

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

CRR No.2716 of 2016 (O&M)
Date of Decision: November 18, 2016

Akhilak

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kunal Dawar, Advocate
for the petitioner.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Akhilak against respondent State of Haryana, challenging the impugned judgment of conviction dated 10.12.2015 and order of sentence dated 11.12.2015 passed by learned Sub Divisional Judicial Magistrate, Hathin, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months under Section 279 IPC and further to undergo rigorous imprisonment for a period of two years under Section 304-A IPC and also challenging the judgment dated 18.07.2016 passed by learned Sessions Judge, Palwal, vide which appeal filed by petitioner was dismissed.

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.215 dated 22.06.2013. The brief facts of the case as noted down in the judgment passed by learned SDJM, Hathin, are as under:-

“2. Brief facts of the present case are that complainant Rasid submitted a complaint to the effect that on dated 22.6.2013, at about 7:30 AM. Abbas, who is grand son of his elder brother, Sahid was going to Kot Bus Stand on cycle and he was coming behind him. When they reached near Government School, then, one tractor Marka Sonalika of blue colour came from the side of Punhana. The said tractor was not having any number and water tanker was also attacked with it. The driver of the said tractor came there by driving it at a high speed and in a rash and negligent manner and hit into the cycle of his grand son from back side. His grand son fell down and front tyre of the tractor crushed his grand son. The said unknown driver left his tractor on the spot and ran away. The engine number of the said tractor was 3100 EL 82F 145062 and chassis No.F2 CSB 1442223. He ran towards his grand son and noticed that his grand son had already expired. The unknown driver of said tractor has caused the death of his grand son by driving it at a high speed and in a rash and negligent manner by hitting his cycle from back side. It is, therefore, requested that necessary action be taken against the accused.”

The prosecution examined PW-1 EHC Sukhbir Singh, PW-2 Vahid, eye witness, PW-3 Dr.Divakar Sharma, PW-4 ASI Raj Pal, PW-5 Constable Asfak, PW-6 Rasid, complainant and PW-7 Iqbal, eye witness. Thereafter, the prosecution closed the evidence.

In the statement under Section 313 Cr.P.C., the accused denied the correctness of the evidence produced by the prosecution and pleaded himself as innocent and stated that he has been falsely implicated in the present case.

No witness was examined in defence.

Learned SDJM, Hathin 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 Sessions Judge, Palwal, vide judgment dated 18.07.2016.

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

At the time of arguments, learned counsel for the petitioner mainly argued that identity of the accused has not been proved beyond reasonable doubt and reasonable doubt exists in the prosecution case and the findings given by both the Courts below regarding identity are against the evidence and law. He also argued that there is nothing on the record to connect the accused with the offending vehicle. He next argued that neither petitioner is named in the FIR nor any description of the accused has been given in the FIR.

On the other hand, learned State counsel argued the prosecution has duly proved its case by leading cogent evidence and the PWs including complainant and eye witnesses have deposed consistently against the accused.

After hearing learned counsel for the petitioner as well as learned State counsel and after going through the record, I find that PW-2 Vahid, eye witness, in chief-examination has stated that a tractor came at high speed from Punhana side and hit the cycle of Abbas and fled away from the spot. In chief-examination, he further stated that he does not know the name of the driver but he identifies him, who is present in the Court. In the cross-examination, he stated that he has not seen the driver of the tractor. At that time, no other person was with him. Only the deceased was

going on the bicycle. He also stated in the cross-examination that he

reached at the accident spot within 10 minutes and then he raised noise. He also stated that Rasid and Iqbal also reached on the spot. He further stated that he has seen the driver when he was running away. PW-6 Rasid, also stated that tractor hit the bicycle of Abbas. The tractor was driven by Akhlak, who is present in the Court. In cross-examination, PW-6 Rasid stated that he has not seen the driver from the front side but has seen him from the back side. He also stated that the driver had ran away from the spot. He again specifically stated in the cross-examination that he has not seen the driver of the tractor from the front side and he has seen him from 15 karams. PW-7 Iqbal also stated in cross-examination that he has seen Abbas from 75-80 feet. He also stated that the tractor driver ran way from the spot and he has seen the tractor driver from the backside when he was running away.

Keeping in view the evidence of these three PWs, I find that the identity of the accused is not proved beyond reasonable doubt. These witnesses stated that they have seen the accused from the backside and not from the front side and they have also seen the driver from distance. They were not present at the spot before the occurrence. There is no description of the accused in the FIR. There is no other cogent evidence to connect the accused-petitioner with the tractor. There is nothing to show that petitioner was driving the tractor at that time. It is not the case of the prosecution that driver stopped the tractor at the spot. All three witnesses have stated that accused ran away from the spot and they have seen the accused from the backside and not from the front side. Moreover, the statement of PW-2 Vahid also creates reasonable doubt as he stated that he was alone at that time and Rasid and Iqbal came on the spot later on. This fact also creates

doubt whether PW-6 Rasid and PW-7 Iqbal were present at the spot at that time or they came later on.

In view of the above facts, I find that the identity of the accused has not been proved by the prosecution beyond reasonable doubt by leading cogent evidence. The findings given by both the Courts below are not as per evidence. The evidence has not been appreciated in right perspective.

Keeping in view the above discussion, I find merit in the present revision petition and the same is allowed. By giving benefit of doubt, the petitioner is acquitted of the charges framed against him. The impugned judgment of conviction dated 10.12.2015 and order of sentence dated 11.12.2015 passed by learned Sub Divisional Judicial Magistrate, Hathin and the judgment dated 18.07.2016 passed by learned Sessions Judge, Palwal, are hereby set aside.

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

November 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No