

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

CRR No.2441 of 2016 (O&M)
Date of Decision: October 19, 2016

Balbir Singh alias Beer

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.S.Baath, Advocate
for the petitioner.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Balbir Singh alias Beer against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 05.11.2015 passed by learned Judicial Magistrate Ist Class, Gurdaspur, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹500/- and in default of payment, to undergo rigorous imprisonment for a period of one month under Section 304-A IPC and further to undergo rigorous imprisonment for a period of six months and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 279 IPC and also challenging the judgment dated 25.05.2016 passed

by learned Addl. Sessions Judge, Gurdaspur, vide which appeal filed by petitioner was dismissed. Both 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.115 dated 14.11.2010. The brief facts of the case as noted down in the judgment passed by learned JMIC, Gurdaspur, are as under:-

“2. In brief, the case of the prosecution is that the complainant Malkeet Singh son of Nishan Singh, R/o Rudiana, P.S. Kalanaur made a statement to the police that he is an agriculturist. On 14.11.2010, he along with his brother Chatterjit Singh as well as neighbour Tasveer Singh son of Bachan Singh were coming back from Mandi Kalanaur by their separate motorcycles after selling Paddy crops, whereas his brother Chatterjit Singh along with his neighbour Tasveer Singh were traveling by motorcycle bearing registration No.PB-58-D-8465. At about 7.30 PM when they reached near Grain market then a Truck bearing registration No.PAT 4809 being driven by accused Balbir Singh in so rash and negligent manner appeared there who without blowing horn struck with the motorcycle of his brother. Due to which, his brother Chatterjit Singh received grievous injuries on his head and other parts of body and his neighbour Tasvir Singh also received injuries. After, arranging the vehicle he got admitted to them at Civil Hospital, Kalanaur, where his brother Chatterjit declared dead and Tasvir Singh referred to Civil Hospital, Gurdaspur whereas Tasvir Singh got medico legally examined by doctor. The driver of the Truck fled away from the spot. On the basis of the statement of complainant, formal F.I.R. was registered against the accused. Site plan of the place of occurrence was prepared. Statements of witnesses were recorded. Accused was arrested and after completion of entire formalities of investigation, challan against the accused was prepared and presented in the court.”

Learned JMIC, Gurdaspur, 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, Gurdaspur, vide judgment dated 25.05.2016.

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

At the time of arguments, learned counsel for the petitioner mainly argued on one point that prosecution has failed to prove the identity of the accused and the present petitioner has been wrongly convicted by both the Courts below as reasonable doubt exists regarding identity of the present petitioner.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that the as per the FIR, at about 7.30 P.M., when the complainant, Chatterjit Singh and Tasvir Singh reached near Grain market, then a Truck bearing registration No.PAT 4809 being driven by accused in rash and negligent manner appeared there, who without blowing horn struck with the motorcycle of complainant's brother, due to which, his brother Chatterjit Singh received grievous injuries on his head and other parts of body and his neighbour Tasvir Singh also received injuries. After, arranging the vehicle he got admitted to them at Civil Hospital, Kalanaur.

I have gone through statement of PW-1 Malkeet Singh, complainant. He, in the chief-examination stated that his brother Chatterjit Singh and neighbour Tasvir Singh on their motorcycle and he on his separate motorcycle, were going to Mandi Kalanaur to sell their paddy and after that, when they were returning, Chatterjit Singh's motorcycle was

going ahead of him and at about 7.30 P.M., when they were near grain

market, one truck No.PAT-4809 being driven by the accused present in the Court, rashly and negligently and at high speed without blowing horn, came from opposite side and driver struck his truck with the motorcycle of his brother Chatterjit Singh, who sustained grievous injuries on his head and also sustained injuries on the other parts of the body and left hand of Tasvir Singh was also broken. The complainant further deposed that he arranged the vehicle and carried both injured to Civil Hospital. It is also stated that accident took place due to rash and negligent driving of the accused, who all of a sudden, turned his truck and caused accident with the motorcycle driven by his brother. It is further stated that accused ran away from the spot by speeding his truck.

In cross-examination, Malkeet Singh admitted that in his statement Ex.PA recorded before the police, he did not disclose the name or particulars of the driver of the offending vehicle. He also taken the stand that he does not know the driver of the offending vehicle and he had not seen him prior to occurrence. He was called by the Investigating Officer in the police station on 17.11.2010 and after that, only once he went to police station to take motorcycle.

From the statement of the complainant, it is clear that he was not knowing the accused prior to the accident. As per the statement, the driver after causing the accident, fled away from the spot along with the truck. There is nothing in the statement that driver came out from the truck and then the complainant saw him. The time of accident was 7.30 P.M. in the month of November and at that time, it is always dark. No identification parade has been got conducted in the present case by the Investigating

Officer. Rather, the statement shows that the police first time shown the

accused in the police station to the complainant. No name has been mentioned in the FIR. No description of any type of the accused has been mentioned in the FIR.

PW-2 Tasvir Singh, is the injured witness. In his cross-examination, he stated that he has not told the name of the accused to the police. He has told the police during his statement that accused driver is unknown person and was having *perna* around his head and face. He stated that the accident occurred at about 7.30 P.M. and it was dark at that time. The headlight of their motorcycle was not on as it might be fused. He further stated in cross-examination that driver of the truck was clean shaven person and was not Sikh turbaned. He also stated that police told that name of the accused was Balbir Singh. The police never called him to identify the driver of offending vehicle. The accused present in the Court was not the driver of offending vehicle at the time of alleged accident.

This statement of injured witness goes in favour of the accused as in cross-examination, PW-2 Tasvir Singh has specifically stated that accused present in the Court was not the driver of the offending vehicle.

The Investigating Officer in his cross-examination stated that on 17.11.2010, he arrested the accused in this case and the complainant Malkeet Singh identified him in the police station. The identification of the accused in the police station is not an identification in the eyes of law.

In view of the evidence on record, I find that when the accident was occurred, it was dark; the truck driver did not stop the truck and ran away from the spot; the name and description of the driver have not been mentioned in the FIR neither the complainant nor injured witness was

Tasvir Singh that accused was not driving the truck, creates reasonable doubt in the prosecution version. In this case, the identification parade was necessary to be conducted. Both the Courts below have given the findings by misreading the evidence on material points.

Keeping in view the above discussion, I find merit in the present revision petition and the same is allowed. The petitioner is acquitted of the charges framed against him. The impugned judgment of conviction and order of sentence dated 05.11.2015 passed by learned Judicial Magistrate Ist Class, Gurdaspur and the judgment dated 25.05.2016 passed by learned Addl. Sessions Judge, Gurdaspur, are hereby set aside.

Petitioner Balbir Singh alias Beer, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case.

October 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No