

In the High Court for the States of Punjab and Haryana
at Chandigarh

(Sr.No.303)

CRR No.1135 of 2006 (O&M)
Date of Decision:-July 10, 2017

Subhash

... Petitioner

Versus

State of Haryana

... Respondent

Coram: **Hon'ble Mr. Justice Gurvinder Singh Gill**

Present : Ms. Aditi Girdhar, Amicus Curiae, for the petitioner.

Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill J.

1. This revision petition is directed against judgment dated 24.05.2006 passed by the learned Sessions Judge, Rewari, vide which the conviction of the petitioner under Section 279 and 304-A of the Indian Penal Code ('IPC'-for short) as recorded by learned Chief Judicial Magistrate, Rewari has been upheld.
2. The petitioner was booked for the aforesaid offences on the basis of allegations levelled by complainant Kishan Kumar (PW-4) to the effect that on 05.11.1997, the petitioner, while driving a vehicle (Tata 407) bearing registration No.HR-38-3720 rashly and negligently and at a high speed hit Arun Kumar (deceased) aged about 6 years who was on his way to school at about 9.00 AM and was going on left side of the road. The injured child

succumbed to the injuries on his way to hospital. The unknown driver of the vehicle fled away from the spot.

3. The matter was investigated by the police. The accused was arrested on 12.11.1997. The accused was sent up for trial where charges in respect of offences punishable under Sections 279 and 304-A IPC were framed on 29.9.1998.
4. In order to bring home the guilt of the accused, the prosecution examined PW-1 Sub Inspector Ram Niwas, PW-2 Dr. Karan Singh, PW-3 Naresh Kumar, PW-4 Krishan Kumar, PW-5 Shyam Kishor, motor mechanic, PW-6 Constable Kanwar Singh, PW-7 Bhoop Singh (retired ASI) and PW-8 Assistant Sub Inspector Anil Kumar.
5. The accused, in his statement recorded under Section 313 Cr.P.C. refuted all the allegations stated the same to be false. However, no evidence was led by him in his defence.
6. Learned Chief Judicial Magistrate, Rewari held that the charges framed against the accused to be duly established and consequently convicted the accused-petitioner for having committed the offences punishable under Sections 279 and 304-A IPC and sentenced him to undergo rigorous imprisonment for a period of one year under Section 304-A along with fine of Rs.1000/- and for a period of 6 months rigorous imprisonment under Section 279 IPC.
7. Petitioner-Subhash preferred an appeal in the Court of Sessions which was

dismissed, while the sentence of imprisonment in respect of offence under Section 304-A IPC was marginally reduced from one year to 9 months and in respect of offence under Section 279 IPC the sentence of rigorous imprisonment was reduced to 3 months.

8. The accused-petitioner still being aggrieved by his conviction, preferred the present revision petition.
9. I have heard the learned counsel for the petitioner as well as the learned counsel representing the State and have also perused the record of the case.
10. Learned counsel for the petitioner has mainly assailed the impugned judgment on the ground that the accused who, as per the FIR is stated to have fled away from the spot was never identified by way of conducting any test identification report and that it was only in the Court at the time of recording of statement of the complainant-Kishan Kumar that the accused was allegedly identified for the first time. Learned counsel has submitted that such like identification in the Court for the first time is not free from doubt and causes serious doubts in the case of the prosecution as regard to identification of the accused who is referred to as an unknown driver in the FIR and is stated to have fled away from the spot. Learned counsel for the petitioner in order to support his contentions has placed reliance upon Piginaraji Ranga Rao Vs. State of A.P. 2011(7) RCR (Criminal) 1493, Manju Baradia Vs. State of Chhattisgarh 2002(1) TAC 55, Love Raj Vs. State of Punjab 2001(3) RCR (Criminal) 15 and State of Punjab Vs. Gurdip Singh 2003(4) RCR (Criminal) 858.
11. Learned counsel for the petitioner has further submitted that the prosecution

has made a vain attempt to fill up the lacuna as regard to identification of the accused inasmuch as the complainant-Kishan Kumar (PW-4), during the course of cross-examination, has stated, that the dead body of Arun Kumar was brought to the hospital in the offending vehicle and the driver had fled away from the hospital. Learned counsel has submitted that such an improvement has been made in order to show that the complainant and others had an opportunity of seeing the accused though in the FIR it is specifically stated that the unknown driver had fled away from the spot. Learned counsel has thus submitted that in the absence of proper identification, the case of the prosecution falls to the ground and the petitioner is entitled to be acquitted of all the charges framed against him.

12. On the other hand, learned State counsel has stated that the evidence led by the prosecution fully establishes the case of the prosecution. Learned State counsel has further stated that there is no absolute rule that under all circumstances the identification of the accused made in the Court is bad in the eyes of law and is not to be relied upon.
13. Having considered the rival submissions and having perused the record, I find that it is a case where the accused was identified by the complainant in the Court for the first time when the complainant stepped into the witness box for recording his statement. However, as per FIR, the accused had fled away from the spot with his vehicle and he is referred to as an unknown person in the FIR. In other words, the identity of the accused was not known at the time of recording of the FIR. The complainant-Kishan Kumar (PW-4), while in the witness box has attempted to improve the case of the prosecution by stating

that the accused had taken the victim to the hospital in his truck and it was from the hospital that the accused fled away. Such like improvement was apparently to suggest that Kishan Kumar (PW-4) had ample time to see and identify the accused so as to justify identification of the accused when the accused appeared in the Court to face trial. However, I find that the aforesaid improvement stands absolutely demolished from the fact that the truck in question was taken into possession by the police after one week of the alleged occurrence i.e. on 12.11.1997 vide recovery memo Exhibit PW-6/A. Had the accused left his truck in the hospital on the day of occurrence i.e. on 05.11.1997, then the truck would have been taken into possession by the police on 05.11.1997 itself. I further find that prosecution has taken no pains to examine the owner of the truck in question, who could have shed some light as to who was driving the truck at the relevant time, though the particulars of ownership were available with prosecution in the shape of Registration Certificate of the truck.

14. Though learned State counsel has submitted that the identity of the accused would also stand established from the driving licence of the accused, but I find that it is not the case that the driving licence of the accused was recovered from the truck itself. On the other hand, it was the accused himself who produced his driving licence before the police which was taken into possession vide recovery memo Exhibit PW-6/B on 12.11.1997. The aforesaid facts show that the accused was not identified at the spot and the prosecution has made desperate attempts to establish his identity in the Court by way of making improvements. In the present case there is no other circumstance to led credibility to the statement of Kishan Kumar (PW-4)

regarding identity of the accused. Rather the aforesaid improvements regarding the accused having gone to the hospital shows that the prosecution had no clue about the identity of the accused.

15. In view of the aforesaid discussion wherein it has been found that the prosecution has failed to establish the identity of the accused, it is certainly not safe to record conviction solely on the statement of Kishan Kumar (PW-4) who identified the accused for the first time in the Court. Consequently, in the absence of identification of the accused, the accused cannot be held to have committed the offences in question. The revision petition merits acceptance and is hereby accepted. The impugned judgment dated 24.05.2006 of learned Sessions Judge, Rewari as well as judgment dated 23.10.2002 and order of sentence dated 26.10.2002 passed by Chief Judicial Magistrate, Rewari are hereby set aside and the accused-petitioner is acquitted of all the charges framed against him. The petitioner would be entitled to refund of the fine, if any, deposited by him. The revision petition stands accepted accordingly.

July 10, 2017

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(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No