepared rough site plan. HC got clicked the photographs of the place of occurrence. Post mortem of the deceased Jasvir Singh was got conducted under the supervision of HC Amrik Singh 391 from Civil Hospital, Malout. Statements of witnesses u/s 161 Cr.P.C. recorded. Broken pieces of glass of the offending vehicle and cycle belonging to the deceased were taken into police possession vide separate recovery memos which were attested

by the witnesses. The I.O. arrested the accused on 9.11.2010 vide grounds of arrest, signed by the accused and attested by the witnesses. His personal search memo was prepared which was signed by the accused and attested by the witnesses. I.O. prepared memo regarding belongings of the accused i.e. one Kameej, Pajama white and one underwear which were converted into parcel. Driving license of the accused was taken into police possession vide recovery memo which was attested by the witnesses. Jeep Mohindera bearing no. HR 22C-9515 alongwith its RC was taken into police possession vide recovery memo which was attested by the witnesses. The offence being bailable, so, the accused was released on bail by the I.O. on his furnishing personal bonds in the sum of Rs.20,000/- and surety bonds by the surety Ajmer Singh s/o Jagrup Singh. Test report of the offending jeep was also placed on the judicial file by mechanic Avtar Singh. After completion of investigation, instant challan was presented against the accused.”

In support of its case, prosecution examined PW1 Avtar Singh mechanic (retired), PW2 Mander Singh, PW3 Dr. Rashmi Chawla, Medical Officer, PW4 Binder Singh, PW5 Tarsem Singh @ Sema, PW6 ASI Gurmeet Singh, PW7 Maninder Singh, PW8 Jagnandan Singh, PW9 Sukhpal Singh, PW10 Gurdev Singh, PW11 ASI Rashpal Singh and PW12 ASI Amrik Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He also deposed that delayed FIR has been registered against him. He has no concern with the offending vehicle. He never drove the offending vehicle. The complainant party has falsely implicated him under the lust of greed.

Learned SDJM, Malout, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed

by the petitioner and the same was dismissed by learned Addl. Sessions

Judge, Sri Muktsar Sahib, vide judgment dated 18.05.2016.

Aggrieved from the above-said judgments, present revision petition has been filed.

After hearing learned counsel for the petitioner as well as learned State counsel and after going through the record, I find that the occurrence took place on the intervening night of 12.06.2010 and 13.06.2010. As per the FIR, the complainant saw the dead body of his brother near farm house of Sardara Singh towards right side on the road and the cycle was lying at a little ahead broken due to accident. The deceased had suffered injuries on left leg and the head, due to which he had died. It is also in the FIR that accident was caused due to rash and negligent driving of the driver of unknown vehicle.

PW-1 Avtar Singh, mechanic, checked the vehicle HR-22C-9515 on the request of the police on 12.11.2010 i.e. after five months of the occurrence. In cross-examination, he stated that the broken parts of the vehicle were freshly broken and he had observed the same. This statement of PW-1 creates reasonable doubt in the prosecution version and shows that the police has tried to create the evidence against the accused. PW-2 Mander Singh, who is the complainant, has not seen the accident and is only the complainant. He also in his statement tried to depose that accident was caused by Rajpal Singh by rash and negligent driving. As he is not the eye witness, therefore, his statement that accident was caused by accused by rash and negligent driving, is of no value.

PW-4 Binder Singh, who is cousin brother of deceased, has simply identified the dead body and he is also not the eye witness to the occurrence. PW-7 Maninder Singh, who deposed that he has joint business

with Jagdish Chander and his jeep bearing registration No.HR-22C-9515 was taken by Rajpal Singh accused, who was driver of Jagdish Chander and when he returned jeep, the front glass was found broken and he told him that an accident has occurred. This witness further stated that he came to know that Rajpal Singh caused accident with cycle and the person riding the cycle has died. He stated that he produced the jeep on 10.11.2010 to the police. The perusal of this statement also shows that PW-7 Maninder Singh is also not eye witness to the occurrence and furthermore, his version that at the time of accident, front glass of the jeep was broken, has been found false by the mechanic, who has stated that the glass was freshly broken when he examined the vehicle after five months. PW-8 Jagdish Singh has stated that he has seen the accident which occurred at 12-12.30 A.M. at night time with the driver of vehicle number HR-22C-9515 and he identified the driver i.e. present accused, who was driving the vehicle. In cross-examination, this witness stated that he has given the information to the father of the deceased on 08.11.2010. There is no cogent explanation that if he has seen the accident on the intervening night of 12-13.06.2010 and he identified the driver and also the jeep number, then why he kept silent for five months. There is no cogent explanation qua the same and the statement of this witness cannot be believed and he is not reliable witness.

In view of such type of evidence, no reliance can be placed. The only eye witness has kept silence for five months and has not reported the matter to the police or to the family of the deceased. Therefore, his version cannot be believed. As regarding the version of the owner of the jeep regarding the broken glass etc., his version also cannot be believed in

view of the mechanical report.

It is settled law that the prosecution is to prove its case beyond reasonable doubt. The accused-petitioner has been arrested in this case after more than five months of the occurrence and the eye witness has also deposed before the police after about five months.

Keeping in view the above discussion, I find that both the Courts below have misread the evidence. The findings given by the Courts below are not as per evidence and are perverse. Reasonable doubt exists in the prosecution version. Therefore, the impugned judgments passed by both the Courts below are set aside.

Resultantly, finding merit in the present revision petition, the same is allowed. The petitioner is acquitted of the charges framed against him.

Petitioner Rajpal Singh, who is in custody, be released forthwith, if his custody is not required in connection with any other case.

August 23, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No