

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 3040-2009 (O&M)
Date of decision: 06.11.2017

Ramesh Kumar

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.S.K.Biriwal, Advocate for the petitioner
Mr.Pawan Garg, Assistant Advocate General, Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

The present petition is directed against the judgment dated 5.11.2009 passed by learned Sessions Judge, Fatehabad reversing that of learned Judicial Magistrate First Class, Fatehabad dated 6.8.2008 and after setting aside the acquittal of the petitioner, convicting him under Sections 279 and 304-A IPC and sentencing him to undergo Rigorous Imprisonment for three months and to pay a fine of Rs.500/-, in default thereof to undergo further Rigorous Imprisonment for one month under Section 279 IPC and Rigorous Imprisonment for one year and to pay a fine of Rs.1000/-, in default thereof to undergo further Rigorous Imprisonment for five months under Section 304-A IPC. Both the sentences were directed to run concurrently.

The short facts of the case are that as per complaint Ex.PA made by Sadhu Ram, on 29.12.2001 he met Tara Chand at bus stand village Badopal. Tara Chand, who was driving four wheeler and was to go to

village Kumharia met him. After sometime, Tara Chand started four wheeler towards village Khumaria. Sadhu Ram along with Prithvi also started on motorcycle towards said village. They were on GT road. When they reached in the area of village Khumharia near Premi Hotel, a Truck bearing registration no.HR-46-7751 came from the opposite side and hit four wheeler being driven by Tara Chand. Sadhu Ram complainant applied brake of his motorcycle and drove the motorcycle to the kacha portion of the road, otherwise he would have met the same fate. As a result of the accident, four wheeler of Tara Chand was broken into pieces. Tara Chand died at the spot. The truck driver left the truck at the spot and ran away.

After recording the evidence, learned Judicial Magistrate First Class, Fatehabad acquitted the petitioner, primarily on the ground that the complainant Sadhu Ram (PW5) as well Prithvi, eye witness have simply stated that the truck was being driven at a high speed. They did not state that it was being driven rashly and negligently. Therefore, it was concluded that rash and negligent driving was not proved. Further, it was held that no test identification parade was conducted. State of Haryana went in appeal before learned Sessions Judge, Fatehabad, who reversed the findings. It was held that it was a GT road. Road was wide enough to accommodate passing of two vehicles side by side. The circumstances show that the truck was being driven rashly and negligently. Regarding the test identification parade, it was held that the accused is owner of the truck and truck was left at the spot. The truck was taken on *Superdari* by the accused petitioner. He has not claimed that on the date of accident somebody else was driving the truck. He was seen running away from the spot by Sadhu Ram (PW5). Therefore, his identity is also proved.

I have heard learned counsel for both the parties and have also carefully perused the record.

Admittedly, both Sadhu Ram (complainant) and eye witness have simply stated in their examination-in-chief that the truck was being driven at a high speed.

Now, the question is as to whether in the absence of statement of witness, the Court can assume that the truck was being driven rashly and negligently?

I am of the view that statement of the eye witness is one part of the evidence. The Court has to consider the entire evidence. The police has produced the site plan, report of the mechanic and other documents on file. The site plan placed on file shows that the truck hit the four wheeler with a great force. The accident took place in the middle of the road. Parts of the four wheeler lying at point 'C'. Report of the mechanic (Ex.PC) and site plan (Ex.P6/C) shows that truck was extensively damaged. Its Steering system was lying broken. Pipes of the brake system were lying broken. Headlights were lying broken. Front bumper was bent. Viewing mirror was broken. Both Kamanis were broken. The tyres of the truck were separated from the main body. In this way, the truck was completely damaged. As stated above, four wheeler was broken into pieces. It goes to show the speed at which the truck was coming on the main road. Normally, if a heavy vehicle hits a light vehicle, such extensive damage will not be caused. Extensive damage caused to the truck itself is sufficient to prove that truck was being driven rashly and negligently. The truck driver never made any attempt to slow down or avoid the accident.

Regarding identity of the accused. Accused is the owner of the

truck. Truck was left at the spot. Identity of the truck is established. Accused never claimed before the trial Court that he had lent the truck to somebody or he had employed a driver or somebody else was driving the truck on the date of accident. He was seen running by Sadhu Ram complainant from the spot. Therefore, in these circumstances, the lower appellate Court rightly concluded that the identity of the driver is also established beyond all reasonable doubts.

Accordingly, I do not find any illegality or infirmity in the findings recorded by the learned Sessions Judge, Fatehabad. Same are hereby affirmed. Keeping in view the facts and circumstances, I also do not find any ground to reduce the sentence.

In view of the above, present revision petition is dismissed.

Petitioner who is on bail be re-arrested to undergo the remaining part of the sentence.

06.11.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No