

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

CRR No.3845 of 2015 (O&M)
Date of Decision: September 15, 2016

Karaj Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Rangi, Advocate
for the petitioner.

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

Mr.H.P.S.Ghuman, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Karaj Singh against respondents State of Punjab and Amrik Khan, challenging the impugned judgment of conviction and order of sentence dated 20.08.2015 passed by learned Addl. Sessions Judge, Patiala, vide which the appeal filed by the complainant-respondent No.2 was allowed and judgment dated 19.01.2015 passed by learned Chief Judicial Magistrate, Patiala, acquitting the accused-petitioner was set aside.

From the record, I find that challan was presented against accused Karaj Singh in case FIR No.26 dated 25.05.2011. The brief facts of

the case as noted down in the judgment passed by learned CJM, Patiala, are

as under:-

“2. Brief facts, as enunciated in the police challan, are that on 25.5.2011 ASI Bhinderpal Singh alongwith other police officials was going towards village Bakshiwala and when they reached near UK Palace, then Amrik Khan s/o Sadiq Mohd. r/o village Kathmathi, PS Bakshiwala, District Patiala met them and suffered statement before the Investigating Officer to the effect that he is resident of aforementioned address and labourer by profession. They are four brothers and his brother Malkiat Mohd. is handicap from his right leg, who has two daughters and one son. Today his brother Malkiat Mohd. was going on his cyclce from the house towards Water Tank and he was coming on his scooter Bajaj Chetak to the village from city. When at about 8 PM his brother reached opposite the house of Ex-Sarpanch Verma Singh, a tractor make Arjan 605 came there, which was going ahead of him and was being driven by Karaj Singh s/o Avtar Singh at a very high speed and in rash and negligent manner and struck against the cycle of Malkiat Mohd. from front side, due to which his brother fell down on the road and died at the spot. He had come to inform the police about the matter after leaving his cousin Sitar Mohd. at the spot.”

Learned CJM, Patiala, after going through the evidence, acquitted the accused-petitioner. Appeals were filed by the complainant and State before the Sessions Court and learned Addl. Sessions Judge, Patiala, accepted the appeal, set aside the judgment dated 19.01.2015 passed by learned CJM, Patiala and convicted and sentenced the accused-petitioner to undergo rigorous imprisonment for a period of six months under Section 279 IPC and to undergo rigorous imprisonment for a period of 1½ years and to pay fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 304-A IPC. Both the sentences were ordered to run concurrently.

Aggrieved from the above-said judgment of conviction and order of sentence, present revision petition has been filed by the accused-petitioner.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioner argued that there are some discrepancies in the statements of the witnesses. Only statement of complainant is there, who is brother of the deceased and no independent witness has been examined. Learned counsel for the petitioner further argued that identity of the accused is also not proved.

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

The mere fact that prosecution has examined only one eye witness Amrik Khan, is no ground to discard the statement of the complainant. The Court is to scrutinize the statement and then to give finding whether witness is reliable or not but learned Magistrate has simply ignored the statement of main witness complainant and held that no independent witness has been examined. Learned CJM, Patiala, has also given much weightage to the discrepancies in the statements of the official witnesses regarding arrest memo and has not appreciated the evidence in right perspective.

Learned Addl. Sessions Judge, Patiala, in judgment dated 20.08.2015 had discussed all these points and found that findings given by learned CJM, Patiala, are incorrect. The perusal of the judgment passed by learned Addl. Sessions Judge, Patiala, shows that the findings are correct, as per evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by learned lower Appellate Court. In no way, the findings given

in impugned judgment dated 20.08.2015 can be held as perverse or against

the evidence.

The discrepancy that in the statement given before the trial Court the complainant has given the time of occurrence as '7.50 p.m.' and in the statement got recorded to the police, he has mentioned the time 'at about 8.00 p.m.', in no way, can be held as material discrepancy. Otherwise also, this is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. The statement given by PW-2 Amrik Khan is a reliable statement. He has deposed consistently as per prosecution version. There are no material contradictions or improvements in his statement. There is also no dispute regarding identity of the accused as the accused belongs to same *mohalla* and PW-2 Amrik Khan was going on his scooter and he has seen the accused from 2-2 ½ feet. Therefore, the identity of the accused is duly proved. Furthermore, the FIR was got registered within 1½ hour and name of the accused was mentioned in the FIR. There is no reason or ground to falsely implicate the accused-petitioner in this case.

In view of the above discussion, I find that the judgment of conviction dated 20.08.2015 passed by learned Addl. Sessions Judge, Patiala, is correct, as per law and does not require any interference from this Court and the same is upheld.

In the alternative, learned counsel for the petitioner prayed for reduction of sentence imposed upon the petitioner.

Keeping in view the facts and circumstances of the present case and in view of the fact that the petitioner is stated to be first offender, only bread earner of the family and in view of the fact the petitioner is suffering from long protracted criminal proceedings since 2011 i.e. for the last about

five years, the sentence imposed upon the petitioner is reduced and he is directed to undergo rigorous imprisonment for a period of one year instead of 1½ years under Section 304-A IPC. However, the other sentence, sentence of fine and in default thereof, shall remain the same. Both the sentences shall run concurrently.

With the above-said modification in the sentence, the present revision petition stands dismissed.

September 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No