

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.4067 of 2015 (O&M)****Date of Decision: January 06, 2016**

Anil Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek K. Thakur, 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 Anil Kumar against State of Punjab under Section 401 Cr.P.C., challenging the impugned judgment of conviction and order of sentence dated 05.06.2015 passed by learned Judicial Magistrate Ist Class, Pathankot, vide which the petitioner was convicted under Sections 279, 337, 338 and 427 IPC and sentenced to undergo rigorous imprisonment for a maximum period of one year and to pay fine under Section 338 IPC and also challenging the judgment dated 05.10.2015 passed by learned Sessions Judge, Pathankot, vide which appeal filed by petitioner was dismissed.

Notice of motion was issued and learned State counsel

appeared and contested the petition.

The brief facts of the case are that on 19.06.2011, information regarding accident was received by the police party headed by ASI Pritam Lal, who went to the hospital and came to know that injured have been referred to DMC Hospital, Ludhiana. Then statement of Naveentam was recorded, who was lying on bed at his house and stated that he was not taken to DMC Hospital, Ludhiana by his parents. He got recorded his statement to ASI Pritam Lal that on 19.06.2011, he along with Kuldeep Rai went to Adda Mirthal on motorcycle bearing registration No.PB-54C-7198 for some personal work and he was pillion rider. When they were returning and about to cross the road from Adda Mirthal at about 7.30 A.M., one car which was coming from Pathankot side on high speed, had not given any horn and hit the motorcycle. They fell down and driver fled away from the spot. Navneetan further stated that the number of the car came to be known as JK-02AK-6537 and he did not know the name of the driver but he could identify him if he is brought before him. As Kuldeep Rai got serious injuries, he was referred to DMC Hospital, Ludhiana. He also stated that accident took place due to rash and negligent driving of car driver.

In order to prove its case, prosecution examined PW-1 Navneetam, PW-2 Kuldeep Rai, both injured; PW-3 Pushpinder Kumar, eye witness; PW-4 ASI Surinder Kumar, who got the mechanical test of the motorcycle as well as the car; PW-5 Swaroop Singh, RC Clerk, who deposed regarding registration certificate of the

motorcycle; PW-6 ASI Gurmej Singh; PW-7 Deepak Kumar, Clerk DTO Office, who brought the record of driving licence of Kuldeep Rai; PW-8 ASI Pritam Lal, Investigating Officer, who deposed regarding investigation conducted by him; PW-9 Gurjinder Singh and PW-10 Dr. Jewan Parkash, who brought the patient treatment record file pertaining to Kuldeep Rai.

At the close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. Accused denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that no recovery has been effected from him and he has been falsely implicated at the instance of informer.

Learned JMJC, Pathankot, on the basis of the evidence produced before it, convicted and sentenced the present petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Sessions Judge, Pathankot, vide judgment dated 05.10.2015.

At the time of arguments, learned counsel for the revision petitioner argued regarding identity of the accused-petitioner. He argued that identity of the accused-petitioner has not been proved by leading cogent evidence. As per the evidence on record, the car was coming at a high speed, which hit the motorcycle and driver of the car fled away with the car. He next argued that the injured PWs and eye witness were not knowing the driver earlier to the occurrence and they have not seen the driver earlier. He also argued that at the time of

occurrence, which happened just within no time and the driver fled away from the spot, the PWs have no occasion to identify the driver. Learned counsel for the petitioner contended that even PW-3 Pushpinder Kumar, who was eye witness to the occurrence, in cross-examination has stated that it is correct that he has seen the accused first time in the Court. Therefore, it is argued that in these circumstances, identification parade was necessary to be conducted to support and corroborate the version of the injured witness.

On the other hand, learned State counsel argued that identity of the accused-petitioner has been duly proved by the PWs while appearing in the Court and the evidence in the Court is substantive piece of evidence.

After hearing learned counsel for the petitioner as well as learned State counsel and after going through the record, I find that Navneetam, complainant was sitting as pillion on the motorcycle. As per his statement, the car was too rash and at high speed that it dragged Kuldeep Rai to some distance, which means that the complainant Navneetam was having no opportunity to see the driver. Even in cross-examination, he stated that he cannot tell how many persons were travelling in the car. If this witness is not aware that as to how many people were travelling in the car, then how he can identify the driver in such a short time when the accident occurred suddenly on the road.

Furthermore, the description of the accused has not been given in the FIR. PW-2 Kuldeep Rai has stated in cross-examination

that after the accident, he fell down unconscious and does not know anything. He also stated in the cross-examination that accused has come to the Court on second date and on earlier date, he had also come to the Court.

Keeping in view the fact that PW-1 complainant even could not tell as to how many persons were travelling in the car, therefore, it is not safe to rely upon his testimony that he identified the accused at the time of accident. PW-2 Kuldeep Rai, who stated in the cross-examination that he immediately fell unconscious and does not know anything as to what happened afterwards, also not supposed to have identified the accused. Otherwise also, when the car came at high speed and dragged one of the occupants of the motorcycle i.e. Kuldeep Rai and fled away, then it is not possible to identify the accused, who was not earlier known to the witnesses. PW-3 Pushpinder Kumar has also stated that he has seen the accused first time in the Court. Furthermore, no description has been given in the FIR regarding the driver of the car.

In the facts and circumstances of the present case, I find that identification parade was necessary in the present case. Therefore, a reasonable doubt exists regarding the identity of the accused.

In view of the above discussion, I find that the judgments and order passed by both the Courts below are not correct and not as per law and therefore, the same are set aside.

Finding merit in the present revision petition, the same is

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

January 06, 2016
Vgulati

(INDERJIT SINGH)
JUDGE