

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision 169 of 2008

Date of Decision : July 13, 2017

Isham Singh

....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Sachin Gupta, Advocate
for the petitioner.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The petitioner was tried for committing offences punishable under Sections 279 and 304-A IPC with the allegations that on 24.3.1997 at about 2.30 p.m. he drove truck bearing registration No. HR-01-9315 in a rash and negligent manner so as to endanger human life and personal safety of Bhagwan Singh and Arjun Singh and struck the truck against them due to which Bhagwan Singh died. Vide judgment and order dated 27.2.2006/1.3.2006, the learned Additional Chief Judicial Magistrate, Kaithal convicted him for the offence under Section 279 IPC and sentenced him to undergo rigorous imprisonment for six months. He was also convicted under Section 304-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo imprisonment for thirty days. Both the sentences were ordered to run concurrently.

Aggrieved of his conviction and sentence, the petitioner filed an appeal but remained unsuccessful as it came to be dismissed by learned Sessions Judge, Kaithal vide judgment dated 8.12.2007. Still not satisfied, he filed the present revision, which was admitted on 31.1.2008. Subsequently, vide order dated 13.2.2008, this Court suspended his sentence of imprisonment and ordered his release on bail during the pendency of the revision.

According to the prosecution, Arjun Singh, brother of Bhagwan Singh deceased made statement Ex.PW2/A to the police on 24.3.1997 to the effect that on that day he alongwith Bhagwan Singh had come to village Neoli, Pharal road to take fodder. Bhagwan Singh was riding the cycle whereas he was following him while walking. When they reached near the drain bridge at about 2.30 p.m., one truck bearing No.HR-01-9315 came from the side of Pundri. It was being driven rashly and negligently by its driver, without blowing any horn and struck against Bhagwan Singh. As a result, Bhagwan Singh and his cycle fell down. The truck driver could not control his truck and it, accordingly, went into the fields. The truck driver came back and disclosed his name to the complainant as Deva son of Santu. The neighbours were attracted to the spot and they tried to rescue Bhagwan Singh. In the meantime, the truck driver ran away leaving his vehicle at the spot. The complainant brought his brother for medical treatment to the hospital. The police reached the hospital and recorded the statement of the complainant and on its basis, FIR No.183 dated 24.3.1997 under Sections 279 and 304-A IPC was registered.

During the investigation of the case, the police came to know that it was Isham Singh son of Sadhu Ram, who was driving the truck but he had disclosed his name wrongly as Deva son of Santu. Accordingly, the petitioner was arrested. Bhagwan Singh died at P.G.I, Chandigarh and, resultantly, offence under Section 304-A IPC was added.

At the trial of the case, the prosecution examined Dr. D.C. Thakral, Medical Officer as PW1, Arjun Singh as PW2, Sher Singh as PW3, ASI Om Parkash as PW4, SI Surinder Pal as PW5, Inspector Ashok Kumar as PW6 and Harjit Singh as PW7.

When examined under Section 313 Cr.P.C., the petitioner denied the allegations levelled against him and pleaded that he was innocent.

After hearing learned counsel for the parties and on going through the case file, learned Additional Chief Judicial Magistrate, Kaithal vide judgment and order dated 27.2.2006/1.3.2006, convicted the petitioner and sentenced him, as mentioned above.

The only issue which arises for determination in the present case is the identity of the petitioner as a driver of the offending truck at the time of incident.

While making statement Ex.PW2/A, on the basis of which FIR was registered, complainant Arjun Singh, brother of the deceased had stated that the driver of the offending truck after causing the accident alighted from the truck and after coming near him, stated that he was Deva son of Santu, resident of Meoli. However, when the people from

neighbourhood started gathering there and the complainant tried to take care of his injured brother, the truck driver after leaving the truck at the spot, ran away. While stepping into the witness box as PW2, complainant Arjun Singh deposed that it was the petitioner, namely, Isham Singh, who was the driver of the offending truck and the petitioner was present in the Court whom he identified. In his cross-examination, he testified that in his statement Ex.PW2/A he had stated the name of the truck driver as Deva son of Santu. He further stated that at the time of the accident, a number of persons had gathered there. He went on to add that Neoli and Pundri villages were situated closeby. 2/3 persons, who were attracted were known to him. One of them was Jagira while the other Ishma. The police had reached the spot an hour later. Infact, he himself had brought the police from Police Station, Pundri. Four policemen had come there in a jeep.

The investigation of the case was conducted by PW5 SI Surinder Pal, who deposed that when he was present at Pharal Chowk in connection with investigation of FIR No.182, he learnt about the accident which had occurred between a truck and motorcycle. On receiving the information, he reached Government Hospital, Kaithal for recording the statement of the injured namely, Bhagwan Singh. As Bhagwan Singh was declared unfit to make a statement, he recorded the statement Ex.PW2/A of complainant Arjun Singh. He further deposed that on 1.4.1997 when he was present in the Police Station, Sharaba, Sarpanch of village Neoli produced accused Isham Singh son of Sadhu Ram, resident of Neoli before him. Further, he associated the accused in the investigation and finding material against him, effected his arrest. On 2.4.1997, Ishwar, owner of

the truck produced photocopy of the registration certificate, which was taken into possession vide memo Ex.PJ. In his cross-examination, he stated that during investigation it came to the fore that the name of the truck driver was Isham and not Deva. He also stated that he did not record the statement of Sharaba, Sarpanch in this regard but simply made a mention thereof in the zimni.

From the above evidence, it is made out that while making statement Ex.PW2/A, PW2 Arjun Singh, brother of the deceased had stated that it was Deva son of Santu, who was driving the offending truck at the time of the accident. However, during the investigation of the case, one Sharaba, who was the Sarpanch had produced the petitioner, namely, Isham Singh son of Sadhu Ram before SI Suridner Pal, Investigating Officer. At that time said Sharaba had stated that it was the petitioner, namely, Isham Singh, who was driving the offending truck at the time of the accident and not Deva son of Santu. If it was Sharaba who produced the petitioner and mentioned his name as Isham Singh, the Investigating Officer was duty bound to record his statement as the factum of identity went to the very root of the case. Instead of doing so, SI Surinder Pal claimed to have recorded the fact in the zimni only. Sharaba was also not cited as a witness by the prosecution in support of its case. Rather, the prosecution depended upon the statement of PW2 Arjun Singh when he stated before the trial Court that it was Isham Singh petitioner who was the driver of the offending vehicle at the time of the accident and not Deva son of Santu. Moreover, the petitioner belonged to village Neoli whereas PW2 Arjun Singh was resident of nearby village Pundri. In such a situation the

prosecution ought to have held an identification parade so as to allay its doubt regarding the identity of the accused. No attempt, whatsoever, was made by the investigating agency to arrange test identification parade.

In view of the above, it cannot be said with certainty that it was Isham Singh petitioner who was driving the offending vehicle at the time of the accident. In any case, he would be entitled to benefit of doubt and under these circumstances, his conviction and sentence cannot be upheld.

Resultantly, the revision is accepted, conviction and sentence of the petitioner, as recorded by the trial Court and upheld by the lower Appellate Court, is set aside and he is acquitted of the charges against him.

The petitioner is presently on bail. His bail bonds and surety bonds are hereby discharged.

July 13, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO